

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 J Ireland (Rotherham MBC, Anston Parish Council) (in attendance)

COMPLAINANT: Councillor C Jepson (in attendance)

WITNESSES: Witness A and Witness B (in attendance)

THE COMPLAINTS SUB-COMMITTEE

Councillor R McNeely (Rotherham MBC) (in the Chair)

Councillor N Simpson (Rotherham MBC)

Mrs A Bingham

Mrs M Evers

Mr D Rowley (Parish Councillor)

INDEPENDENT PERSON

Mr D Roper-Newman

ROTHERHAM MBC OFFICERS

Bal Nahal (Monitoring Officer/Legal Adviser to the Sub-Committee)

Stuart Fletcher (Investigating Officer)

Debbie Pons (Senior Democratic Services Officer)

The Complaint

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

The complaint alleged:-

- The Subject Member had breached the Anston Parish Council Code of Conduct by making comments under the pseudonym "Anstonian" on a social media blog site, named Anston Parish Council Watch. The comment referred to possible nepotism in the awarding of a contract to a local firm by Anston Parish Council. A statement has been received from the owner of that firm who considered the statement to be defamatory.

The Panel comprised of Councillor McNeely (in the Chair); Councillor N. Simpson, Ms. A. Bingham, Ms. M. Evers and Parish Councillor D. Rowley. Mr. D. Roper-Newman 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 form and the written response from the Subject Member. The Subject Member had responded to the complaint indicating it was not he who had made the comment on the social media blog site nor was he the person using the pseudonym "Anstonian".

The Subject Member also contested that as the complaint itself was received more than three months after the post was made, it should not be considered by the Sub-Committee. The Monitoring Officer decided the complaint should proceed to a Hearing despite the complaint itself being received more than three months after the alleged breach of the Code of Conduct incident took place. This was on the basis that Councillor Jepson only became aware of the relevant post, and the alleged identity of the post maker, more than three months after the post had been made.

The Investigating Officer explained that the administrator of the blog site, Anston Parish Council Watch confirmed the personal e-mail address associated to the pseudonym "Anstonian", was jonathan.ireland@hotmail.com, and evidence would be heard from this witness.

The Investigating Officer further referred to the Subject Member's response to the complaint that even if this post was associated to him via his personal e-mail address, this would mean that any posts made from that account would not be made in an official capacity. He further stated that the only way to prove that he made the comments would be for evidence from the Police and/or Internet Service Provider, stating this to be the case.

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

2 (1) Except when you are acting as a representative of the Council when sub-paragraph (2) applies, you must comply with this Code whenever you –

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

General Obligations

- (3) (1) You must treat others with respect*
 - (2) You must not –*
 - (a) do anything which may cause the Council to breach any of the equality duties;*
- (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 Complainant

The Complainant 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 set out the reasons for the delay in submitting his complaint and the timeframes for the seeking of advice, gathering evidence and the seeking of witness statements. He found the comments made on the Anston Parish Council Watch blog to be unacceptable, upsetting and they questioned his own integrity as a Parish Councillor.

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

- The complaint not being signed.
- The Complainant and the Director of the local company being former work colleagues.

The Sub-Committee asked the Complainant about a number of matters, namely whether the practice of three quotes for work had been undertaken by the Parish Council, about the content of the post allegedly made by the Subject Member which had generated further comments by members of the Parish, the detail in the further documentation provided by the Complainant in the form of e-mails and the Complainant's association with the Director of the local firm.

When the Chair asked what outcome the Complainant wanted from the Hearing, the Complainant confirmed he believed there should be some kind of censure, but was happy for the Panel to consider the complaint and determine their own sanctions in this case.

The first witness for the Complainant then gave evidence and confirmed his statement, which was contained within the report, was true and accurate. Witness A's statement explained that when he was informed about the relevant post he made enquiries as to who had made the post, including contacting the administrator of the blog, and these enquiries had led him to believe that Councillor Ireland had made the post.

Witness A further confirmed his success in tendering for the contract with the Parish Council. Whilst Councillor Jepson and he had previously worked in the same Department, neither had worked closely together although they would be described as colleagues.

Witness A stated that the comments made on the Anston Parish Council Watch blog effectively alleged inappropriate conduct on his behalf and he therefore considered them to be defamatory to his Company, to the Directors of the company and found them to be uncomfortable and disconcerting.

