

STANDARDS COMMITTEE

Minutes of the meeting of the Standards Committee held on Friday, 23 June 2023 at the Council Chamber - Council Offices at 10.00 am

Committee

Members Present:

Cllr G Bull (Chairman)	Cllr N Dixon
Cllr L Shires	Cllr A Fitch-Tillett
Cllr R Macdonald	Cllr P Porter

Officers in

Attendance:

Democratic Services and Governance Officer - Scrutiny (DSGOS), Assistant Director for Finance, Assets, Legal & Monitoring Officer (MO) and Solicitor (Investigator)

Also in

attendance:

Independent Person, Subject Member - Keith Bacon, Complainant - Raymond Read, Parishioner - Mr Snelling, Parishioner - Mrs Snelling

13 TO RECEIVE APOLOGIES FOR ABSENCE

Apologies were received from Cllr H Blathwayt as the Subject Member was known to him.

14 ITEMS OF URGENT BUSINESS

None received.

15 DECLARATIONS OF INTEREST

Cllr N Dixon stated that the Subject Member was known to him, but it was not relevant to the hearing in any way that would prejudice his judgement.

16 EXCLUSION OF THE PRESS AND PUBLIC

- i. The MO introduced the item and stated that the Committee were required to determine whether the meeting should be held in public or private session. She added that she would assist Committee Members with advice when deliberating, but would not seek to influence any decisions and gave an overview of the hearing process.
- ii. The Chairman sought the opinions of the Investigator, Independent Person and Subject Member on whether the meeting should proceed in public or private. The MO advised that the papers of the report did refer to third parties by name, and whilst some of those individuals were in attendance and had stated that they were happy for the meeting to proceed in public, other individuals referred to by name in the report should not be mentioned to protect their identity. The MO added that preference should always be for meetings to take place in public, unless there was a legally justifiable reason for information not to be disclosed. It was noted that the Complainant, two witnesses, Investigator, Independent Person and Subject Member had all stated their preference for the meeting to proceed in public.

Members retired to determine whether to continue the meeting in public.

- iii. The Chairman stated that the Committee had agreed to continue the meeting in public session as the debate remained in the interest of the public. He added that those in attendance must refrain from mentioning any names of third parties that were not in attendance.

RESOLVED

To hold the Hearing in public.

17 CODE OF CONDUCT COMPLAINT

Investigator's Introduction

- i. The Investigator introduced their report and sought to outline key points including the legal position, a summary of evidence, their findings and recommendations. She added that the complaint contained two allegations, one relating to a comment from the Subject Member to a parishioner following a meeting, and the second relating to the Subject Member's conduct during that meeting. It was noted that the Investigator had not found enough evidence to support the second allegation, and therefore sought to focus on the first allegation, where supporting evidence had been found to determine a breach of the Catfield Code of Conduct.
- ii. The Investigator stated that the legal backdrop of the complaint included the principle of freedom of expression, which was a fundamental human right to uphold opinions and receive and impart information without interference by public authority, regardless of frontiers. She added that this was enshrined within article 10 of the European Convention on Human Rights and the Human Rights Act under English Law. It was noted that this was a qualified right however, which meant that it could be restricted to protect the rights and freedoms of others. The Investigator stated that this was relevant to the standards regime as it was underpinned by the Localism Act, which allowed a Councillor's freedom of expression to be restricted. She added that politicians were allowed an enhanced freedom of expression to enable to debate and challenge. However, personal abuse or false statements were not afforded enhanced protections, which meant that close and careful consideration should be given to the allegations to determine whether there had been a breach of the code.
- iii. The Investigator referred to the second complaint and noted that it was an accusation of inappropriate behaviour to a parishioner during a Parish Council meeting. She added that a potential breach had only been found on the first complaint, having reviewed the minutes and recording of the meeting and not found any evidence of actions outlined in the complaint. It was noted that none of the representations received had made reference to verbally abusive language, and consequently a breach had not been found.
- iv. On the first complaint, the Investigator noted that the Complainant had reported that an offensive statement had been made in reference to a parishioner's mother following a meeting of the Parish Council. The Subject Member had admitted the statement, but stated that it was made during a private conversation between two adults, and the words used were common parlance used by public figures. It was noted that the Subject Member had

also stated that the comments made had nothing to do with the parishioner's mother being female, and that his comments would have been the same regardless of who it was directed at. It was noted that the Subject Member had also stated that it was late and he was tired after chairing a four hour meeting, and he did not wish to speak to the parishioner.

