

ROTHERHAM METROPOLITAN BOROUGH COUNCIL

STANDARDS AND ETHICS COMMITTEE

RECORD OF THE DECISION OF THE STANDARDS AND ETHICS SUB-COMMITTEE MEETING HELD ON 18TH JANUARY, 2021

SUBJECT MEMBER: Councillor S Ellis (Rotherham MBC) (in attendance)

COMPLAINANTS: Councillor A Cowles and Councillor M Elliott
(in attendance)

THE COMPLAINTS SUB-COMMITTEE

Councillor R McNeely (Rotherham MBC) (in the Chair)
Councillor N Simpson (Rotherham MBC)
Mrs A Bingham
Mrs K Penney (Independent Co-opted Member)
Mr R Swann (Parish Councillor)

INDEPENDENT PERSON

Mr P Beavers

ROTHERHAM MBC OFFICERS

Bal Nahal (Monitoring Officer/Legal Adviser to the Sub-Committee)
Stuart Fletcher (Investigating Officer)
Andrew Frosdick (Governance Adviser)
Debbie Pons (Senior Democratic Services Officer)

The Complaint

At a meeting of the Rotherham Standards and Ethics Sub-Committee held on Monday, 18th January, 2021, consideration was given to a complaint against Councillor Sue Ellis (Subject Member).

The complaint related to:-

- The Subject Member had received an overpayment made by the Council in respect of her charring of the South Yorkshire Pensions Authority, which ended in May, 2019, although payment continued until August, 2020.

The Panel comprised Councillor McNeely (in the Chair); Councillor N. Simpson, Ms. A. Bingham, Ms. K. Penney and Parish Councillor R. Swann. Mr. P. Beavers also attended the hearing in his role as Independent Person, along with Ms. B. Nahal as Legal Adviser to the Panel.

Mr. S. Fletcher, Investigating Officer, was invited to present the report of the investigation into whether there had been a breach of the Members' Code of Conduct and which fell within the remit of Rotherham Borough Council's Standards and Ethics Committee.

The Investigating Officer took the Sub-Committee through the complaint and whether the Subject Member's conduct in this matter amounted to a breach of the Council's Code of Conduct.

The Investigating Officer referred the Sub-Committee to the following paragraphs of the Council's Code of Conduct that would be relevant in this case:-

Scope

1. (1) *This Code applies to you as a member of Rotherham Borough Council ("the Council").*

(2) *It is your responsibility to comply with the provisions of this Code and uphold the seven principles of public life set out in Annex 1 to this Code*

ANNEX 1

The Seven Principles of Public Life

Honesty 6

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Scope

2. (1).....*you must comply with this Code whenever you -*

(a) conduct the business of the Council (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) Act, claim to act, or give the impression you are acting as a representative of the Council.

General obligations

5. *You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.*

Evidence of the Complainants

The first Complainant (Councillor Cowles) referred to the details of his complaint as set out in the report and confirmed it was a true and accurate record of his complaint.

The Complainant confirmed he had received telephone calls/emails from the public about the unacceptable behaviour of the Subject Member. He had requested the Council's leading group to take action, but it had not done so. His course of action, which was not politically driven, was to raise a complaint formally through the Standards and Ethics Committee Complaints Procedure.

He found the Council to be lax in the payroll error and found it unacceptable that the Subject Member would have received seventeen reminders on her payslip that she was receiving an allowance she was not entitled to, where it would have been identified on a separate line. This was public money and the Complainant found it hard to accept that the Subject Member had not known she was receiving £600 more than she should each month. Whilst it was accepted there may have been mitigating personal circumstances that prevented her from rectifying the oversight, over an extended period this was unacceptable.

On this basis, the Complainant believed for the remainder of this municipal year the Subject Member should step down from her position as Chair of the Licensing Board and Committee and seek to be re-selected should she be re-elected.

The Sub-Committee had no questions for the first Complainant.