No questions were put to the first witness.

The second witness for the Complainant then gave evidence and confirmed his statement was true and accurate.

Witness B confirmed he was the former administrator of the Anston Parish Council Watch blog and that, as moderator, he was also aware of the originators of e-mail address and pseudonyms of participants who commented on the blog. Two such pseudonyms had been used, namely “George” and “Anstonian”, which were associated with the e-mail address jonathanireland@hotmail.com. Transcripts of comments made on the blog from these accounts were contained within the report.

The Sub-Committee asked when the posts were removed and how long they had remained posted; and were advised they had remained in situ up to the point where the blog was closed. A post had been included by Witness B as administrator to confirm the posts were personal views and not those of Anston Parish Council. He found the content defamatory. He had shared the detail and originator of the e-mails when asked to do so as part of the investigation and complaint submitted by Councillor Jepson.

It was further pointed out that detail in the posts (25% precept increase and £70,000 maintenance fund) were matters that had been discussed by the Parish Council at the relevant January meeting and that when coming to a vote, Councillor Ireland, who was present, had, in fact, voted against.

The Sub-Committee questioned whether the sharing of personal information had been GDPR compliant and Witness B believed he was legally obliged to provide this information. The Sub-Committee raised questions over the reliance and retention of personal data.

Witness B did point out that the blog automatically archived posts after thirty days but confirmed archived posts’ content remained searchable. The data for the Complainant had only been shared for the purposes of the complaint.

Witness B further clarified when asked by the Monitoring Officer that it was not unusual for pseudonyms to be used on the blog and, in fact, other Parish Councillors had done similar. The relevant issue here was whether the comments that were made were deemed to be in a personal capacity or in an official capacity as a serving Parish Councillor.

The Complainant also confirmed, as per Parish Council policy and procedures, the appropriate channels for appointing contractors had been followed and voted on by the Parish Council accordingly. No decision to appoint a particular contractor had been a single person decision.

The Complainant also pointed out that once he had become aware of the content of the post on the blog, he considered this to have been made by the Subject Member in his capacity as a Parish Councillor, as it related to Parish Council business and had been posted to stir up controversy.

Evidence of the Subject Member

The Investigating Officer referred to the response provided by the Subject Member and the Subject Member confirmed his statement in the report was true and accurate.

The Subject Member was invited to present his case.

The Subject Member sought confirmation that this Hearing was only in respect of his position as a Parish Councillor and was advised that as comments on the blog were in relation to Anston Parish Council business the complaint did relate to his position as Parish Councillor.

The Subject Member quoted an extract from Section 14 of the Standards and Ethics Committee Complaints Procedure where the complaint must relate to conduct that occurred when the named Member was acting in his/her official capacity or for Parish Councillors, at any official Parish Council meeting.

The Subject Member pointed out that this complaint was one of a long line of complaints made by the Complainant. He regarded it as bullying and intimidating behaviour. He also made reference to Section 15 of the Standards and Ethics Committee Complaints Procedure and particular Sections (j) and (k):-

The following types of complaint will not be considered as 'valid complaints' at the discretion of the Monitoring Officer) under this procedure:

(j) Complaints which relate to conduct which is alleged to have taken place more than 3 months prior to the submission of the complaint, unless there are exceptional circumstances to justify the later submission of the complaint.

(k) Complaints which are considered malicious, vexatious, politically motivated, tit-for-tat or not sufficiently serious to warrant further action.

The Subject Member re-iterated the key issues that initially needed to be decided. These were should the Sub-Committee consider this complaint as it was submitted more than three months after the post was made, whether the relevant post had been made by the Subject Member and if the relevant post was found to be made by the Subject Member, was the post made in his official capacity.

The Subject Member contested that as the complaint itself was received more than three months after the post was made it, therefore, should not be considered by the Sub-Committee. He considered the lengthy timeframes, which he described in detail, to be out of time given that it was some fifteen months since the comments had been posted.

In response to the complaint he reiterated he did not make the comment on the social media blog site, and he was not the person using the pseudonym "Anstonian". The I.P. addresses were registered to specific hardware. He had searched via a location finder online and this returned nothing.