- v. The Investigator stated that in order to make a finding against the Subject Member, Committee Members would need to be satisfied of the following; that at the time of the incident the Subject Member was acting in their capacity as a Councillor or as a representative of the Council, that on the balance of probability the alleged conduct occurred, and finally that the conduct comprised a breach of the Catfield Code of Conduct. She added that Committee Members also had to take into account the increased right to freedom of expression in political speech. It was noted that the second matter of probability did not need to be considered as the Subject Member had admitted the incident. On the issue of capacity, the Investigator stated that Catfield Parish Council's Code of Conduct made clear that there was an expectation to maintain acceptable behaviour when conducting the business of the Council, or when claiming to act or giving the impression of acting as a representative of the Council. She added that the legal position when considering capacity, was that it should be determined using ordinary English using a fact sensitive approach. It was noted that the guide to the Code of Conduct stated that it applied where the Councillor was acting in their capacity as a Councillor, which included carrying out official duties, such as considering or discussing local authority business, promoting and representing the authority in the community, and acting as a bridge between the public and the authority. The Investigator added that the guidance also stated that it did not solely apply during local authority meetings, or on local authority premises. As a result, it was the Investigator's recommendation that the incident had occurred when the Subject Member was acting in their capacity as a Councillor, as it took place immediately after a Parish Council meeting and outside the meeting venue. She added that the parishioner had approached the Subject Member to discuss Council business discussed at the meeting, even if the Subject Member did not wish to discuss it. Finally, the complaint related to comments made in reference to the actions of the parishioner's mother during the meeting, at which time the Subject Member was acting as Chairman. For these reasons, the Investigator determined that the Subject Member was acting in their capacity as a Councillor, and was still acting in this capacity when discussing the meeting with the parishioner, and therefore they were acting or giving the impression of acting as a representative of the authority when the incident occurred.
- vi. The Investigator stated that in order to consider whether the Subject Member's actions amounted to a breach of the Code of Conduct, it should be noted that whilst some shocking language may be acceptable in public life, purely personal abuse was not acceptable. She added that whilst the language used had become more acceptable in common parlance, in this instance it had been used to convey disdain to the parishioner's mother, which fell into the definition of personal abuse rather than political expression, and was therefore not afforded enhanced political protection. It was noted that the Subject Member's comments could also be considered misogynistic, and that the comments were unnecessary given that the Subject Member's experience chairing meetings, as they should be able to adequately manage any unruly behaviour.

- vii. The investigator stated that the issue was compounded by the Subject Member refusing to accept any wrongdoing, and stating that their actions had been entirely appropriate despite several opportunities to issue a candid apology with a further opportunity to change their position once they had read the report. On this basis it was the Investigator's recommendation that the comments were entirely inappropriate and disrespectful, both to the parishioner and their mother, and amounted to a breach of the Catfield Code of Conduct.

Questions and Discussion

- viii. The Subject Member stated that he had not been made aware of submissions received by the Council in January 22 until August 22 when he had received the draft investigation report. The Investigator stated that it may help to outline the Standards process following the submission of a complaint. This would be followed by an initial assessment by the MO or deputy MO in accordance with criteria outlined in the Constitution, and it would then be determined whether a formal investigation was required, or alternately whether the matter could be dealt with by means of a simple resolution. In this particular instance, there was an opportunity to resolve the matter without proceeding to an investigation, whereby the Subject Member was given the opportunity to apologise but had refused to do so, thus proceeding the matter to an investigation. It was noted that at this early stage the actions taken were only influenced by the initial assessment of the complaint and the response from the Subject Member, with the views of others not taken into account until a formal investigation was commenced. The Investigator stated that it would take several months to undertake a full investigation and prepare a draft report, which would then be shared with the Subject Member to seek further representations. She added that this is why it took several months for the Subject Member to be advised of the allegations.
- ix. The Subject Member stated that accusations regarding conduct at the meeting were a separate allegation, and he had not been made aware of these allegations until the draft report had been shared him. He added that he should have been made aware sooner, even though he had not been found guilty of those allegations. It was suggested that if he had been found guilty, he would have been unaware until the point at which the draft report was shared. The Subject Member stated that these allegations looked as though they were part of a concerted effort, and asked how these accusations had come to the Council and whether they had been sought. The Investigator replied that she had not been a part of the investigation at this time, and could not provide a comprehensive answer, although she could confirm that the representations were sought and received as part of the investigation process by the officer responsible at the time. She added that these accusations only became apparent mid-way through the investigation, and this would explain why the Subject Member did not hear of the accusations until receiving the draft report.
- x. The Chairman noted that there were procedures in place that the Subject Member could pursue if they felt that the correct procedures had not been followed, however he had been given the opportunity to respond to the comments when reviewing the draft report.
- xi. The Subject Member suggested that to provide balance the Investigator

