

HEARINGS SUB-COMMITTEE

27 September 2022

*Councillor Jon Askew
*Councillor George Potter
*Councillor Jo Randall
*Councillor Tony Rooth
*Councillor Deborah Seabrook

*Present

Councillor Paul Spooner was in attendance.

Councillors Ramsey Nagaty and John Redpath were in remote attendance

1 ELECTION OF CHAIRMAN

The Sub-Committee

RESOLVED: That Councillor George Potter be elected chairman for the hearing.

2 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

There were no apologies for absence.

3 DISCLOSURE OF INTERESTS

There were no disclosures of interest.

4 ALLEGATIONS REGARDING THE CONDUCT OF TWO BOROUGH COUNCILLORS

The Sub-Committee noted that allegations of misconduct against Councillor Paul Spooner and Councillor Graham Eyre (“the Subject Members”) had been submitted in a formal complaint by Martin Giles (“the Complainant”) dated 29 June 2021. The complaint related to the alleged failure of the Subject Members to comply with the Councillors’ Code of Conduct in relation to the content of emails sent by the Subject Members, a WhatsApp message sent by Councillor Spooner, and tweets posted by Councillor Spooner in connection with enquiries by the *Guildford Dragon* in respect of the election of the Conservative group leader in June 2021.

In accordance with the procedures set out in the Council’s adopted Arrangements for dealing with allegations of misconduct by councillors (“the Arrangements”), the Deputy Monitoring Officer assessed the allegations contained in the complaint and, in consultation with the Independent Person, attempted to resolve the complaint by way of informal resolution.

As the Subject Members did not agree with the proposed informal resolution and, given that it had not been possible to identify an informal resolution to the complaint that satisfied both the Complainant and the Subject Members, the Deputy Monitoring Officer considered the further views of the Independent Person and decided that the matter should be referred for independent investigation.

Simon Goacher, Partner at Weightmans LLP, was instructed in January 2022 to investigate the complaint.

In June 2022, following consideration of comments from the Subject Members and Complainant on the draft report, the Investigating Officer submitted his final report to the Deputy Monitoring Officer. The report contained a number of exhibits including the relevant Council codes and interviews with the Complainant and the Subject Members. The conclusions reached in the final report were that the Subject Members had breached the Code of Conduct through:

- (a) failure to treat others with respect (para 2 (1) of the Code; and
- (b) conducting themselves in a manner which could reasonably be regarded as bringing the office of councillor or the Council into disrepute or acting in a manner contrary to the Council's duty to promote high standards of conduct (para 4 of the Code)

This Sub-Committee had therefore been convened to conduct a local hearing into this matter.

In accordance with the Council's Arrangements, the Chairman confirmed that the Sub-Committee was quorate, and noted that neither the Investigating Officer nor the Subject Members considered that any part of the hearing should be held in private, and no documents (or parts thereof) should be withheld from the public and press.

The Investigating Officer presented his report to the hearing, a copy of which, including a schedule of evidence, was attached to the agenda circulated to the Sub-Committee.

The Subject Member present, Councillor Spooner, asked the Investigating Officer where the line was drawn between a councillor working as a councillor and a councillor exercising freedom of expression in relation to the general discussion that took place between media and politicians. The Investigating Officer explained that it was dependent upon the subject matter of the conversation, where a councillor speaks to the press about Council business, or issues in relation to the Council then they were, in his view, acting as a councillor.

After the Investigating Officer had answered questions from the Sub-Committee, the Subject Member then presented his case to the Sub-Committee.

After the Subject Member had answered questions from the Sub-Committee, both the Investigating Officer and Subject Member present summed up their respective cases, following which the Sub-Committee agreed to adjourn the hearing to deliberate in private to consider whether on the facts found, the Subject Members had failed to comply with the Code of Conduct.

Following their deliberations, the Sub-Committee reconvened the hearing in public.

