

Monitoring Officer's Report

Meeting Date	Not applicable
Report Title	Alleged code of conduct breach by Cllr Alan Horton
Cabinet Member	Not applicable
SMT Lead	
Head of Service	
Lead Officer	
Key Decision	Not applicable
Classification	Exempt unless subcommittee determines otherwise

1 Introduction

- 1.1 This is the report of the monitoring officer regarding allegations that Cllr Alan Horton (Conservative, the leader of the opposition), breached the members' code of conduct by making unsubstantiated allegations of probable criminal misconduct against Swale cabinet members during a meeting of the full council on 17 June 2020.
- 1.2 The report argues that this is an unusual conduct-related case because the essential facts are all contained within the transcripts of the relevant meetings, but the high public profile of the case and the number of complaints received suggest the need for a more public resolution than would normally be appropriate given this circumstance. The report outlines the facts of the matter, summarises the complaints received, and considers the best means to resolve them.

2 Outline of events

- 2.1 The full council meeting on 17 June was the first such meeting at Swale to be held remotely as a result of the Covid-19 pandemic. There was no physical attendance, and all attendees dialled into the meeting via skype, using either video and audio or audio alone.
- 2.2 A transcript of the relevant section of the meeting is provided at Appendix I. This shows that approximately 50 minutes into the meeting, during a debate on a motion on lorry parking proposed by Cllr Monique Bonney (Independent, the cabinet member for economy and property), Cllr Horton made the following statement:

"I think that to abandon the lorry parking in Swale and say it's somebody else's responsibility is symptomatic of the way that this cabinet does its business. It is abandoning residents whose lives are blighted on a daily basis. We could do something; this cabinet chooses not to. And [the motion] specifically mentions Junction 7, and I think that this is because they are quite clearly working behind the scenes in closed doors, probably involving brown paper packages, with the Duchy of Cornwall, who don't want a lorry park on the land opposite their thing. I

do not believe this is about lorry parking; I think it is about housing and the desperate need that this administration has to generate some soon."

- 2.3 The use of the phrase "probably involving brown paper packages" led to an immediate adverse reaction in the council chamber, and to a suggestion that the allegation should be withdrawn. In response to this, Cllr Horton asserted that such language had repeatedly been used by the administration in describing the work of the Conservatives, and that that had been the basis for his description of the cabinet in the same terms.

- 2.4 This in turn led to a motion without notice to eject Cllr Horton from the chamber, proposed by Cllr Mike Baldock (Swale Independents Alliance, the deputy leader and cabinet member for planning) and seconded by Cllr Richard Palmer (Swale Independents Alliance, the cabinet member for community). Following a tumultuous exchange of views across the chamber, the mayor granted Cllr Horton permission to speak again and he said:

"I was specifically accused of saying that the leader had used language of that sort. I don't believe I did. I think I said his cabinet, and I stand by that. However, I appreciate that my language was emotional, charged and inappropriate for a full council meeting, and I apologise unreservedly to all of the members, officers and members of the public who are listening to this meeting. I am sorry, I let my emotion run too high. It is unlike me, and I apologise."

Following this Cllr Baldock withdrew his motion to eject Cllr Horton and the debate on the substantive motion continued.

- 2.5 As a result of comments and complaints received, which are discussed in more detail in Section 3, I spoke with Cllr Horton, who had already recognised the need to make a more comprehensive public apology. In fact the next convenient meeting at which this apology could be made was the delayed annual council meeting on 15 July.

- 2.6 This meeting was also held remotely via skype, and a transcript of the relevant section is provided at Appendix II. By prior agreement with the mayor, Cllr Horton was offered a slot near the beginning of the meeting to make his apology, where he described his remarks as "utterly inappropriate" and concluded as follows:

"I wish to be clear: I unreservedly retract any allegation of wrongdoing by anyone, and I truly apologise for making those allegations, indeed for all that I said. It was wrong, it was unjustified and, despite my clumsy attempt to do so at the time, it was unjustifiable. I wish to sincerely apologise to anyone I hurt, or who has been, or feels that they have been, personally harmed by my allegations. I'm all too aware that I have caused distress, anger and pain for many. I didn't intend or want to do so, and I am deeply, deeply sorry that I did."

