

# HEARINGS SUB-COMMITTEE

11 September 2017

\*Councillor Colin Cross  
\*Councillor Richard Billington  
\*Councillor Gordon Jackson  
\*Councillor Nigel Kears  
\*Councillor Nigel Manning

\*Present

Councillors David Elms, Angela Gunning, Susan Parker and David Reeve were also in attendance.

## **1 ELECTION OF CHAIRMAN**

The Sub-Committee

RESOLVED: That Councillor Gordon Jackson be elected chairman for the hearing.

## **2 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTES**

There were no apologies for absence from members of the Sub-Committee. Apologies for absence were received from the two complainants.

## **3 DISCLOSURE OF INTERESTS**

There were no disclosures of interests.

## **4 ALLEGATIONS REGARDING THE CONDUCT OF A BOROUGH COUNCILLOR**

The Sub-Committee noted that two allegations of misconduct against Councillor David Reeve ("the Subject Member") had been submitted by Councillors Paul Spooner and Caroline Reeves ("the Complainants") in July 2016 concerning the release of a report written by the Subject Member, which was based, it was alleged by the Complainants, on information provided to him on a confidential basis as an elected councillor.

In accordance with the procedures set out in the adopted Arrangements for dealing with allegations of misconduct by councillors ("the Arrangements"), the then Monitoring Officer assessed the allegations and, after consulting the Independent Person, decided that the matter should be referred for an independent investigation.

Olwen Dutton, Partner for Anthony Collins Solicitors LLP, was instructed in September 2016 to investigate the complaints.

In January 2017, the Investigating Officer's draft report was received and circulated to the Subject Member and the Complainants for comment. The report attached a number of appendices, which included details of interviews with the Complainants, the Subject Member, and a Principal Planning Officer.

In March 2017, following consideration of comments, the Investigating Officer submitted her final report to the then Monitoring Officer. The conclusions reached in the final report were that the Subject Member had breached the Code of Conduct through:

- (a) the disclosure of confidential information (para 3 (a) of the Code)
- (b) failure to treat others with respect (para 2 (1) of the Code)
- (c) conducting himself in a manner which could reasonably be regarded as bringing the office of councillor or the Council into disrepute (para 4 of the Code)

Upon receipt of the final report and in consultation with the Council's Independent Person, the then Monitoring Officer sought to achieve a local resolution. Meetings were held between the Independent Person, the then Monitoring Officer, the Complainants and the Subject Member but unfortunately a local resolution could not be agreed between the parties.

In such circumstances, the Council's Arrangements provided that if the Monitoring Officer considered that a local resolution was not appropriate, or the Subject Member concerned was not prepared to undertake any proposed remedial action, then the Monitoring Officer would take the Investigating Officer's report to the Hearings Sub-Committee.

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 then invited any representations from the Deputy Monitoring Officer, the Investigating Officer and the Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public and press (subject to Part 1 of Schedule 12A of the Local Government Act 1972 (as amended)).

As there were no such representations, the Chairman confirmed that the hearing would proceed in public.

The Investigating Officer presented her report to the hearing, a copy of which, including a number of appendices, was attached to the agenda circulated to the Sub-Committee.

The Subject Member, Councillor Reeve, asked a number of questions regarding the evidence presented by the Investigating Officer.

During this part of the hearing, the Subject Member drew the Sub-Committee's attention to recent correspondence he had had with the Deputy Monitoring Officer in which he referred to a Council of Europe Human Rights handbook entitled "*The right to a fair trial - A guide to the implementation of Article 6 of the European Convention on Human Rights*". The Subject Member suggested that under the terms of the Convention which, he argued, applied to this hearing, it was necessary in order to ensure a fair trial, to have all parties present, including the Complainants, so that the Subject Member had the opportunity to cross-examine them, just as the Investigating Officer had been given the opportunity to cross-examine him.

The Deputy Monitoring Officer advised the Sub-Committee that she had sought external legal advice in respect of this matter and that Leading Counsel had advised that the Council's Arrangements were sound and Human Rights compliant and that it was not necessary to require the attendance of the Complainants at the hearing. Under the Council's Arrangements, the complainants had no right to speak, nor could they be cross-examined even if they had attended the hearing, unless they had been called as witnesses.

On the basis of this advice, the Sub-Committee agreed to proceed with the hearing.

After the Investigating Officer had answered the Subject Member's remaining questions and the questions from the Sub-Committee, the Subject Member then presented his case to the Sub-Committee and referred to written evidence he had adduced which was also attached to the agenda circulated to the Sub-Committee.

After the Subject Member had answered questions from the Sub-Committee, both the Investigating Officer and Subject Member summed up their respective cases, following which the Chairman invited the Independent Person to express her view as to whether she considered, based on the evidence presented to the Sub-Committee, that there had been a breach of the Code of Conduct. The Independent Person's view was that regardless of what the Subject Member did with the information and his significant justifications for doing it, there was a breach of the Code of Conduct. By disclosing the information, which he had admitted, the Subject Member did not treat Councillor Spooner with respect, which had an impact on other officers and councillors leading to a lack of trust and confidence between them. From the outcome of the breach, this had to some degree, led to the Subject Member bringing the Council into disrepute, albeit recognising that the Subject Member acted in good faith for his ward and the people of Guildford.

