

STANDARDS (DETERMINATION) SUB COMMITTEE

Friday, 28 February 2020

Attendance:

Councillors
Becker (Chairperson)

Miller

Laming

Mr M Cronin – Independent Person

1. **APPOINTMENT OF CHAIRPERSON**

RESOLVED:

That Councillor Becker be appointed Chairperson for the meeting.

2. **DISCLOSURE OF INTERESTS**

The Chairperson advised that both she and the other two members of the Sub-Committee knew the Councillor who was subject of the complaint, but were not close acquaintances and so this did not preclude them from considering the item.

3. **PROCEDURE FOR THE HEARING**

RESOLVED:

The Sub- Committee agreed to endorse the procedure as circulated with the agenda for the hearing.

4. **EXEMPT BUSINESS**

RESOLVED:

1. That in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

2. That the public be excluded from the meeting during the consideration of the following items of business because it is likely that, if members of the public were present, there would be disclosure to them of 'exempt information' as defined by Section 100I and Schedule 12A to the Local Government Act 1972.

<u>Minute Number</u>	<u>Item</u>	<u>Description of Exempt Information</u>
	Complaint relating to a City Councillor) Information relating to any individual. (Para 1 Schedule 12A refers))))

5. **COMPLAINT MADE AGAINST A CITY COUNCILLOR**

(Report SSC050 refers)

The role of officers present at the hearing was explained. These were the Investigating Officer and Monitoring Officer (Lisa Kirkman), Deputy Monitoring Officer (Catherine Knight) and Legal Advisor (Fiona Sutherland). The Independent Person (Michael Cronin) would provide assistance to the Sub-Committee during its determination but would not take part in its decision. The Councillor subject of the complaint was accompanied by another Councillor to provide support throughout the hearing. Also present was the complainant (who was a witness of the Investigating Officer) and a companion to provide support to her.

The Standards (Determination) Sub- Committee considered the complaint received by the Monitoring Officer and the information and evidence as set out in Report SSC050 and in line with the procedure adopted by the Sub- Committee, it heard evidence from those present.

The relevant Code of Conduct and arrangements for considering complaints were included as appendices to the report. As the complaint had been received before the Council had adopted its current Constitution (and Code of Conduct therein) in May 2019, the previous Code and processes related to that code applied. Therefore all references and any breaches of the Code were those of the Code of Conduct as it stood at that time.

The Sub- Committee considered the report of the Investigating Officer (as set in Report SSC050) and determined that further consideration should be taken in exempt session, by virtue of Paragraph 1 of Schedule 12A of the Local Government Act 1972, as the matter was about a person and personal details and information pertinent to that person (the complainant).

The Sub- Committee agreed that as the personal information in the report related to the complainant who was also a witness of the Investigating Officer, she and her companion could remain throughout the meeting if they wished.

In summary, the Sub- Committee concluded that a number of breaches of the Code of Conduct as it stood at the time had taken place (details set out in the attached Decision Notice).

RESOLVED:

That, in respect of the complaint relating to a Winchester City Councillor, the findings of the Standards (Determinations) Sub-Committee be as set out in the Decision Notice attached to the minutes.

The meeting commenced at 2pm and concluded at 4.35pm (adjourned between 2.40pm until 2.55pm for a comfort break and then retired to consider its findings in private between 3.05pm and 4.30pm)

Chairperson

WINCHESTER CITY COUNCIL

STANDARDS (DETERMINATION) SUB-COMMITTEE

28 February 2020

DECISION AND REASONS ON THE COMPLAINT MADE AGAINST COUNCILLOR SUSAN COOK

INTRODUCTION

1. Councillor Susan Cook has been an elected member of Winchester City Council since May 2015 representing the ward of Twyford and Colden Common.
2. Under the Localism Act 2011, Winchester City Council must promote and maintain high standards of conduct by its elected members. The Council must adopt a code dealing with the conduct that is expected of members where they are acting in that capacity and must have in place arrangements under which allegations can be investigated and decisions on allegations can be made.
3. On 4 April 2019, the complainant, a resident of Twyford, made a complaint to the Monitoring Officer that Cllr Cook had breached the Winchester City Council Code of Conduct. The matter was investigated by the Monitoring Officer and her findings presented to the Sub-Committee at this hearing.
4. The Standards (Determination) Sub-Committee was convened in order to determine whether on the basis of the evidence provided Cllr Cook had failed to comply with the Winchester City Council Code of Conduct in respect of the complaint made. A procedure for the hearing was sent out to the members of the Sub-Committee and to the Independent Person appointed under the Localism Act and agreed in advance. The procedure was also sent to Cllr Cook.

PROCESS

5. At the hearing, the parties were as follows:
 - i) Lisa Kirkman, Monitoring Officer/Investigating Officer assisted by Catherine Knight, Deputy Monitoring Officer;
 - ii) Cllr Cook supported by Councillor Caroline Horrill, Group Leader.
6. The Sub-Committee was also assisted by Michael Cronin, the Independent Person, who remained with the Sub-Committee during the hearing and the deliberations. His views were given and taken into account during the deliberations. We are grateful to him for his assistance.