3 Outline of complaints received

- 3.1 The council meeting on 17 June gave rise to a high number of complaints and other comments to the monitoring officer regarding members' conduct. The majority of these were concerned with the language used by Cllr Horton, including 19 emails which have been classified as complaints from members of the council and a further two emails classified as complaints from members of the public.
- 3.2 The complainant in one of the latter complaints did not wish their name to be made public, and as this conflicts with the ordinary requirement of natural justice for the accused to know the identity of the accuser, this complaint has been treated as withdrawn. A list of other complainants is provided at Appendix III.
- 3.3 Cllr Horton's language was very clear in its specification of the group of individuals against whom the allegation was levelled. From the transcript it is evident that Cllr Horton used the phrase 'this cabinet' on two occasions immediately before making the allegation, and in his final comment at the same meeting before the motion to eject him is withdrawn he again clarifies this, saying, "I think I said [the leader's] cabinet".
- 3.4 In some parts of the transcript Cllr Horton uses the term 'this administration', which to the extent that it can refer to a specific group of people is essentially synonymous with the term 'cabinet'. At no point in the transcript does there appear to be any indication that the allegation extends beyond the seven members of the Swale cabinet.
- 3.5 Complaints were submitted by a number of deputy cabinet members, a subset of whom argued that they had been personally implicated by Cllr Horton's allegation. The law does not specifically recognise the role of deputy cabinet members, and in law a councillor is either a cabinet member or she is not. On this basis it would be hard to argue that deputy cabinet members were in fact included in Cllr Horton's allegation.
- 3.6 Nonetheless, the role of the deputy cabinet member has long been a central and well-defined feature of Swale's system of governance, with those councillors often participating in all but the most formal elements of executive decision-making alongside their cabinet colleagues. In these circumstances it is unsurprising and not unreasonable that some deputy cabinet members would interpret the allegation as having been made also against them.
- 3.7 Most complainants expressed anger or distress resulting from Cllr Horton's language, and some councillors from groups represented on the administration believed not unreasonably that their own integrity had been impugned or their own reputations besmirched. Cllr Horton's comments caused a number of newer councillors to question whether local government was a sector with which they really wanted any continuing involvement.
- 3.8 A small number of councillors also believed that they had been personally affected by the unsubstantiated allegation. This was the case most pointedly for cabinet and deputy cabinet members who had felt the need to inform

professional, charitable or other bodies with whom they were involved that an allegation of criminality or other corruption had been made against them.

- 3.9 In his comments immediately following Cllr Horton's apology at the July meeting, Cllr Truelove (Labour, the council leader) welcomed the apology on behalf of the cabinet and touched briefly on the effect of the allegation on some councillors.
- 3.10 More than one complainant expressed the concern that Cllr Horton's allegation had encompassed not only Swale cabinet members but also the Duchy of Cornwall and even, by extension, HRH the Prince of Wales personally. Given that the Prince has not been personally involved in any discussions with the council, I am of the view that this argument is rather hyperbolic. Neither the Duchy itself nor anyone connected with it submitted a complaint, and while the argument is not in itself unreasonable, to pursue it further would appear to be wholly unproductive.

4 Discussion

- 4.1 From the perspective of a council monitoring officer, this is a fairly unusual case. On the one hand, the high public profile of Cllr Horton's comments and the sheer number of complaints they generated mean that justice needs not only to be done but to be seen to be done: in other words, to the extent that the comments can be argued to represent a breach of the code of conduct, the council's standards regime needs to be seen publicly to have taken a proportionate level of action.
- 4.2 On the other hand, in this case it can reasonably be argued that all the facts of the matter are contained in the transcripts of the relevant meetings, and that the somewhat tortuous process which would ordinarily be gone through in preparation for that moment of public action by the standards regime would be disproportionate.
- 4.3 In a typical complaint case in which the monitoring officer accepted the need for action beyond informal (i.e. wholly non-public) resolution, an independent investigator would be appointed to determine the facts and come to a preliminary judgment as to whether those facts constituted a breach of the code of conduct. This investigation would as a minimum include interviews with the subject councillor and all complainants, but depending on the nature of the case could also include the gathering of documentary, physical or testimonial evidence.
- 4.4 The investigator's report would form the basis of the monitoring officer's (or alternatively the standards committee's) decision as to whether a hearing panel should be convened. The hearing would then have the dual purpose of making a final judgment as to whether the code of conduct had been breached and, if so, specifying an appropriate sanction.
- 4.5 In considering whether it would be appropriate to engage an independent investigator in this case, there needs to be an evaluation of the balance between the likely cost and the likely added value. While there is a strong public interest in the council's standards regime responding appropriately to incidents such as this, there is no less a public interest in ensuring that council resources are