Having carefully considered the representations and evidence submitted by the Investigating Officer and the Subject Members and having taken into account the views of the Independent Person, and on the balance of probabilities, the Sub-Committee

RESOLVED: That, in relation to the allegations that the Subject Members had breached:

- (a) paragraph 2 (1) of the Code of Conduct through their failure to treat others with respect, as described in the Investigating Officer's Report; and
- (b) paragraph 4 of the Code of Conduct through their failure to conduct themselves in a manner that could reasonably be regarded as bringing the office of councillor, or the Council, into disrepute or in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct, as described in the Investigating Officer's Report,

the Sub-Committee considered that there had been a breach of the Code of Conduct by the Subject Members.

Reasons:

In relation to the e-mails sent by Councillor Eyre, the Sub-Committee considered first of all the question of whether they had been sent in a personal capacity or in Councillor Eyre's capacity as a councillor. The Sub-Committee concluded that given that the emails related to a communication with a journalist about a matter relating to the Council, namely a group leadership election, they did meet the test of being made in the capacity of being a Councillor.

In considering the content of the emails, the Sub-Committee considered that the second e-mail quoted in paragraph 30 of the Investigator's report sent by Councillor Eyre to Mr Reading, constituted a breach of Section 2 (1) and Section 4 of the Code of Conduct.

In relation to Councillor Spooner, and the e-mail sent to Mr Reading, the WhatsApp messages and tweets, the Sub-Committee again applied the test of whether these were made in a personal capacity or in Councillor Spooner's capacity as a councillor. Again, considering the context namely communication with a journalist in relation to a media enquiry about Council business the Sub-Committee deemed that the e-mail and the WhatsApp messages were made in the capacity of being a councillor. The Sub-Committee considered that the tweets, regardless of whether or not made in the capacity of a councillor, should be regarded as being "fair comment and opinion" and therefore should not be considered to be a breach of the Code of Conduct.

However, in considering the content of the e-mail and WhatsApp messages, the Sub-Committee found that these amounted to a breach of Section 2 (1) and Section 4 of the Code of Conduct.

The Chairman invited both the Investigating Officer and the Subject Member present to make their representations as to whether any sanction(s), or recommendation(s) should be applied and what form any sanction(s) or recommendation(s) should take.

The Investigating Officer had recommended that the Sub-Committee's findings should be published and reported and that the Subject Members be asked to tender an apology to such persons as were aggrieved by their actions.

The Subject Member present indicated that, notwithstanding the Sub-Committee's findings, he would not be making an apology.

The Sub-Committee noted that the Independent Person had been consulted throughout the process, and her view following receipt of the Investigating Officer's report had remained consistent throughout that this was a matter that would be suitable for an informal resolution by way of an apology and that would be the sanction that she would recommend.

The Sub-Committee agreed to adjourn the hearing to deliberate in private to consider the suggested sanctions/recommendations and their application in the light of the representations from the Investigating Officer and Subject Member present and the views expressed by the Independent Person.

Following their deliberations, the Sub-Committee reconvened the hearing in public.

The Chairman indicated that the Sub-Committee had carefully considered the representations submitted by both the Investigating Officer and the Subject Member, the various questions in the Arrangements in respect of matters to consider when applying a sanction and had taken into account the views of the Independent Person in that regard.

The Sub-Committee therefore

RESOLVED: (1) That, in the case of Councillor Eyre, the following sanctions be applied:

- To publish and report the Sub-Committee's findings in respect of Councillor Eyre's conduct
- To issue a formal letter of advisement as to the future conduct of Councillor Eyre
- To request Councillor Eyre to tender an apology to the complainant for his conduct.

(2) That, in the case of Councillor Spooner, the following sanctions be applied:

- To publish and report the Sub-Committee's findings in respect of Councillor Spooner's conduct
- To issue a formal letter of advisement as to the future conduct of Councillor Spooner
- To issue formal censure to Councillor Spooner for his conduct.

The meeting finished at 9.45 pm

Signed

Chairman

Date