



Minutes of the Standards Hearing Sub-Committee

17 October 2018

-: Present :-

Councillors Morey, O'Dwyer and Thomas (J)

1. Allegation of a Breach of the Member Code of Conduct

A record of decision together with further information is attached to these Minutes.

Chairman/woman

Record of Decision

Standards Hearing Sub-Committee Complaint Against Councillor Mark King

Introduction

This decision notice relates to a complaint submitted on 4 December 2017, by an individual, who has requested anonymity, against Councillor Mark King. Upon receipt of the complaint the Council's Monitoring Officer appointed Tim Darsley to undertake the Independent Investigation. Mr Darsley interviewed the complainant, Councillor King and other relevant individuals. The investigation report contains information that is sensitive and confidential and at a Preliminary Hearing on 20 July 2018, the Standards Hearing Sub-Committee resolved to hold the substantive hearing in private pursuant to s.100(A)(4) Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 1 and 2 of Schedule 12A of the Act namely, information relating to an individual and information likely to reveal the identity of an individual and in accordance with s.36 of the Freedom of Information Act 2000, by virtue of the fact that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Whilst this meant that the investigation report would also be exempt, the Committee resolved that a public decision notice would be issued and publicised following the determination at the substantive hearing. It is considered that there is sufficient in this decision notice to address any questions that might be legitimately raised about the complaint and determination of it.

Decision maker

The Standards Hearing Sub-Committee at its adjourned meeting held on 17 October 2018.

Procedural Matters

The Standards Hearing was originally listed for the 18 September 2018, however Councillor King did not attend and the Sub-Committee concluded that it was not appropriate to proceed in his absence on that occasion. The matter was therefore adjourned until the 17 October 2018.

Just prior to the adjourned Hearing Councillor King advised that he would not be attending and that the Hearing should proceed in his absence. A written statement was provided by Councillor King, together with his responses to questions posed by the Members of the Sub-Committee and the complainant.

Several witness statements in addition to those provided in the Investigators Report were submitted prior to the substantive hearing. The independent investigator and requested witnesses were in attendance to respond to questions from Members of the Hearing Sub-Committee and the complainant.

Complaint Summary

The complainant complained about Councillor King. The complainant believes there have been breaches of the Code of Conduct on many occasions and in many respects.

The complainant met Councillor Mark King in his professional capacity, as a Member of the Executive. The complainant believes that Councillor King used his professional contact with her to inappropriately establish a personal relationship.

The complainant acknowledges that a personal relationship did commence with Councillor King and they made plans for their future together. However the complainant reports that she became more and more concerned for her safety due to behaviours demonstrated by Councillor King.

The complainant reports that Councillor King asked her to do things on his behalf. He requested that the complainant use her friendship with the Elected Mayor to persuade him to make Councillor King the Deputy Mayor. He also asked the complainant to close the organisation for a particular day as it was important to give a good impression of the town.

During the course of the relationship the complainant alleges that Councillor King sent her various photos and details of meetings that he was sat in. He provided her with copies of his diary and told her confidential council information.

The complainant also reported that Councillor King was derogatory about other councillors and council officers, comments that were sensationalist and damaging to the reputation of the Council

The complainant reports that Councillor King had been trying to exert pressure over her to submit a Standards complaint against Councillor Excell, to the extent that he drafted a complaint for her to submit, some of which wasn't true.

The complainant reports that her personal relationship with Councillor King ended, but that on Monday 20 November 2017, during a telephone call with the complainant when he was attempting to maintain the relationship, Councillor King threatened to get the organisation closed down if the complainant did not resume the relationship. The complainant provided numerous amounts of text messages, messages on messenger and facebook, which the complainant says supports evidentially this complaint and also provided a copy of the complaint that Councillor King had drafted in her name. In respect of an outcome to the complaint, the complainant does not believe that Cllr King should remain as an Executive Lead or remain as a Councillor.

Findings as to Breaches of the Members Code of Conduct

Section of 27(1) of the Localism Act 2011 requires a relevant authority to adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in their capacity as a councillor. Members are required to follow the Code of Conduct when they are acting in their role as a

councillor. The Code of Conduct does not apply in respect of conduct in a member's private life.

Considerable amounts of information was provided and issues were raised that were not part of the original complaint or investigation. Members in their deliberation were clear that they could only make findings in respect of the original complaint. Therefore the Sub-Committee concluded that based on the evidence before them at the hearing on the 17 October 2018, that on the balance of probabilities there is evidence to support the following findings as to breaches of the Members Code of Conduct;

Allegation 1: That Councillor King used his position to gain an advantage.

Finding

- i) that Councillor King did not use his position as a Torbay Councillor to develop a relationship with the complainant. Councillor King and the complainant met at a public consultation event in December 2016, further contact and initial meetings between Councillor King and the complainant were at the request of the complainant. In late July 2017 Councillor King contacted the complainant it was at this juncture that the personal relationship developed. The development of the relationship was in Councillor King's personal capacity and therefore not a breach of the Members Code of Conduct.

Outcome

No Breach of the Members Code of Conduct

Allegation 2: That Councillor King bullied the complainant to close the organisation and Councillor King placed himself under an obligation to another.

Finding

- ii) that the request to close the organisation on 28 September 2017 was made in Councillor King's capacity as an elected Member. The request was made in connection with Council business, the request only carried credence because he was a Councillor.

Members of the hearing Sub-Committee did not consider Councillor Kings behaviour to be bullying in nature, however considered that the evidence demonstrated that Councillor King had, by his actions placed himself under an obligation to the complainant which gave rise to a potential influence over him in the performance of his official duties.

Outcome

Breach of the Members Code of Conduct:

Paragraph 1.3 When acting in your capacity as a Member of the Council –

- (b) you must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.**

Allegation 3: That Councillor King used his position to gain an advantage.

