

Consideration of a Code of Conduct Complaint Decision Notice

www.oxford.gov.uk



| Complaint No.: | Complaint received | Deadline for assessment |
|--------------------------------|---------------------------------------|--------------------------------|
| 0017352 | 26 August 2021 | 30 September 2021 ¹ |
| Monitoring Officer: | Independent Person(s) | Date of Meeting(s): |
| Susan Sale | Chris Ballinger Andrew Mills-Hicks | 11 July 2022 (adjourned) |
| Investigating Officer: | | 13 October 2022 (reconvened) |
| Emma Griffiths | | |
| Name of complainant(s): | Name of Subject Councillor: | City / Parish Council: |
| Parish Cllr Sue Stewart | Parish Cllr Michael Evans | Littlemore Parish Council |

Power to determine the Complaint

1. Section 27(1) Localism Act 2011 provides that a relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority. Section 27(2) Localism Act 2011 provides that a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members of the authority, when they are acting in that capacity.
2. In response to these obligations, Littlemore Parish Council adopted a code of conduct, governing the conduct expected of Littlemore Parish Councillors.
3. Section 28 Localism Act 2011 provides that arrangements must be in place to deal with complaints of Councillors breaching their code of conduct and in this case the arrangements provide that the District Council is responsible for considering and determining allegations of breach of the code relating to Parish Councillors within their Districts.
4. The Code of Conduct complaint against Parish Cllr Michael Evans has been determined under Section 22 of the constitution for Oxford City Council. The decision was made by a Local Panel Hearing of the Standards Committee held on 11 July 2022, adjourned and reconvened on 13 October 2022, in accordance with the 'Procedure for dealing with Code of Conduct complaints against Councillors'.

¹ Deadline extended due to diary and leave commitments of all parties

Summary of complaint

5. The Complainant alleged that the Subject Councillor sent an abusive and hostile email to the Parish Clerk, copied to various other Parish Councillors, which was in breach of the Parish Council’s Code of Conduct (para 9) and it’s Member and Officer Protocol (para 3.2.d) which states that Officers can expect from Councillors respect, dignity and courtesy. The following sections of the Code were therefore relevant:

| General Obligations | |
|---------------------|---|
| 9 | Respect for others You must treat others with respect and ensure that you are aware of and comply with all legal obligations that apply to you as a member of co-opted member of the council and act within the law; |
| 10 | Bullying You must not bully any person |

6. Upon receipt of the complaint, the Monitoring Officer undertook an assessment of the complaint, in consultation with the Independent Person, and concluded that the complaint merited further investigation. An Investigating Officer of Oxford City Council was appointed to carry out the investigation and provided a report to the Monitoring Officer.
7. The Monitoring Officer received the Investigator’s report and noted that evidence was provided to support a breach of paragraphs 9 and 10 of the Code. The Monitoring Officer therefore concluded to refer the complaint to the Local Hearing Panel of the Standards Committee for determination.

Local Hearing Panel of the Standards Committee 11 July 2022

8. The Local Hearing Panel, comprised of three members of the Standards Committee, and met on 11 July 2022 to consider the Investigating Officer’s report and to make a determination as to whether the Subject Member had breached the Littlemore Parish Code of Conduct. The Subject Councillor was in attendance. The Sub-Committee did not resolve to exclude the public from the meeting.
9. The Investigating Officer and the Subject Councillor presented their case and both had the opportunity to call witnesses and ask questions of each other’s witnesses.
10. The Subject Member left the meeting after the evidence had been heard and the Sub-Committee determined to adjourn and re-convene at a later date.

Reconvened Local Panel Hearing of the Standards Committee 13 October 2022

11. The Local Panel Hearing reconvened on 13 October 2022.

12. The Monitoring Officer clarified that the previous hearing had adjourned at the point of summing up, and that the hearing should commence from this point to avoid repetition.
13. The Investigating Officer summed up her report that the Subject Councillor in sending the email, considered in her opinion to be disrespectful and of a bullying nature, had let his frustrations get the better of him and failed to act in a manner acceptable to a Councillor. Given the nature of the professional relationship between the Clerk and the Subject Councillor, it was not appropriate for the Subject Councillor to write such an email. In citing paragraphs 9 and 10 of the Littlemore Parish Code of Conduct, concluded that the Subject Councillor had breached the Members' Code of Conduct.
14. The Subject Councillor summed up his case and stated that he did not feel that he had bullied anyone and questioned how one email could constitute bullying. He stated that he was not a bully, and therefore the case against him was null and void. He stated that he had acted as a whistleblower and would have more to say, however would use the correct forum to do so.