THE HEARING- PROCEDURE

7. Once the hearing commenced, Cllr Becker was elected chairperson. Largely for the benefit of the complainant, who was present, the Chairperson explained that although the members of the Sub-Committee knew Cllr Cook as a fellow councillor, they were not close associates of hers hence their inclusion on the Sub-Committee.
8. The Sub-Committee then resolved to exclude the public from the meeting during the determination of the complaint relying on Schedule 12A of the Local Government Act, 1972, paragraph 1 because the Sub-Committee would hear personal information about the complainant.
9. Following the passing of the resolution, the Sub-Committee invited the complainant and her companion to remain throughout the meeting – which they both did. Cllr Horrill also remained in order to support and assist Cllr Cook.
10. On the substantive issues the investigating officer presented her report and the complainant gave evidence as a witness. Cllr Cook also gave evidence and was questioned by the investigating officer. The Sub-Committee and the Independent Person asked questions of the complainant and of Cllr Cook.
11. The Sub-Committee took a short break before the parties each summed up their case. The Sub-Committee adjourned to consider and deliberate in private with the Independent Person, the Legal Advisor to the Sub-Committee and the Democratic Services Manager present.

THE CODE OF CONDUCT

12. The complaint was received on 4 April 2019 before the adoption of the new Constitution and Code of Conduct in May 2019. This complaint has therefore been considered under the Code of Conduct and Guidance in force when the complaint arose.
13. The relevant parts of the Code of Conduct are:

‘General Obligations of Members and Co-opted Members’

As a Member of Winchester City Council, your conduct will address the principles of the Code of Conduct by:

3.1 Representing the needs of residents, and putting their interests first.

3.2 Dealing with representations or enquiries from residents, members of communities within the administrative area of Winchester City Council and visitors fairly, appropriately and impartially.

3.5 Listening to the interests of all parties, including relevant advice from

statutory and other professional officers of the Council, taking all relevant information into consideration, remaining objective and making decisions on merit.

3.8 Restricting access to information when the wider public interest, the Council's Constitution or the law requires it.

3.14 Always treating all people and organisations with respect and propriety.

THE COMPLAINT

14. The complainant summarised her complaint as:

- Bullying, harassment and victimisation
- Breach of Data Protection Act/Code of Conduct principles
- Failing to treat people with respect
- Using their position improperly, to their own or someone else's advantage

With the complaint she submitted a series of emails dated between 14 December 2018 and 1 April 2019 obtained when the complainant exercised her rights under data protection laws to obtain her personal data from Winchester City Council and from Councillor Cook. The complainant also detailed her interactions with Cllr Cook over this period. This information is contained in the report provided to the Sub-Committee.

There is no dispute that Cllr Cook was acting in her capacity as a councillor at the time and no dispute over the contents of the emails.

BACKGROUND

15. The complainant had recently moved into a house in the village of Twyford located in the ward that Cllr Cook represents. The property is owned by Winchester City Council – which is relevant due to the involvement of a Winchester City Council Housing Officer. From January 2019, she was contacted by Cllr Cook about complaints received by Cllr Cook relating to vehicle parking and bin storage at the property. Contact took place face to face, by phone and by email.

16. The job of the Sub-Committee is not to consider the merits of the complaints received by Cllr Cook but to determine whether there has been a breach of the Code by Cllr Cook in her dealings with the complainant.

ANALYSIS/FINDING OF FACTS:

17. Taking each element of the complaint in turn:

Bullying, harassment and victimisation

The Code of Conduct does not contain explicit reference to bullying, harassment or victimisation. Such conduct would be a breach of 3.14 - treating people with respect and propriety. Based on the written and oral evidence we do not find that Cllr Cook herself bullied, harassed or victimised the complainant. We do however find that through her actions, whether intended or not, Cllr Cook encouraged surveillance of the complainant by a third party or parties and thereby created an environment in which the complainant felt harassed and judged. There is evidence of this in emails from Cllr Cook to a third party of 13 January 2019 @12.29 where the expressions "Hope you can spread the word", of 15 January @ 11.55 "Please keep an eye on things" and 5 February @ 19.04 "Please keep me posted on all matters" were used in the context of updates on parking and bins.

Although at the hearing, Cllr Cook denied that this was her intention, it should have been obvious to her how her words would or could be interpreted and that there would be consequences for the complainant.

We find that Cllr Cook's actions were a breach of 3.1 of the Code by her failure to represent the needs of residents, putting their interests first (specifically, the complainant's interests) and 3.2 of the Code of Conduct in that she did not deal with representations from residents fairly, appropriately and impartially in encouraging them to carry out surveillance of the complainant's activities.