Finding

- iii) that Councillor King did ask the complainant to persuade the Mayor to make him the Deputy Mayor. Members considered there to be sufficient evidence to indicate that this request was made in Councillor King's capacity as a Councillor. Whilst Councillor King admits that such conversations were held, he states that the comments were made in jest. The Sub-Committee concluded that on the balance of probabilities it was not a 'joke' and that Councillor King was seeking to obtain an advantage in contravention of the Code of Conduct.

Outcome

Breach of the Members Code of Conduct

Paragraph 5 you must not -

- (a) you must not attempt to use your position as a Member improperly to confer on or secure for yourself an advantage.**

Allegation 4: Councillor King disclosed confidential information.

Finding

- iv) that Councillor King did not disclose confidential information. Councillor King did share information with the complainant that the complainant without knowledge of the Council procedures and policies could have perceived to be confidential. However the Sub-Committee concluded that no confidential information was in fact divulged by Councillor King.

Outcome

No breach of the Members Code of Conduct

Allegation 5: That Councillor King made derogatory comments about Council Officers and Councillors.

Finding

- v) that Councillor King did make derogatory comments about Council Officers and fellow Councillors. However such comments were made in Councillor King's personal capacity. The Sub-Committee concluded that the comments were trivial gossip and made between two people who were having a relationship,

and that whilst Councillor King may have known the officers and fellow Councillors through his role as a Councillor, he was not representing the Council when the comments were made.

Outcome

No Breach of the Members Code of Conduct

Allegation 6: That Councillor King used his position improperly to disadvantage Councillor Excell

Finding

- vi) that Councillor King drafted a complaint against Councillor Excell, with the permission of the complainant. The drafting of the complaint was undertaken in Councillor King's personal capacity, as would happen in any relationship where one party with the necessary skills takes a lead and assists the other person. However having been aware of the alleged behavior of a colleague, Councillor King had a professional duty, and a duty under the Code of Conduct to report the alleged behaviour to the Monitoring Officer.

The Sub-Committee concluded that by not reporting the concerns that he held as to Councillor Excell's conduct towards the complainant that he was not acting in accordance with the Code of Conduct which requires members to promote and support high standards of conduct including being willing to challenge poor behaviour in other councilors.

Outcome

Breach of the Members Code of Conduct

Paragraph 1.3 When acting in your capacity as a Member of the Council –

- (i) you must promote and support high standards of conduct when serving in your public post. You should exhibit these principles in your own behaviour, actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.**

The Sub-Committee also concluded that there was evidence to prove on the balance of probabilities that Councillor King had sought to cause a disadvantage to Councillor Excell through his actions and statements in this respect.

Outcome

Breach of the Members Code of Conduct

Paragraph 5 you must not –

- (a) attempt to use your position as a Member improperly to confer on any other person, a disadvantage.**

Allegation 7: That Councillor King threatened to close down the organisation

Finding

- vii) that in respect of the allegation that Councillor King threatened to close the organisation that there was insufficient evidence for the Sub-Committee to make any finding. There was no documentary evidence and the accounts provided by the complainant and by Councillor King were contradictory. On this basis the Sub-Committee found there was insufficient evidence to make any finding.

Outcome

Unable to determine.

Sanctions

The role of Councillor is a privileged position, and it is incumbent upon all members to demonstrate the highest possible standards in respect of their behaviours and conduct. It is the role of the Standards Committee to hold members to account in this respect.

Having made their determination that Councillor King had breached the Code of Conduct the Sub-Committee went on to consider what sanctions if any should be applied to Councillor King

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 Sub-Committee took due regard of the sanctions they could impose. Thereafter they determined that the following sanctions were appropriate to address the breaches it had found:

- i) that Councillor King be formally censured, the censure is set out in appendix 1 to this decision notice;
- ii) that Councillor King undertake bespoke one to one training on the Members Code of Conduct; and
- iii) should any of Councillor King's constituents raise matters regarding the organisation concerned, Councillor King is recommended to pass these matters to another ward Councillor.

Other Matters

The Committee also requested that the Monitoring Officer undertake or request be undertaken an investigation of the following allegations made by the complainant, which were not part of the complaint before them;

1. That the Monitoring Officer undertake an investigation into Councillor Excell's behaviour towards the complainant.
2. The procurement and awarding of contracts in respect of bus services and security.
3. The procurement and awarding of a contract for an event.
4. The Public Safety Advisory Group process for events.
5. Allegations of impropriety in respect of planning matters.

Chairman of the Standards Hearing Sub-Committee

Formal Censure

The Standards Hearing Sub-Committee determined that the following censure is issued to Councillor Mark King in light of his breaches of the Member's Code of Conduct:

Councillor King is hereby formally censured for placing himself in a position whereby he was under obligation and influence of another individual; he sought an advantage for himself and a disadvantage for another; and he failed to uphold and promote high standards of conduct when holding public office. The position of councillor requires a high level of integrity and responsibility. Therefore, the community expects the highest standards of propriety, ethics and morality, from their councillors in their conduct. A councillor is a community leader and role model, and must act in an exemplary manner to ensure their position is respected and brings confidence in public office.

An individual councillor's actions and conduct will always reflect on the wider role of a councillor and, as a direct consequence, will inevitably impact on the reputation of their fellow councillors and the Council as a whole both generally and specifically. The Sub-Committee have concluded the conduct and actions of Councillor King, have not met the high standards that are expected of a person holding public office. The Standards Hearing Sub-Committee believe it is incumbent on all councillors to ensure the public have confidence and trust in their elected representatives, the Standards Hearing Sub-Committee are disappointed that Councillor King's actions were not in keeping with this belief.