expended proportionately, effectively and efficiently. The cost of an independent investigation would typically run to several thousand pounds.

- 4.6 Part of the work of the investigator would ordinarily be to interview the complainant(s) to understand not only the detail of their allegations but also the effects of the alleged conduct on them. In many instances – for example those involving bullying or harassment – these effects would form part of the body of facts relevant to the question of whether a breach of the code of conduct had occurred and how serious a breach it was.
- 4.7 In this case, while some complainants have indeed been personally impacted by the conduct, none of these impacts – as discussed in Section 3 above – seems to me to be so severe as to warrant more than a general recognition that a significant number of people were distressed by Cllr Horton’s allegation and a smaller number adversely affected on practical, professional or other levels by an actual or perceived need to bring the allegation to the attention of third parties.
- 4.8 These are effects which can readily be imagined by anyone reading the transcript of the meeting, and it seems reasonable to me on this basis that the standards regime’s interest in the matter does not need to extend beyond the words that were spoken by Cllr Horton – in other words, that all the pertinent facts of the matter should be regarded as being contained within the transcript. With this in mind, asking an independent investigator to produce a report would seem to be a superfluous and disproportionate step which in this particular case could be omitted without significant detriment to anyone.

5 Monitoring Officer’s Preliminary Finding

- 5.1 The Swale members’ code of conduct contains 11 paragraphs delineating the behaviour which all councillors are expected to model whenever acting in that capacity. Some of these are very specific, but towards the end there are two more general paragraphs which are reproduced here:

9. Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.

10. Always treating people with respect, including the organisations and public I engage with and those I work alongside.

- 5.2 While these loosely-worded paragraphs are frequently treated as convenient passe-partouts by people wishing to make trivial complaints, in this case I think it more likely than not that a reasonable observer with a knowledge of the transcript of a meeting in which a councillor had made an unsubstantiated public allegation of probable criminal misconduct and/or serious corruption against a group of his fellow councillors would conclude that that councillor had failed to comply with these paragraphs.
- 5.3 **On this basis my preliminary finding is that Cllr Horton’s conduct at the June meeting did amount to a breach of paragraphs 9 and 10 of the code of conduct.**

- 5.4 Since the council meeting in June, I have on multiple occasions consulted each of the council's two independent persons appointed under s28 of the Localism Act 2011 to provide their views to me on matters related to the code of conduct. As is usual in these cases, Cllr Horton was offered the contact details of the independent persons so that he could speak with one or both of them without needing to go through me, and as is proper I do not know if he availed himself of this facility. The independent persons both agree with my preliminary assessment that Cllr Horton's allegation was a breach of Paragraphs 9 and 10 of the code of conduct.