should have contacted two District Councillors to seek an opinion on his conduct at meetings, and asked whether this had been done. The Investigator confirmed that she had not done this because she had reviewed a recording of the meeting and read the minutes, and was satisfied that the Subject Member had not been verbally abusive or used inappropriate conduct during the meeting, which meant that there was no reason to question his chairing skills.

- xii. The Chairman noted that at his discretion, he would seek comments on the Investigator's report from the Complainant. The Complainant thanked Members for the opportunity to speak and stated that it had taken approximately two years to reach a Hearing, which was far too long and had been particularly draining and contributed to his health issues which had led him to step-down as a Parish Councillor and Chairman. He added that the Subject Member had made clear at a Parish Council meeting that he had no intention of apologising, and he did not feel the language used was appropriate for a Councillor to direct towards an individual. It was noted that the Complainant had been approached by those offended by the remarks, and the refusal of the Subject Member to apologise was why the issue had dragged on for so long.

Subject Member's Comments

- xiii. The Subject Member referred to p43 and stated that he had been involved in voluntary work for over forty years, equating to thousands of hours of unpaid work. He added that he had been born in Catfield and lived in the village twenty-two years, which was relevant as the issues discussed at the meeting in question related to social housing. It was noted that the Subject Member very rarely used bad language, and never in his capacity as a Councillor. The Subject Member stated that under the exceptional circumstances of chairing a stressful meeting for four hours he had unfortunately used expletive language. He added that he could have denied the accusation, suggested the Parishioner misheard him, or apologised. However, he stated that as a matter of principle he stood firm on his position, as he believed he was right, acting as a private individual and not in his capacity as a Councillor during the time of the incident. The Subject Member stated that it had been a pleasure to serve on Catfield Parish Council for 30 years, though the last two had been full of antagonism and stress. He added that in January 2021 he had made a complaint about a Councillor who had been bullying the Clerk, but stated that NNDC had refused to investigate on the basis that they were advised that Catfield did not have a Code of Conduct, though this was not the case as he had helped to implement it in 2012. It was noted that key issues were identified on p96, where the Subject Member had wanted to cut the meeting short, but hadn't to allow for full debate of the issues.
- xiv. The Subject Member stated that the key question related to capacity, and stated that the Catfield Code of Conduct referred to acting, which by definition required purposeful action, and was not simply existing. He added that when sitting in the meeting he was acting as Chairman, however when leaving the village hall he was no longer acting in his role as a Parish Councillor and was instead a parishioner trying to go home. It was noted that the Subject Member had also not claimed to be acting as a Parish Councillor at the time of the incident, and no one had much such a claim. The Subject Member stated that he had not given any impression that he was acting as a Parish Councillor, and when approached made it immediately clear from his

response that he was not acting in this manner by stating 'I don't want to talk to you'. He added that the comments made could have been made by any Parish Councillor regarding conduct during the meeting, and any other professional approached outside of their place of work should be assumed to be off-duty. The Subject Member suggested that being engaged by a member of the public should not mean that he would act as Parish Councillor in his response. He added that the Catfield Code of Conduct did not seek to regulate what Councillors do in their private and personal lives, but only when conducting Council business or carrying out their work. It was noted that the principles used to determine whether a Councillor was acting in their official capacity required the Councillor to be conducting the business of their authority, and the Subject Member stated that he was not acting as a Councillor at the time of the incident.

