
STANDARDS HEARING SUB-COMMITTEE

MINUTES of the Meeting held in the Council Chamber, Swale House, East Street, Sittingbourne, Kent, ME10 3HT on Monday, 19 June 2017 from 10.00am - 3.31pm.

PRESENT: Councillors Paul Fleming, Sue Gent and Alan Horton (Chairman).

OFFICERS PRESENT: Philippa Davies, Robin Harris, Donna Price and Gary Rowland.

ALSO IN ATTENDANCE: Mr Duncan Milne (Investigating Officer), Councillor Mike Baldock (Subject Member), Mr Greenhill (Subject Member Representative) and Mrs Sally Pirie (Independent Person).

APOLOGY: Councillor Roger Truelove (Witness).

33 ELECTION OF CHAIRMAN

Resolved: That Councillor Alan Horton be elected as Chairman for this meeting.

34 FIRE EVACUATION PROCEDURE

The Chairman drew attention to the evacuation procedure. He advised that at 11am the Council would be observing a minute silence, in remembrance of those who lost their lives and all those affected by the fire at Grenfell Tower, London.

35 DECLARATIONS OF INTEREST

No interests were declared. Members were advised that although they all attended the Scrutiny Committee meeting on 29 November 2016, and were acquainted with the Subject Member, due to their role as Councillors of the same authority, this was not a pecuniary or non-pecuniary interest and did not preclude them from considering the complaint. The Chairman outlined to the meeting that the panel were aware of their responsibilities and would consider the matter in a fair and impartial manner and come to a decision based upon the merits of the case.

36 CONSIDERATION OF COMPLAINT NO. SBC 1.17

The Chairman welcomed everyone to the meeting and asked all those in attendance to confirm their name and role. Mr Greenhill explained that he was there to assist the Subject Member, not as an advocate.

37 EXCLUSION OF THE PRESS AND PUBLIC

The report had been published as an open report, with the appendices as exempt.

Resolved: To not pass the resolution to exclude the Press and Public and to hold the meeting in public session.

38 CONSIDERATION OF COMPLAINT NO. SBC 1.17

The Monitoring Officer introduced the report which set out the complaint of Member Misconduct: SBC 1.17. The Investigating Officer's report had found that there had been a breach of the Members' Code of Conduct. The Sub-Committee was asked to determine whether there had been any breach, or breaches, of the Code of Conduct, and if there had, to determine what sanction, if any, should be recommended to the Council.

The Chairman asked the Subject Member whether he agreed with the information in the Pre-Hearing Summary report and in particular whether there was any further information the Subject Member wished to have considered, and if there was, to outline why it had not been raised in the pre-hearing phase. The Subject Member Representative questioned whether the Investigating Officer was truly independent, as he had previously been employed by Swale Borough Council. He also considered that the Subject Member should have been provided with all the information prior to the Hearing. The Subject Member Representative stated that the report was flawed as it referred to, but did not include, the interview with the Complainant, and as such it was not possible to see all the evidence from which the Investigating Officer had reached his conclusion, and he questioned how a decision could be made on this basis.

The Investigating Officer provided a background on how Investigating Officers' reports were written, and he gave assurance that on balance, nothing in the Complainant's interview affected his conclusion.

The Independent Person stated that the Investigating Officer's report should stand as it was.

The Sub-Committee, Senior Lawyer (Contentious), Legal Assistant and Democratic Services Officer left the meeting at 10.31am, and returned at 10.45am to respond.

The Chairman advised that the Sub-Committee considered that the Subject Member had had the opportunity to raise these issues within the timeframe of the normal process prior to this Hearing, but had not heard the reasons why the Subject Member was asking to present the information now at the hearing for the first time. The Subject Member Representative advised that he had not had the opportunity to see the draft papers so was unaware of the fact that the Investigating Officer was a past employee of Swale Borough Council. The Investigating Officer further advised that the normal procedure had been followed, and that all the facts needed to reach a decision, were in his report.

The Sub-Committee, Senior Lawyer (Contentious), Legal Assistant and Democratic Services Officer left the meeting at 10.53am, and returned at 11.12am to respond.

