

Date of decision: 21 July 2021

Reference: 817

DECISION NOTICE

**RELATING TO ALLEGATIONS OF BREACHES OF THE CODE OF CONDUCT FOR
MEMBERS OF BINGHAM TOWN COUNCIL BY COUNCILLORS FRANCIS PURDUE-HORAN
AND JOHN STOCKWOOD**

Introduction

This decision notice relates to the complaints submitted by an employee of Bingham Town Council and two Town Councillors, (**the complainants**), against Bingham Town Councillors, Councillors Francis-Purdue Horan And John Stockwood, (**the Subject Members**).

Rushcliffe Borough Council's Standards Committee has made findings as to breaches of Bingham Town Council's Member Code of Conduct and has determined the sanctions to impose in light of those breaches.

At all material times the Standards Committee was satisfied that the Subject Members were acting in their capacity as Town Councillors.

The Standards Committee applied the Bingham Town Council Code of Conduct as adopted by full Council on 22 October 2019 in reaching this decision.

Preliminaries

On receipt of the complaint's Rushcliffe Borough Council's Independent Person was contacted by the Monitoring Officer, as required by the Localism Act 2011, and in accordance with the arrangements for dealing with alleged breaches of the Code of Conduct. The complaints were assessed against the initial tests set out in the Public Interest Test and having been so assessed were referred for formal investigation into alleged breaches of the Code of Conduct.

Mr Timothy Leader, a barrister, was instructed by the Monitoring Officer to carry out an independent investigation. Mr Leader interviewed the complainants, the subject members and other relevant individuals several times and considered a substantial amount of written material. He used this information to compile a report to the Monitoring Officer. It contains information which is sensitive and confidential. The Monitoring Officer is satisfied that Rushcliffe Borough Council cannot properly disclose the report or the complaint as to do so would disclose that confidential information about individuals who are affected by and/or took part in the investigation of the complaint, and could also undermine the integrity of the complaints procedure. The Monitoring Officer is satisfied that the public interest in complying with Rushcliffe Borough Council's obligations and maintaining the confidentiality outweighs the public interest in disclosing this material at this time. Having considered the representations of the Monitoring Officer, Investigator and the Subject Members the committee determined to exclude the public from the hearing of the complaints.

Neither the investigation report nor the complaints will be published or otherwise be put into the public domain. In any event, there is sufficient detail in this decision notice to address any questions that might legitimately be raised about the complaint and the determination of it.

Prior to the issue of the final report, the complainants and the subject members were given an opportunity to provide comments to the investigator on the draft report and his findings. The period was extended to give the subject members an opportunity to make their comments as this was considered appropriate given the detail in the draft report. The investigator considered the comments made by the subject members and addressed them in the final report. The complainants were content with the draft report save for some minor housekeeping matters.

Following issue of the final report, the Monitoring Officer further consulted the Independent Person and determined that the complaints be referred to a hearing before the Standards Committee of Rushcliffe Borough Council. Rushcliffe Borough Council's Standards Committee is a cross party committee, it met on the 26th May and 21st July 2021 to consider the independent investigator's report, representations of the Subject members and the Independent Person's views to determine whether the subject members had breached the Code of Conduct and if so any sanctions that may be imposed as a result of the breach. The Standards Committee was held in private session. The Subject Members were present at the Standards Committee meeting and were represented by a lay person (nonlegal representative). The instigating Officer having confirmed an intention not to call witnesses none were called.

Prior to the hearing, in accordance with Rushcliffe Borough Council's adopted arrangements some facts were agreed and presented to the panel.

The Standards Committee's consideration and findings are restricted to that which properly falls within the Code complaints process.

The complaints

The complaints were submitted by a Town Council employee, the Town Clerk and Two Town Councillors. The complaints relate to the Subject Members who are also members of Rushcliffe Borough Council, one is a member of Nottinghamshire County Council. The complaints have been considered in the context of their membership of Bingham Town Council only.