The Subject Member further stated that whilst he was not "Anstonian", Section 14 determined that a post would only be determined in an official capacity for a Parish Councillor when they were at any official Parish Council meeting. This was clarified for the Sub-Committee by the Legal Adviser that the Parish Council Code of Conduct covered all of a Parish Councillors official conduct, not just the time that they were in a Parish Council meeting.

The Subject Member went on to state that if the relevant post, if found to be made by the Subject Member, would this post be in breach of the Code of Conduct. The Subject Member referred the Sub-Committee to his response in the report which quoted from the Defamation Act 2013 stating 'it is a defence to an action of defamation for the

defendant to show that the imputation conveyed by the statement complained of is substantially true.” He pointed out Councillor Jepson was a former colleague of the Director of the local firm, Witness A.

The Subject Member also pointed out, as he had already referred to, that he felt that the administrator of the website had committed an offence under Data Protection legislation if personal details, such as his personal e-mail address were shared without permission.

In response to the submission from the Subject Member the Complainant wished to clarify:-

- He had never bullied the Subject Member or made vexatious complaints against him. Other Parish Councillors may have done, but he had only previously raised concerns about Councillor Ireland and another Parish Councillor’s election materials.
- The reasons why there had been a delay in his submitting the complaint which related to not knowing of the original post at the time it was made, the seeking of Legal advice, collating evidence and conducting the investigation about who had made the post.
- He was a former colleague of Witness A, not a close associate, and he had retired from the Council in 2003.

In response the Sub-Committee sought a response from the Subject Member on:-

- Had the Subject Member commented on the Anston Parish Council Watch blog.
- Did he believe someone had “set him up” by fraudulently using his e-mail address.
- Had he used the pseudonym “George” or “Anstonian”.
- Whether the use of “Astonian” had been used in an official capacity thereby breaching the Code of Conduct.

The Subject Member confirmed he had made blogs before in a personal capacity but could not comment if he had been “set up”. He stated he was not “Anstonian” so did not believe there had been any breach of the Code.

Summary

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

In closing remarks the Subject Member again reiterated his view that the complaint was “out of time” and should not be viewed as exceptional. There was no substantive proof that he was the originator of the post. If he had made the post, which he had not, it was not made in an official capacity so the Code of Conduct was not engaged and the comments made were facts. He also believed there to be a breach of GDPR.

The Complainant in response stated he believed Councillor Ireland had made the post from his personal e-mail address and that there was no breach of GDPR as the details provided were part of an investigation.

The Investigating Officer, the Subject Member, the Complainant and the witnesses 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 were asked to consider the evidence from both parties and the documents referred to in the Investigating Officers' report.

The Sub-Committee considered, in consultation with the Independent Person, whether:-

- The Sub-Committee should consider this complaint as it was submitted more than three months after the post was made.
- Was the relevant post made by the Subject Member.
- If the relevant post was found to be made by the Subject Member, was the post made in his official capacity.
- If the relevant post was found to be made by the Subject Member, was the content of the post in breach of the Code of Conduct.

In considering all the evidence and verbal submissions made before them the Sub-Committee considered, in consultation with the Independent Person, the key issues and, accepted that although the complaint, as submitted, was out of time, on the basis that the post was still live at the point the complaint was made and the date of knowledge, accepted the complaint.

The Sub-Committee also believed on the balance of probabilities it was more likely than not that the relevant post was made by the Subject Member.

The Sub-Committee also found that, on balance, the relevant post was made by the Subject Member in his official capacity.

The Sub-Committee found on balance the Subject Member had breached the Code of Conduct in making the posts in that he had failed to treat others with respect.

The Sub-Committee then considered, in consultation with the Independent Person, whether by making the comments the Subject Member had conducted himself in a manner which could reasonably be regarded as bringing his office of Parish Councillor or the Parish Council into disrepute. They found on balance that by making the posts on the blog the Subject Member had done so, both in respect of his office as Parish Councillor and the Borough Council.

Given their findings that the Subject Member had breached the Code of Conduct the Sub-Committee considered what sanctions, if any, to impose upon him. They noted that the Subject Member was a member of the Borough Council's Standards and Ethics Committee.

The Investigating Officer, the Subject Member and the Complainant were asked to return and were advised of the decision.

Resolved:- That, in light of their findings, the complaint 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 and Anston Parish Council for information.
- (5) That the Councillor's Group Leader be recommended to remove the Subject Member from the Council's Standards and Ethics Committee.

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

Dated: 25th January, 2021