The Sub-Committee agreed to adjourn the hearing to deliberate in private to consider whether on the facts found, the Subject Member had failed to comply with the Code of Conduct.

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

The Chairman reiterated that the Sub-Committee's decision-making process had not been influenced by the correctness or otherwise of the SHMA or the Subject Member's analysis of it, but had been made on the evidence presented in the papers and at the hearing.

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

RESOLVED:

- (1) That, in relation to the allegation that the Subject Member had breached the Code of Conduct through the disclosure of confidential information as described in the Investigating Officer's Report, the Sub-Committee considered that there had been a breach.

Reasons:

All parties had accepted that the information released by the Subject Member was confidential. The Subject Member had suggested that the information released was de minimis and, therefore, only a technical breach of the Code of Conduct. However, whilst this might go to mitigation, the Sub-Committee did not accept this argument, but accepted the Coco case (*Coco v A N Clark (Engineers) Ltd [1969] RPC 41*) as good authority. The Subject Member had accepted that some confidential information had been disclosed, but the Sub-Committee was of the opinion that there was no concept of a technical, de minimis breach – either confidential information had been released, or it had not. The Council was under a contractual duty to Experian to maintain the confidentiality of this material.

In determining whether the disclosure was in the public interest as argued by the Subject Member, the Sub-Committee had taken into account the guidance produced by the former Standards Board for England in relation to disclosure of confidential information in the absence of any relevant case law or current authoritative guidance.

In particular, the Sub-Committee noted that the Standards Board guidance had suggested that for the disclosure to be in the public interest, it needed to involve one or more of a number of matters listed therein, including "*the environment is likely to be damaged*". However, as there was no immediate peril to the environment evident, the Sub-Committee did not consider that this applied in this case to justify disclosure in the public interest.

Furthermore, the Sub-Committee noted that the Subject Member had failed to comply with the Council's requirement to consult with the then Monitoring Officer before the confidential information was released, as required by Note 1 paragraph 3 (a) (iv) (bb) of the Code of Conduct. There was no reasonable excuse for omitting to do this whatever the Subject Member's belief as to the wider public interest.

- (2) That, in relation to the allegation that the Subject Member had breached the Code of Conduct through his failure to treat others with respect, as described in the Investigating Officer's Report, the Sub-Committee considered that there had been a breach.

Reasons:

The Subject Member had failed to go back to officers highlighting the errors that he thought he had identified in the SHMA before the release of the confidential information. The timing of the release to a wide audience just before midnight on a Friday, even though the Subject Member had had the information for approximately four months gave no opportunity for review or comment.

- (3) That, in relation to the allegation that the Subject Member had breached the Code of Conduct by bringing the Council into disrepute, as described in the Investigating Officer's Report, the Sub-Committee considered that there had been a breach.

Reasons:

The Sub-Committee agreed with the definition of "*disrepute*" in the Investigating Officer's Report and the detailed reasons therein for her conclusion that the Subject Member had breached the Code of Conduct in this regard. The Sub-Committee had focused particularly on the impact on the good reputation of the Council. The Subject Member's report had been clearly directed at the widest possible audience highlighting what he believed to be faults with the SHMA calculations which officers did not have the opportunity to rebut before its release and the imminent close of the consultation on the Draft Local Plan.

It was stated clearly in the Subject Member's report that he had obtained the information in his capacity as a councillor and that he had relied on the background information that he had been given, referring specifically to the Experian report, in order to purport to demonstrate shortcomings in GL Hearn's SHMA report.

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

The Investigating Officer had recommended that the Subject Member be asked to make an apology and that he undergo further training in the Code of Conduct and other related policies in the Constitution.

The Subject Member indicated that he had already said all he wished to say about mitigating circumstances during the hearing.

The Chairman invited the Independent Person to express her view on any sanction(s) or recommendation(s). The Independent Person agreed with the Investigating Officer's view but also suggested that the Subject Member having to appear before a hearing in public was a sanction in itself.

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 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.

In particular, the Sub-Committee had taken into account the arguments that the Subject Member had made in respect of mitigating circumstances, particularly the extent of the confidential information that was disclosed, and accepted the view of the Planning Officer that the incident would not have any long-term impact on the Local Plan process.

The Sub-Committee felt that it was the officers who had been mistreated in respect of this matter in that they did not have the opportunity to have their say on the information published by the Subject Member; and that there was a potential breach of the Council's contractual obligations with Experian.

The Sub-Committee therefore

RESOLVED: That the following sanctions be recommended to Council:

- (1) That the Subject Member be asked to apologise specifically to Laura Howard, Principal Planning Officer, regarding the disclosure of the confidential information.
- (2) That the Subject Member be requested to participate in appropriate training, on a one-to-one basis, on the role of the councillor and their responsibilities under the Code of Conduct, in particular reconciling their representational role with their obligations under the Code.

The meeting finished at 3.40 pm

Signed .....

Chairman

Date .....