6 Next Steps

- 6.1. In Section 4 I outlined my reasoning for wanting to omit the step of commissioning a report from an independent investigator. This case is unusual inasmuch as it is high-profile enough to warrant a visible, public response from the standards regime, but lacks what is more typically a concomitant need for an objective investigation and analysis to clarify the facts of the matter before proceeding to a judgment.
- 6.2. A set of assessment criteria is published as an appendix to the code of conduct in Part 5 of the council's constitution. These criteria emphasise the need for both a sound assessment of the public interest when making decisions on how complaints should be handled, and for a proportionate approach to be taken, with a presumption in favour of informal resolution wherever possible.
- 6.3. To the extent that the criteria distinguish between different types of cases, they are not especially helpful in this instance. The three options specified as the possible outcomes of an initial assessment decision are informal resolution, no action, or the referral of the complaint to the monitoring officer for further investigation. In my view neither of the first two of these would be appropriate in this case, but further investigation – by the monitoring officer or anyone else – does not seem necessary for the reasons already discussed.
- 6.4. I have received legal advice on the interpretation of the paragraph in the assessment criteria on multiple complaints, which suggests that progressing a case involving as many complainants as this one does to a formal standards hearing would in fact require a separate hearing for each complainant. It seems very unlikely to me that this was the intention of the wording when it was first adopted, and even less likely that the public interest would be served in a balanced way if such an approach were taken, but as the monitoring officer I am not in a position simply to disregard the advice of the council's solicitors.
- 6.5. What is required in this case is a way to resolve the matter which acknowledges and balances the different elements of the public interest, namely:
- The public interest in ensuring any response is lawful and does not breach the common law principles of natural justice;
 - The public interest in the council's standards regime being seen to take action in response to a very public incident; and
 - The public interest in ensuring any response is proportionate and an efficient use of public resources, particularly considering that the relevant facts of the

matter can all reasonably be regarded as being contained in the transcript of the two meetings.

- 6.6. Taking account of this need to balance the public interest while also recognising the particular circumstances of this case, including its high public profile and the largely self-contained nature of the body of relevant facts, I am of the view that what is required is a short public standards hearing to make a formal finding as to whether Cllr Horton's allegation amounted to a breach of the code of conduct and, if applicable, to determine an appropriate sanction. In view of some of my foregoing comments, this approach may deviate slightly from the letter of the council's constitution, but I believe it is entirely in accordance with its spirit.
- 6.7. In discussing the pre-hearing process, the standards committee procedure rules at Part 4.6 of the council's constitution suggest that the monitoring officer needs to receive a report from the investigating officer in order to trigger a formal standards hearing. For the reasons already discussed, this case does not warrant an investigation, and I am therefore of the view that this current report should suffice as the requisite investigation report.
- 6.8. Once constituted, the hearings panel will of course have the discretion to conduct the hearing as it sees fit within the parameters established in Part 4.6 of the constitution. My own view for what it is worth is that the panel will need to recognise that its primary role in this case is to provide a public conclusion to the incident and the complaints it generated, rather than – in the event that it determines the code of conduct to have been breached – to impose anything more than a symbolic sanction. I am not of the view that the panel should call witnesses or hear from complainants, although of course complainants will be entitled to attend as visiting councillors or members of the public.
- 6.9. From discussions with the two independent persons it is clear that they also would prefer this matter to be brought to a conclusion in a proportionate manner which allows justice to be seen to be done but which does not involve excessive castigation of Cllr Horton. The independent persons will ideally be present at the hearing and provide their views to the panel in person.
- 6.10. In my view and those of the independent persons, the fact that Cllr Horton was willing to make the full public retraction and apparently very sincere apology that he did at the July meeting militates strongly against anything more punitive than a short hearing to make a formal finding as to whether the code of conduct was breached, in order definitively and publicly to draw a line under the incident.

7 Appendices

- 7.1 The following documents are to be published with this report and form part of the report:
 - Appendix I: Transcript of council meeting on 17 June 2020
 - Appendix II: Transcript of annual council meeting on 15 July 2020

8 Background Papers

- 8.1 The minutes and recordings of the relevant council meetings can be accessed via the council's website [here](#).

David Clifford

Head of Policy, Communications and Customer Services – Monitoring Officer

September 2020

Appendix I: Transcript of relevant section of 17 June full council meeting

Cllr Horton: Just for your attention Mr Mayor I missed a significant portion of Cllr Bonney's introduction there, so I do not feel it would be fair for me to vote on this motion; however, having said that, it is not a vote that I would have been supporting anyway. I think that to abandon the lorry parking in Swale and say it's somebody else's responsibility is symptomatic of the way that this cabinet does its business. It is abandoning residents whose lives are blighted on a daily basis. We could do something. This cabinet chooses not to. And it specifically mentions Junction 7, and I think that this is because they are quite clearly working behind the scenes in closed doors, probably involving brown paper packages, with the Duchy of Cornwall, who don't want a lorry park on the land opposite their thing. I do not believe this is about lorry parking, I think it is about housing and the desperate need that this administration has to generate some soon. Thank you Mr Mayor.