In essence, the complaints allege the subject members bullied the Town Clerk over a sustained period with the object of removing her from office and that this breached the "Nolan Principles" that sit at the heart of Bingham Town Council's Code of Conduct. More particularly, it was alleged that the Subject Members:

- Were not open and accountable for their decisions (paragraphs d, e, and h of the Code).
- Bullied a member of staff (bullying being characterised at paragraph h of the Code)
- Conducted themselves in a manner or behaved in such a way so as to give a reasonable person the impression that they have brought their office or Bingham Town Council into disrepute.

Findings as to breaches

Breaches

Having carefully considered the independent investigator's report, the evidence presented by the Subject Members and the Independent Person's views the Standards Committee found that the subject members have breached paragraphs (d), (e) and (h) of the Code of Conduct:

Reasons

The breaches of the Member Code of Conduct found result from the independent investigator's findings, the evidence of the Subject Members and the views of the Independent person, that the subject members failed to promote and maintain high standards of conduct in that they created an oppressive working environment for the Town Clerk, Sharon Pyke, with the object of removing her from office.

- (d) you are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office

Whilst the subject members were advised by professional HR advisors, in not seeking and confirming this advice in writing they failed to hold themselves accountable for their decisions and frustrated any proper scrutiny of those decisions. The panel is satisfied that professional advice was however properly sought by the Subject Members.

- (e) you must be as open as possible about your decisions and actions and the decisions and actions of the Council and should be prepared to give reasons for those decisions and actions

The failure by the subject members to seek professional HR advice in writing, or confirming the same in writing, led to the subject members not being able to be forthcoming with the reasons for their decisions and actions. The panel is satisfied that professional advice was however properly sought by the Subject Members.

- (h) you must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and by example, by respecting others and not bullying, intimidating or harassing and person, or behaving in an improper or offensive manner (including the use of offensive language or making improper personal remarks to or about individuals), by respecting the confidentiality of information you receive, and by not conducting yourself in a manner which is likely to bring the authority into disrepute.

Bullying is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted. Again, it is the impact of any behaviour rather than the intent which is the key.

Bullying usually arises as a result of an individual misusing their power (usually derived from status or some other position of strength) and, again, can occur through all means of communication. Bullying tends to be a pattern of behaviour or can be a one off serious incident that becomes objectionable or intimidating. The examples in the following list are, by no means, exhaustive:

- Unwelcome physical, verbal or non-verbal conduct;
- Intimidatory behaviour including verbal abuse or the making of threats;
- Making someone's working life difficult;
- Disparaging, ridiculing or mocking comments and remarks;
- Physical violence; and
- Deliberately excluding an individual from conversations, work or social activities, in which they have a right or legitimate expectation to participate.

The committee finds that the intention of the Subject Members was to deal with what they perceived to be the poor performance of the Town Clerk. In the absence of a clear performance management framework the Subject Members sought professional advice however, that advice was revised and led to decisions being overturned on three occasions. This created an oppressive working environment for the Town Clerk. That environment was created by successive attempts by the Subject Members to remove the Town Clerk not via an appropriate

performance management mechanism but by measures that would result in her employment ending without the use of such mechanisms.

The Committee finds on balance evidence that:

- Councillors John Stockwood and Francis Purdue-Horan have breached Bingham Town Council's Member Code of Conduct as adopted by Council on the 22nd October 2019 by failing to promote and maintain high standards of conduct in that each has harassed and repeatedly behaved unfairly and oppressively towards the Town Clerk, Sharon Pyke, with the object of removing her from office and did so in a way which was inconsistent with the principles of open, accountable behaviour and of providing good leadership.

Given the nature of the conduct the Committee determined that the Subject Members' actions were, and are, in conflict with the promotion and support of high standards of conduct expected from their office. In particular, the Standards Committee found that the Subject Members failed to adhere to the general principles of public life which underpin the Code of Conduct insofar as they relate to objectivity, accountability, openness and leadership.