Considerations and Conclusions

15. The Local Hearing Panel had before them the following documentation:
1. Monitoring Officer Report
 2. Investigator's Report
 3. Complaint Form
 4. Subject Member's response
 5. Arrangements for dealing with code of conduct complaints
 6. Littlemore Parish Code of Conduct
 7. Local Hearing Panel Procedure Rules

Views of the Independent Person

16. The Independent Person was called to present his opinion to the Local Hearing Panel prior to decision and advised that in the first allegation of respect, he found that the Members' Code of Conduct had been breached as the Subject Councillor had used language that was not only disrespectful in language and tone, but had grievous intent in the act of copying in other members of the Parish Council. He went on to consider the allegation of bullying and advised that whilst it had been made clear throughout the hearing that bullying can be for a singular event and not a pattern of behaviour, the Panel should also consider that bullying is also an exercise of power over another, and when taken in the context of the Member/Officer protocol, the Subject Councillor had exploited his position in exercising his strength against the former Clerk. In response to the Subject Councillor's assertion of acting in the role as whistleblower, he felt it more appropriate that 'the Subject Councillor has blown his top, rather than his whistle' in venting his frustration of the former Clerk in an email to other members of Littlemore Parish Council.

Paragraph 9: Respect

17. The Local Hearing Panel considered whether the Subject Councillor had breached the Members' Code of Conduct paragraph 9. The Panel took into account that the Subject Councillor, both in his response to the Monitoring Officer, and at the Local Hearing Panel, stated that he felt his comments were not derogatory as he had not used any derogatory comments, he had not said 'anything about race or sexuality etc and only said what was his genuine opinion'. The Local Hearing Panel reviewed this against the information provided within the Investigator's Report that when considering respect for others, 'as an elected representative of the public, it is important for a parish councillor to treat others with respect and to act in a respectful way', and that was not appropriate in the context of his position on the Parish Council, or to be directed towards an employee of the Parish Council. The Local Hearing Panel also noted that the email was critical of both the former Clerk's personality and attributes, and appeared to be a personal attack, as well as his ability to do his job, and that the criticism was carried out in a public way, as a copy of the email was sent to a number of other Councillors of the Parish Council.
18. The Local Hearing Panel considered the Subject Councillor's view of his right to freedom of speech as reported in his response to the complaint, and considered this against Article 10 of the European Convention on Human Rights (as incorporated in the Human Rights Act 1998) included within the paperwork provided to the Panel. The Local Hearing Panel noted this information, but felt that it did not qualify as an absolute, and should be considered within the context of its delivery.
19. In the case of the email sent to the former Clerk of Littlemore Parish Council, it was not deemed acceptable to be claimed as freedom of expression as it indicated a disregard as to the effect of his conduct on others.
20. Therefore the Local Hearing Panel were in agreement that the Subject Councillor had breached the code of conduct in paragraph 9.

Paragraph 10: Bullying

21. The Local Hearing Panel proceeded to consider the alleged breach of paragraph 10 of the Members' Code of Conduct, in that 'you must not bully another person'. The Panel considered the Subject Councillor's comments made both in the paperwork and at both hearings, that 'he was not a bully', and although he had accepted that one email would constitute bullying behaviour, he had not bullied the former Clerk because 'he is not a bully so that is null and void'. The Panel considered the evidence provided in the paperwork against these comments, and found that not only was the behaviour bullying, it was also an abuse of power in respect of Member and Office protocol, and written in a manner to cause humiliation to the former Clerk by copying in other Councillors of the Parish Council.
22. Therefore the Local Hearing Panel were in agreement that the Subject Councillor had breached the code of conduct in paragraph 10.

Sanctions

23. The Local Hearing Panel invited the Investigating Officer to address them in terms of appropriate sanctions. The Subject Member had left the hearing, and was not represented, and so the Local Hearing Panel was not able to hear representations from the Subject Member concerning sanctions.
24. Having determined that the Subject Councillor had breached the Littlemore Code of Conduct in respect of paragraph 9 and 10, and having taken account of the representations made by the Investigating Officer and the views of the Independent Person, the Local Hearing Panel voted in favour of advising the Parish Council to impose the following sanctions:
1. The Subject Councillor provides a formal written apology to the former Clerk of Littlemore Parish Council, copying in those from the original email.
 2. The Subject Councillor provides a formal apology to Littlemore Parish Council for breaching the code of Conduct.
 3. The Subject Councillor attends Code of Conduct training, either via the Parish Clerk or Monitoring Officer, within 3 months of the date of this decision notice.
 4. The Local Hearing Panel recommends to Littlemore Parish Council that they consider whether it is appropriate for the Subject Councillor to be appointed to the Personnel Committee, for the time being.
25. The decision notice has been sent to the Subject Councillor, the Complainant, the Independent Persons and Littlemore Parish Council, and will be published on the council's website.
26. Under Paragraph 10, of the 'Procedure for dealing with code of conduct complaints against councillors' of Oxford City Council's Constitution, there is no right of appeal for the Complainant or for the Subject Councillor against a decision of the Monitoring Officer or of the Standards Committee. However, the Monitoring Officer reports these decisions to the Council's Standards Committee so there is oversight of how these matters are dealt with.

Signed



Name

Susan Sale, Monitoring Officer, Oxford City Council

Date

17th October 2022

Publication

Internal: to Parish Council/Complainant/Subject Councillor
External: Oxford City Council website

This page is intentionally left blank