Breach of Data Protection Act/Code of Conduct principles

There is clear written evidence that Cllr Cook had disclosed information to a third party about the complainant's private and family life despite the complainant explicitly asking that details of her private life should not be shared with other residents of Twyford. In turn, Cllr Cook accepts that the third party has shared the information with at least two other residents. The clearest example is the email of 13 January @ 12.29 in which information about the complainant's working, child care and domestic arrangements were disclosed without consent or other lawful reason. This is exacerbated by the assurances of confidentiality given by Cllr Cook. There appears to be a lack of understanding on the part of Cllr Cook who, in evidence stated that she had shared details but not names. It is noted that she has not completed the Council's mandatory on-line data protection training, and has not attended the one to one data protection training offered to her last year, citing pressures of work. It is also noted that she has failed to give an adequate apology to the complainant.

We find that the above amounts to a breach of 3.8 of the Code in that Cllr

Cook failed to restrict access to information as required by data protection legislation. Furthermore, the sharing of private information despite being explicitly asked not to, amounts to a breach of 3.14 of the Code – failing to treat all people with respect.

Failing to treat people with respect

The complainant has stated that she felt pressured by Cllr Cook into giving her details of her private and family arrangements and that her manner was rude, abrupt, accusatory and demanding. Written evidence and evidence from the complainant indicates that Cllr Cook did not approach the complaints she received from neighbours objectively. The emails indicate that, despite assurances from the Housing Officer that the complainant was not in contravention of her tenancy conditions, Cllr Cook continued to make enquiries and raise complaints on behalf of residents to the extent of contacting the Police and DVLA about parking issues.

Cllr Cook denies that she has acted other than in a professional and caring manner.

Notwithstanding the denial, we find that Cllr Cook was in breach of 3.5 in failing to listen to the interests of all parties and failing to remain objective in the face of repeated neighbour complaints about the complainant despite assurances given by the professional housing officer. We have no reason to doubt the complainant's version and find that the manner in which Cllr Cook first approached the complainant also amounted to a breach of 3.14.

Using their position improperly to their own or somebody else's advantage

We do not find any evidence that Cllr Cook used her position improperly to her own or someone else's advantage.

DECISION NOTICE

The following Decision Notice is a record of the determination by the Standards (Determination) Sub-Committee on 28 February 2020. The Standards (Determination) Sub-Committee was convened in order to determine whether Cllr Cook failed to comply with the Winchester City Council Code of Conduct in respect of a complaint dated 19 April 2019. Taking into account all matters and after due consideration, the Standards (Determination) Sub-Committee has concluded that there have been a number of breaches of the Code of Conduct:

- Para 3.1 - Representing the needs of residents, putting their interests first.
- Para 3.2 – Dealing with representations or enquiries from residents, members of communities within the administrative area of Winchester City Council and visitors fairly, appropriately and impartially.

- Para 3.5 – Listening to the interests of all parties, including relevant advice from statutory and other professional officers of the Council, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Para 3.8 – Restricting access to information when the wider public interest, the Council’s Constitution, or the law requires it.
- Para 3.14 – Always treating all people and organisations with respect and propriety.

SANCTIONS

In terms of sanctions, Cllr Cook should:

1. Send a fulsome written apology within 10 working days of the date of this decision notice, with a copy to be provided to the Monitoring Officer.
2. Complete the Council’s mandatory online data protection training within four weeks of the date of this decision notice.
3. Complete face-to-face data protection training with a member of the Council’s Legal team within two months of the date of this decision notice.
4. Attend the Code of Conduct training for new Members following the next ward elections.

The Independent Person agrees with the findings and the sanctions of the Standards (Determination) Sub-Committee. This Decision Notice will be published on the Council’s web-site.

CONCLUDING REMARKS

Finally, the Sub-Committee expressed regret that it was necessary for the complainant to have made her complaint. The Sub-Committee apologised for the treatment the complainant received. Furthermore, the Sub-Committee commended the complainant for her bravery in attending the hearing and hope that in future she enjoys living in the district.

OTHER MATTERS

On behalf of Cllr Cook, Cllr Horrill asked that the Standards (Determination) Sub-Committee re-consider the requirement to publish the Decision Notice on the web-site as publication may have a material impact on Cllr Cook’s employment, in particular in relation to the data protection issue. The Standards (Determination) Sub-Committee agreed to consider this point and have done so.

After due consideration, the Standards (Determination) Sub-Committee’s view was that a failure to publish would set an unwelcome precedent and be contrary to the Council’s principles of transparency and accountability. The Standards (Determination) Sub-Committee considered it is difficult to see how matters

which are not a criminal offence could have an impact on Cllr Cook's employment. Publication is not intended as a punishment and although the Standards (Determination) Sub-Committee understood and have some sympathy for Cllr Cook's position in this regard, did not feel it possible to accede to the request to withhold publication.

Right of Review

None

Councillor Kathleen Becker (Chairperson)

Councillor Brian Laming

Councillor Steve Miller

11 March 2020