The second Complainant (Councillor M. Elliott) referred to the details of his complaint as set out in the report and confirmed it was a true and accurate record of his complaint.

The Complainant found it unjust that Councillor Sue Ellis had for over a year been receiving an allowance for which she was not entitled. The fact that she received this extra money apparently without realising was somewhat incredulous and she was duty bound to declare her situation in a timely manner following her resignation from an outside body.

The Complainant recognised the Council's Finance Department had acceptable responsibility for the oversight and incorrect payments. However the Complainant felt that the Subject Member in accepting the apology lay the fault with the Council and, therefore, took no responsibility for not drawing the error to the Council's attention earlier.

The Sub-Committee had no questions for the second Complainant.

The Subject Member was asked if she had any questions for the Complainants and she passed comment on:-

- The complaints against her were politically driven.
- The first Complainant was Leader of the Opposition and had failed to take responsibility for ensuring Councillors of his political party were compliant with updating their Register of Interests on time.

The Sub-Committee received the investigation as to the circumstances of the overpayment which was undertaken by Andrew Frosdick, employed by the Council as a Governance Advisor. Mr. Frosdick has previously been employed by Barnsley Metropolitan Borough Council as a Monitoring Officer for a number of years. This investigation was not prompted by the complaints referred to in this report, but considered the relevant issues.

Mr. Frosdick highlighted:-

- The chain of events which led to the overpayments for Chair of the South Yorkshire Pensions Authority.
- Lack of clarity and clear specific instruction in the Members' Allowances payments to the Payroll Section from the former Head of Democratic Services.

- The link between the allowances not being clear.
- Enquiry from a member of the public questioning the figures in the published payments under the Members' Allowances Scheme.
- The reasonableness for the Council to seek to recover the overpayment from Councillor Ellis.
- No cross reference of the payments was made between Payroll and Democratic Services.
- Payslips were not provided and the Subject Member was expected to access the details of her allowance via the H.R. Portal.
- Extenuating personal circumstances of the Subject Member.
- Repayment of the overpayment by the Subject Member.
- No further action to be taken as the allowance paid had not been inappropriately claimed.

The Sub-Committee asked whether action had been taken on the recovery of any payroll deductions made by the Council and were advised all had been paid and in fact was overpaid in the sum of 19p which has since been rectified.

The Subject Member was asked if she had any questions for Mr. Frostdick and she passed comment on:-

- No paper payslip being issued to the Subject Member.
- Confirmation by Human Resources that following interrogation the H.R. Portal had not been accessed by the Subject Member.
- Lack of attention to detail of personal banking fell short of a breach of the Code of Conduct.

Evidence of the Subject Member

The Investigating Officer referred to the response provided by the Subject Member and the Subject Member confirmed the statement she has provided was a true and accurate record.

The Subject Member was invited to present her case.

The Subject Member confirmed she was fully aware of the Nolan Principles and described her employment background before becoming a Borough Councillor. The one thing she upheld was her integrity and took her Councillor responsibility very seriously. She gave due diligence to her own election expenses and ensured these were submitted early without delay.

In terms of the overpayment she questioned whose responsibility it should be for ensuring correct payments were made to Elected Members. An apology had been received from the Finance Department to how they had let the Subject Member down.

The Subject Member had never claimed the allowance and following Mr. Frostdick's investigation no action was to be taken.

Like the majority of Elected Members, the Subject Member did not receive a paper payslip with the expectation, like officers, to access via the H.R. Portal.

The Subject Member shared her personal financial circumstances whereby she was in a fortunate position for her allowance to be deposited into an account and left to accrue. The family lived from her partner's salary rather than relying on funds from an elected position, given the fragility around the election. No statements were provided from this account, so it was left to build up and was only used for university payments or supplement as retirement pension. She had not received any statements to confirm the amounts in the account.

The Subject Member had no cause to monitor the account until the overpayment was drawn to her attention. As the funds had not been spent they were immediately paid in full amounting to £9,604.99 on the 13th October, 2020. Therefore, upholding the sixth Principle of Public Life - Honesty.