Cllr Truelove: Mr Mayor, if I could just come in. I didn't want to speak and I indicated that, but I do think that that "brown paper packages" is really unacceptable. I think it's not typical of Cllr Horton and I think he ought to withdraw it straight away.

Cllr Baldock: Hear hear.

Cllr Harrison: Hear hear.

Cllr Bonney: Agreed.

Other members: [Similar comments such as "agreed" and "disgraceful".]

Mr Mayor: Cllr Horton?

Cllr Horton: Mr Mayor, it's the language which is repeatedly used by the current administration when describing my party's work, so if it's good enough for them, whilst I accept Cllr Truelove said it's not typical for me, I used it specifically because it's the language which is used about us.

Cllr R. Clark: Hear hear Alan, fully support that.

Unidentified member: Totally agree.

Cllr Baldock: Mr Mayor, I move that the member be ejected.

Cllr Winckless: I second that.

Cllr Baldock: A totally unacceptable comment and he should be ejected from this meeting.

Unidentified member: Agreed.

Cllr Whiting: Mr Mayor, if I may, Cllr Horton has already said he won't vote on this motion.

Cllr Truelove: Yes, he has.

Cllr Whiting: So I don't know where in the constitution Cllr Baldock's ridiculous suggestion comes from.

Cllr Truelove: Mr Mayor, I would ask that at some time Cllr Horton points me to where I have ever used "brown paper envelope" accusations against the Conservative party. I am absolutely sure I would never do that, would never want to do that, so I just make that point on my own behalf and I think it's true of all cabinet members. Members of the public might do it, they're prone to do that, but I don't honestly think... I think this is a really unfortunate departure from the agenda, but I'll say no more.

Mr Clifford: Mr Mayor, would you mind if I came in for a moment please?

Mr Mayor: Yes, certainly.

Mr Clifford: It seems to me that the language that is used on social media and in general public discourse is a little bit different to the sort of language that you would expect in the council chamber. Clearly that's a matter for you to manage; I did just want to raise the point that a motion without notice can in fact be moved to exclude a member from the meeting, if you can have a proposer and a seconder. Thank you.

Cllr Baldock: I proposed it.

Mr Mayor: Thank you. Do we have a seconder?

Cllr Palmer: I'll second it. Cllr Palmer.

Cllr Baldock: If I may speak to that motion Mr Mayor?

Mr Mayor: Yes, you may.

Cllr Baldock: I think there are standards that are required at a full council meeting. There are standards that do not apply to social media and other areas, but at a full council meeting you should expect a certain standard. That comment was totally out of order. He was given the opportunity to withdraw it, he refused to do so, so I move that he be removed from this meeting.

Mr Mayor: Seconder?

Cllr Baldock: That's Cllr Palmer.

Cllr Palmer: I'll reserve my right to come back on that.

Mr Mayor: OK, is there anyone else who wants to speak on this?

Cllr S. Clark: Mr Mayor, it's Cllr Simon Clark. I feel that Cllr Horton's comments against the cabinet are completely out of order. He should immediately apologise to all members of the cabinet, and indeed all members of this council for those comments. I would wholeheartedly support his immediate removal from the remainder of this meeting. Thank you Mr Mayor.

Mr Mayor: Does anybody else wish to speak?

Cllr R. Clark: Mr Mayor, if Cllr Horton is ejected from the proceedings, I'm going as well.

Cllr Whelan: That's a bonus.

Cllr Whiting: Mr Mayor, we can't be having comments like that. I don't know who just said "That's a bonus", but I'd like to propose whoever that person was is ejected from this meeting.

Other members: [Comments such as 'I agree'.]

[General tumult.]

Cllr Whiting: Mr Mayor, if I may, please, it is absolutely ridiculous that the administration would want in any way to neuter the opposition. I know they might do it in their own groups and in their own group meetings, and not allow any dissention from the whip...

Cllr R. Clark: Whoever said it won't you stand up and tell me who it is?

Mr Mayor: Members, let's come back to some sort of order.