The Chairman advised that the Subject Member himself had had the opportunity to raise any issues during the Pre-Hearing stage. In response, the Subject Member explained that rather than have an email exchange prior to the Hearing, he preferred that any outstanding issues be discussed at the meeting itself. The Chairman drew attention to the background information in the report which explained that the Investigating Officer had previously been the Head of Legal at

Swale Borough Council. The Chairman advised that the Sub Committee would not consider the additional information the Subject wished to introduce as he had clearly had the opportunity to do so earlier in the pre-hearing process and had chosen not to.

The Chairman invited the Investigating Officer to present the findings of his investigation into the alleged breaches of the Code of Conduct. Members were given the opportunity to ask questions of the Investigating Officer.

The Chairman invited the Subject Member to present his case into the alleged breaches of the Code of Conduct. Members were given the opportunity to ask questions of the Subject Member. The Subject Member explained that there had been a lot of public interest in the confidential papers and he had considered the meeting should have been open to the public. He explained that the decision to hold the meeting in closed session had not been subject to debate. The Subject Member explained that he had major concerns with not allowing the public into the meeting. He had kept the confidential papers as a point of reference and stated that the Ombudsman had later stated that the Council had been wrong not to have let the public into the meeting. The Subject Member stated that as the Council had been wrong, he wanted to keep hold of the confidential papers. He explained that he did not think that the request to hand back the papers was legitimate and he had previously not come upon a decision to do that. Custom and practice, quoted in the report, was not mentioned at the meeting, and he was unaware of the procedure to number, then return paperwork. The Subject Member stated that he had been instructed by an officer, and it had not been voted upon. He considered the instruction was not reasonable as Members had the opportunity to copy the confidential papers. He did not think it was reasonable to have to return the papers; his previous experience as a County Councillor at Kent County Council had been an 'invitation' to return papers, not an order. He stated that there needed to be a basic requirement of trust from officers, and was concerned that officers could issue a threat to Councillors, which he considered to be a dangerous precedent. In response to a question as to whether he made a conscious decision to leave the papers at home, the Subject Member advised that he had filed them in his Group Room so that he had access to them. He was not confident that he would be able to see the confidential papers again unless he kept a copy for himself. He also stated that he returned a copy that had been lent to him, to the Senior Democratic Services Officer, and had added 'no. 1' on it to tally with the numbering of the original paperwork that he had kept.

The Chairman invited the Independent Person to give her opinion as to whether there had been a breach of the Code of Conduct. She stated that in her opinion there had been a breach of the Code of Conduct.

The Sub-Committee, Senior Lawyer (Contentious), Legal Assistant and Democratic Services Officer left the meeting at 12.53pm, and returned at 2.37pm to advise on the Sub-Committee's decision.

The Sub-Committee determined that there had not been a breach of Paragraph 5, but there had been a breach of Paragraph 8 of the Code of Conduct, and that the principle of leadership had not been adhered to.

The Chairman invited the Independent Person and the Investigating Officer to make representations on any sanctions they considered should be implemented.

The Subject Member responded by stating that he had not considered the instruction to hand back the confidential papers to be reasonable and that the findings were of no consequence. He considered the Sub-Committee had failed to engage as to whether the instruction had been reasonable.

The Sub-Committee, Senior Lawyer (Contentious), Legal Assistant and Democratic Services Officer left the meeting at 2.44pm, and returned at 3.19pm to advise of the Sub-Committee's decision on any sanctions that were to be implemented.

The Chairman advised that the Sub-Committee had concluded that they would recommend:

- (1) That the Sub-Committee's findings be reported to Full Council.*
- (2) That the Subject Member be removed from the Scrutiny Committee, as a Member or Substitute Member, for a period of three months.*

In concluding the meeting, the Chairman confirmed that a written decision would be published within 20 working days and there was no right of appeal.

Resolved:

- (1) That the Sub-Committee found that there was no breach of Paragraph 5 of the Code of Conduct.***
- (2) That the Sub-Committee found that there was a breach of Paragraph 8 of the Code of Conduct, and that the principle of leadership had not been adhered to.***

Recommended:

- (1) That the Sub-Committee's findings be reported to Full Council.***
- (2) That the Subject Member be removed from the Scrutiny Committee, as a Member or Substitute Member, for a period of three months.***

Chairman

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