The Subject Member shared her further extenuating personal circumstances from May 2019 and over the relevant period which she said explained why little regard had been paid to her financial situation.

The Subject Member addressed the first Complainant's suggestion that she be removed from her position of Chair of the Licensing Board and Committee and described the in-depth work she had been involved in with Commissioner Ney. Through this work the responsibility for Licensing had been one of the first to be handed back to the Council and she had worked tirelessly to produce a Licensing Policy that was held in high regard and deemed best practice.

The Sub-Committee sought a response from the Subject Member on whether the Subject Member had ever had a paper payslip and whether she had been given the option to have one, which she confirmed she had not. The Sub-Committee also asked for the purposes of transparency whether everything had been paid back to the Council. The Subject Member confirmed it had.

Summary

The Investigating Officer referred back to the complaint as set out in the documentation.

In closing remarks the first Complainant reiterated that the blame for the overpayment should not lay entirely with the Council. Whilst he acknowledged mistakes in payroll would inevitably happen, had this not been picked up by a member of the public, overpayments may well be continuing to occur.

It was the Subject Member's responsibility to manage their own affairs and give due diligence to their financial position.

The second Complainant failed to see why proper examination of financial affairs had not been carried out and expressed his surprise that even with a savings account an annual statement was provided for the Subject Member.

The Subject Member in her closing remarks referred to her extenuating personal circumstances to be the drivers behind her lack of attention to her financial situation. In the twenty-five years of being a Councillor she had never encountered a problem.

Action had now been taken to ensure appropriate monitoring of her own and the family's financial position and monthly statements were now being received.

The Subject Member gave her reassurance that she held in high regard the Nolan Principles and once the issue had been brought to her attention she had, without delay, paid the amount back in full.

The Investigating Officer, the Subject Member, the Complainants and Mr. Frosdick left the room to allow the Sub-Committee, the Independent Person and the Monitoring Officer to consider the matters before them.

The Findings of the Sub-Committee

The Panel considered the evidence from both parties and all the documents referred to in the Investigating Officer's report.

The Sub-Committee considered, in consultation with the Independent Person, whether the Subject Member's conduct in this matter amounted to a breach the Code of Conduct.

If the Sub-Committee found that the Subject Member was in breach of the Code, would it be appropriate for any of the available sanctions to be imposed on the Subject Member in accordance with Standards and Ethics Committee Complaints Procedure.

After hearing all of the evidence and verbal submissions made before them, the Sub-Committee considered, in consultation with the Independent Person, the key issues which had been highlighted in the report and evidence.

The Sub-Committee did believe the Subject Member's conduct on the balance of probabilities in this matter did amount to a breach of the Council's Code of Conduct under General Obligations Section 5 - you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute. However, the Sub-Committee did not find a breach of the Code of Conduct in relation to the sixth Nolan Principle - Honesty.

Given their findings that the Subject Member had breached the Code of Conduct the Sub-Committee considered what sanctions, if any, to impose upon her. The Sub-Committee did not believe the sanctions warranted removal of the Subject Member from Committees or Sub-Committees, but in making their decision emphasised the Subject Member must take responsibility for ensuring her financial affairs were in order.

The Investigating Officer, the Subject Member and the Complainants were asked to return and were advised of the decision. The first Complainant (Councillor Cowles) was unable to return to the hearing but was to be advised of the outcome by the Legal Adviser to the Sub-Committee.

Resolved:- That, in the light of their findings, the complaints be upheld and the following sanctions should be applied to the Subject Member:-

- (1) That the Subject Member be censured.
- (2) That the formal decision notice setting out the findings of the Sub-Committee shall be reported to the forthcoming meeting of the Standards and Ethics Committee.

- (3) That the findings in respect of the Subject Member's conduct should be published on the Council's website.
- (4) That the findings should be reported to full Council for information.

Signed: Councillor R McNeely (Chair of Sub-Committee)

Dated: 25th January, 2021