The Standards Committee in its findings of fact determined that the actions of the subject members were based on the perceived poor performance of the Town Clerk.

The Standards Committee did not attach any weight or significance to the question of whether the members acted under delegated powers by reason of custom and practice or otherwise. They plainly led and instigated the oppressive behaviour the Committee found.

The Subject Members denied any misconduct representing throughout that they acted on professional advice and were supported by Council. The Standards Committee determined, having reviewed the findings of the investigation report, and having heard the evidence that on each of the three material occasions decisions were overturned notwithstanding that advice.

In accordance with the Town Council's code of conduct the panel has considered "the impact of any [the] behaviour rather than the intent..." The panel finds that the incidents cannot be considered as happening in isolation, the impact of the incidents upon the Town Clerk's working life must be considered in the context of each previous incident and what we therefore find was a pattern of behaviour with cumulative impact.

The Standards Committee determined that the subject members' conduct would lead a reasonable person to consider that the Subject Members' office as Councillors (which is how the role of Councillor is described under the Local Government Act 1972) had been brought into disrepute. Accordingly, the Standards Committee found that the subject members have, through their actions, breached the Code of Conduct.

The panel has not considered whether Councillor John Stockwood or Francis Purdue-Horan improperly procured a dispensation to take part in the debate of item 11 of the agenda of Full Council on 15th December 2020 given the findings of the investigator (which was there was no case to answer).

Sanctions

Having made their determination that the subject members have breached Bingham Town Council's Member Code of Conduct, the Standards Committee went on to consider what sanctions, if any, should be applied to the subject members. As part of their deliberations the Standards Committee had regard to the views of the Independent Person as to the appropriate sanction should breaches of the Code of Conduct be determined. The Committee also heard from the Subject Members and the Investigator.

The Committee also considered the application of the performance management framework in place for staff of Bingham Town Council during this period, and the resulting consequences of a failure to follow proper procedures in response to perceived poor performance.

The Standards Committee noted that the powers for a Council to disqualify or suspend an elected member were removed pursuant to the Localism Act 2011. Notwithstanding the lack of an ability to disqualify or suspend an elected member, the Standards Committee took due regard of the sanctions they could impose and thereafter determined that the following sanctions are appropriate to address the breaches it found:

1. Invite the Subject Members to apologise to the Town Clerk in writing.
2. The committee invites the Subject Members to reflect on the appropriateness of their membership of the HR committee.
3. The committee recommends that Bingham Town Council arrange HR performance management training for the subject members and all members of Bingham Town Council.

The Committee has given careful consideration to the detailed submissions of both the investigating officer and the subject members and the introduction of a HR committee to consider staffing. In the spirit of supporting the Town Council the panel issues guidance to the Town Council, **Appendix**.

Appendix – Guidance

Further to the decision of the Standards Committee taken on 21 July 2021, the Standards Committee issues the following guidance to the Town Council for its consideration:

1. Performance management framework
The Town Council via the HR committee seek to review the current employee handbook to ensure its provisions are appropriate and allow for the effective management of employees.
2. Governance framework

To support scrutiny, openness and accountability all decisions and advice sought by the Town Council on which those decisions were based is produced to the decision makers. Where advice is sought, such advice should be sought in writing.

To support good governance at the Town Council meetings agendas, meeting procedure and application of Standing Orders be agreed by the meeting chair and the proper officer (Town Clerk/Deputy Clerk) in advance by meeting at a reasonable time in advance of the meeting so that the key personnel are able to properly plan the meeting and the Town Council is seen as being open and accountable.

OFFICIAL

The advice of the proper officer be sought by all Councillors as appropriate and that she work proactively and in partnership with Councillors in her role supporting the Town Council with decision making, meeting procedures and declarations of interest.

3. Where there is a conflicting position advice be sought from NALC.