- xv. The Subject Member stated that his alternate defence was the Human Rights Act which stated that the right to freedom of expression was crucially important, and may only be interfered with when there are justifying and compelling reasons, no matter how offensive or burdensome the comments may be. He added that the burden was on the investigating authority to justify interfering with freedom of speech, taking into account the additional freedoms granted to political speech, which allowed for a degree of immoderate, offensive or shocking language. It was noted that there must therefore be a justifying and compelling reason for the Committee to claim that he had breached the Code of Conduct.

Questions and Discussion

- xvi. Cllr L Shires stated that the Subject Member had made clear that it was a very stressful meeting, and that they rarely used such language and would not change their position on the matter. She asked that given the issue was around capacity, whether it was for the public to determine when a Councillor was acting in their official capacity, taking into account that many District Councillors were often asked Council related questions when not in meetings. Cllr Shires stated that reference had also been to discussing the meeting, which she felt placed the Subject Member in a position to respond to an enquiry about that meeting whilst still on Council premises. She asked how a member of the public would be able to discern or anticipate that they were not acting in their capacity as a Councillor. The Subject Member replied that the circumstances would suggest that this was not an appropriate time to engage in conversation about the matters discussed at the meeting. He added that he was also approached outside of meetings, but had made clear that he did not wish to speak to the parishioner after a long and stressful meeting. Cllr L Shires stated that as Chairman of the Parish Council, he had engaged in a discussion regarding an individual's conduct at the meeting, but had not at any point made clear that he was not acting in his official capacity. The Subject Member replied that he had not stated that he was not acting in his official capacity, though he perhaps should have made this clear.
- xvii. The Chairman asked whether the Subject Member genuinely believed that they had behaved appropriately, and could not have dealt with the matter in a more professional manner and apologised for their conduct. The Subject Member replied that in hindsight he regretted making the comments which were out of character, but stated that he was still adamant that he acted in a private capacity and was not acting as a Councillor once he had left the building.

- xviii. The Independent Person noted that the Subject Member suggested the incident took place during a private conversation, and asked whether the Subject Member regarded his comments as being offensive. The Subject Member replied that whilst it was rare for him to use this type of language, he did not regard it as being offensive or abusive.

Independent Person's Comments

- xix. The Independent Person noted that the Code of Conduct had outlined the requirement for Parish Councillors to be acting in their official capacity in order to be applicable. He added that it was his opinion that the Subject Member was acting as a representative of the Council outside of the meeting as he was approached directly to discuss Council business that had been debated during the meeting, and whilst he had said that he did not want to discuss the matter, he commented on conduct at the meeting, which related to official Council business. It was noted that even if not officially acting, he had given that impression to the parishioner, and therefore could not argue that he was not acting in his capacity as a Councillor. The Independent Person stated that the right to freedom of expression was also a qualified right, which did not provide the freedom to offend people, and should take into account treating people with respect. He added that Councillors should behave in the way a reasonable person would consider to be respectful, which was not the case in this instance, as the comments represented a clear personal attack. It was noted that members of the public should be treated with respect and decency in order to maintain trust in local politics. The Independent Person stated that in terms of mitigation, the meeting was chaired appropriately and there had been no similar evidence of disrespect during the meeting, despite provocation, with members of the public also expected to show Councillors respect. He added that a parishioner had accused the Subject Member of being a 'fibber' during the meeting, which whilst offering some mitigation, did not excuse the comments made. It was suggested that the Subject Member should have apologised at the first opportunity.

Questions and Discussion

- xx. Cllr L Shires stated that the comments made during the meeting were not comparable to the comments made by the Subject Member after the meeting. The Independent person replied that calling the Subject Member a fibber twice during the meeting did show a lack of respect, but he had handled it well during the meeting.