Cllr Truelove: Yes.

Mr Mayor: David, did you want to speak?

Mr Clifford: Thank you Mr Mayor. It was just to remind members that this debate is eating into the time we have for debating the motion. In terms of the motion to eject the member, I would suggest that you want to put that to the vote now that it has been proposed and seconded, without further debate.

Mr Mayor: Right.

Cllr Horton: Mr Mayor, Alan Horton, may I come back in please?

Mr Mayor: Certainly.

Cllr Horton: Thank you Mr Mayor. I was specifically accused of saying that the leader had used language of that sort. I don't believe I did. I think I said his cabinet, and I stand by that. However, I appreciate that my language was emotional, charged and inappropriate for a full council meeting, and I apologise unreservedly to all of the members, officers and members of the public who are listening to this meeting. I am sorry, I let my emotion run too high. It is unlike me, and I apologise.

Cllr Baldock: I withdraw my motion Mr Mayor.

Cllr Truelove: Yes.

Mr Mayor: Thank you Cllr Baldock. We'll proceed.

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Appendix II: Transcript of relevant section of 15 July annual council meeting

Cllr Horton: Thank you Mr Mayor, it's Alan Horton. At the first virtual meeting of Swale Borough Council on Wednesday 17 June, during a debate on a motion being proposed by Cllr Bonney, I said some things that were utterly inappropriate and which I profoundly regret. I apologised at the time, an apology that was not as immediate as it should have been, and furthermore it fell well short of what was necessary to properly apologise for my behaviour. I wish to be clear: I unreservedly retract any allegation of wrongdoing by anyone, and I truly apologise for making those allegations, indeed for all that I said. It was wrong, it was unjustified, and despite my clumsy attempt to do so at the time it was unjustifiable. I wish to sincerely apologise to anyone I hurt, or who has been, or feels that they have been, personally harmed by my allegations. I'm all too aware that I have caused distress, anger and pain for many. I didn't intend or want to do so, and I am deeply, deeply sorry that I did. Thank you Mr Mayor.

Mr Mayor: Councillor Truelove, did you wish to speak?

Cllr Truelove: Yes Mr Mayor and thank you for that Cllr Horton. On behalf of the cabinet I welcome this statement. It cannot have been easy to do, and I guess the last month would have caused Cllr Horton some discomfort. Very briefly I would like to touch on the pain and distress referred to. Cabinet members were not just linked through reference to brown parcels to inappropriate behaviour, but to a probable criminal act. One member has found it necessary to inform his professional body, another has had to inform various organisations of which he is a treasurer. Some members who are not cabinet members were deeply offended and asked whether this is what they came into local government for. Let us be robust in our meetings, but let's not lower ourselves to what is commonplace in what is best described as the antisocial media, and let's move on. Thank you Mr Mayor.

Appendix III: List of complainants

Name	Position at time of incident and complaint
Cllr Mike Baldock	SIA councillor, deputy council leader, cabinet member for planning
Cllr Derek Carnell	SIA councillor, deputy cabinet member for finance
Cllr Simon Clark	Labour councillor
Cllr Steve Davey	Labour councillor
Cllr Tim Gibson	Labour councillor
Mr John Greenhill	Member of the public
Cllr Alastair Gould	Green councillor, deputy cabinet member for planning
Cllr Angela Harrison	Labour councillor, cabinet member for health and wellbeing
Cllr Carole Jackson	Labour councillor
Cllr Denise Knights	Liberal Democrat councillor
Cllr Benjamin A. Martin	Liberal Democrat councillor
Cllr Ben J. Martin	Liberal Democrat councillor, cabinet member for housing
Cllr Richard Palmer	SIA councillor, cabinet member for community
Cllr Ken Rowles	Labour councillor
Cllr Julian Saunders	Labour councillor, deputy cabinet member for community
Cllr Sarah Stephen	SIA councillor
Cllr Eddie Thomas	Liberal Democrat councillor, deputy cabinet member for environment
Cllr Tim Valentine	Green councillor, cabinet member for environment
Cllr Ghlin Whelan	Labour councillor
Cllr Tony Winckless	Labour councillor