Closing Statements

- xxi. The Investigator stated that if Committee Members were satisfied that the Subject Member was acting in his capacity as a Councillor, that he did make the comments, and that they did amount to offensive behaviour, then it would amount to a breach of the Catfield Code of Conduct. She added that it was her submission that all three aspects were satisfied, and whilst she accepted comments that a Councillor was not 'switched-on' by a question from a parishioner outside of a meeting, the comments were in reference to a meeting that had just taken place, in direct reference to his role as Chairman. The Investigator therefore recommended that the Subject Member was acting in their official capacity, and there was no dispute from the Subject

Member of the words used, and these words were disrespectful to the parishioner and their mother.

- xxii. The Subject Member stated that he did not dispute the words used, but felt that he was not acting in his official capacity at the time of the incident, and despite the mitigating circumstances of a very long meeting, the altercation was between two adults.
- xxiii. The MO stated that there were two matters in the report, one relating to conduct in the meeting itself where no breach had been found by the Investigator, and Committee Member's should therefore focus on comments made immediately after the meeting to consider on the balance of probability whether they amounted to a breach of the Catfield Code of Conduct. It was noted that there was no dispute that the comments had been made, therefore consideration should be applied to the matter of capacity and the Subject Member's right to freedom of speech. The MO summarised the comments made by the Subject Member and stated that Members should consider all written and heard evidence when determining whether there had been a breach of the Catfield Code of Conduct.

Committee Members retired to consider the evidence

Findings

- xxiv. The Chairman noted that the Committee had considered all information and had found that on the allegation that the Subject Member had treated others with disrespect at a meeting, no breach had been found by the Investigator and the Committee had similarly found no breach. In regards to the other matter, the Committee had found a breach on the basis that on the balance of probability, the Subject Member was acting in their capacity as a Councillor. It was noted that whilst the Subject Member had disputed this, the time at which the comment was made, the location of the incident and the subject matter all linked the incident to the meeting that had just taken place. The Chairman stated that whilst the Subject Member had a right to freedom of speech, the comments made were not protected under that right as it was a personal and abusive comment that was not acceptable, and taken alongside the Committee's view on capacity, Members agreed that the Subject Member had breached the Catfield Code of Conduct. He added that the Subject Member had not behaved in a way that a reasonable person would consider respectful.

Sanctions

- xxv. The MO outlined available sanctions and stated that any sanctions agreed must be reasonable and proportionate to the breach identified, and be relevant to the Subject Member's behaviour. She added that any sanctions would need to be recommended to the Parish Council and could include a written report to the Parish Council, issuing of a formal censure, a request for the Subject Member to make a formal apology, removal from any committees, withdrawal of Parish Council facilities or exclusion from Parish Council property outside of any required meetings. It was noted that the last two options must not unduly restrict the Subject Member's ability to undertake his duties as a Councillor.

Questions and Discussion

- xxvi. The Investigator reminded Members that the Subject Member had been given ample opportunity to apologise for his actions but had declined to do so, taking into account that it could have negated the need to undertake such a long and costly process. Despite this, she was of the view that the breach identified still fell within the scope of an apology to the parishioner and the parishioner's mother, and wondered whether taking into account the findings of the Committee, the Subject Member would be more inclined to accept that his actions were not appropriate. She added that whilst this may seem like a low level sanction, it should be noted that historical cases in the administrative court had been dealt with in similar ways. It was suggested that in addition to a formal apology, it may also be appropriate for the Subject Member to complete equality and diversity training.
- xxvii. The Independent Person stated that given that the Subject Member did not think their comments were abusive, that equality and diversity training was necessary for him to understand what was acceptable language.

The Committee retired to consider sanctions

- xxviii. The Chairman stated that the Committee had taken into account both aggravating and mitigating factors, the length of public service and subsequent surprise at the comments made. He added that the following sanctions would therefore be recommended to Catfield Parish Council; that a clear apology be given in writing within 28 days to Mr Snelling and Mrs Snelling which acknowledges that the comment was disrespectful, and secondly that code of conduct and equality and diversity training be completed within six months of the Standards Hearing. It was noted that a full written summary of the recommendations would be shared within five working days of the meeting.

RESOLVED

That the following be recommended to Catfield Parish Council:

- 1. That a clear apology be given in writing within 28 days to Mr Snelling and Mrs Snelling which acknowledges that the comment was disrespectful.**
- 2. That code of conduct and equality and diversity training be completed within six months of the Standards Hearing.**

The meeting ended at 12.58 pm.

Chairman