

Minutes of the Standards Hearing Sub-Committee

10 May 2022

-: Present :-

Councillors Atiya-Alla, Barbara Lewis and Mills

(Also in attendance: Councillors Barrand, Brooks, Bye, Mandy Darling, Douglas-Dunbar, Foster, Hill, Kennedy, Law, Chris Lewis, Long, David Thomas and Jacqueline Thomas)

1. Election of Chairman/woman

Councillor Mills was elected as Chairwoman for the meeting.

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

The Sub-Committee considered a report on an investigation relating to allegations that Councillor Foster had failed to follow the Code of Conduct for Members.

At the Hearing Mr Jones outlined his report and responded to Members questions. The Complainants were asked whether they agreed or disagreed with the findings in the report. Councillor Foster also responded to the allegations and Members questions.

The record of the Standards Hearing Sub-Committee's decision and reasons for decision, are attached to these Minutes.

Chairman/woman

Record of Decision

Standards Hearing Sub-Committee – allegations of misconduct made against Councillor Foster

Decision maker

The Standards Hearing Sub-Committee at its meeting held on 10 May 2022.

Finding of Fact

The Standards Hearing Sub-Committee considered carefully all the written and oral representations and found as fact, the following:

1. Torbay Council is a relevant authority, in accordance with the Localism Act 2011.
2. Torbay Council adopted a Code of Conduct for Members and this was last revised and further adopted on the 25 February 2021.
3. Councillor Foster was acting in her official capacity as an elected Member whilst chairing the meeting of Torbay's Housing Crisis Review Panel on the 27 September 2021.
4. Throughout the first hour (hereinafter referred to as 'this period') of the meeting of the Torbay Housing Crisis Review Panel held on 27 September 2021 (hereinafter referred to as 'the meeting'), Councillor Foster dismissed the opinion of others and at times, refused to allow others to speak.
5. There was no clear or obvious reflection by Councillor Foster during this period of the meeting, on the comments being made or the impact of appearing to completely ignore the comments.
6. A reasonable person would conclude that the conduct shown by Councillor Foster in this period of the meeting, would influence the willingness of fellow Councillors, Officers, or members of the public to speak up or interact, because they would expect the encounter to be unpleasant or highly uncomfortable.
7. Notwithstanding Councillor Foster's representation that she listened to everyone's submissions during this period, the recording showed that Councillor Foster failed to accept or follow the clear and impartial advice provided by the Officers present at the meeting and therefore did not have reasonable regard to any advice provided to her by an Officer of the Council.
8. Councillor Foster was aware that the meeting Clerk had become distressed and dismissed this distress, by asking the Director of Place to undertake the duties of the Clerk.

9. Councillor Foster was further dismissive to the Head of Governance, when she subsequently joined the meeting to provide support and advice. Advice of which was also disregarded.
10. Had Councillor Foster been successful in approach, through her continued insistence that a vote be taken, the majority membership of the Panel would have been from the Conservative Group, with other parties being disadvantaged.
11. The recording of the meeting is clear, that only as result of robust challenge by Officers, did they avoid being forced into carrying out the wishes of Councillor Foster and avoid their impartiality being compromised.
12. It is the role of Officers to be present at meetings to provide clarity and advice on matters and they did so on this occasion.
13. Councillor Foster, having attended and raised an objection which was noted at the Pre-Overview and Scrutiny meeting, was aware of the decision taken by the Overview and Scrutiny Co-Ordinator for political proportionality of the Panel membership.
14. This meeting resulted in negative press coverage which overshadowed the objective of the meeting.

Decision and Reasons for Decision

Having determined the findings of fact, Members of the Standards Hearing Sub-Committee determined that Councillor Foster failed to follow the following paragraphs of the Code of Conduct for Members:

4.2 (a) You must treat others with respect.

Reasons:

Having viewed the recording, it was Members opinion, that Councillor Foster failed throughout this period of the meeting, to show any respect to any party who made a submission on the Panel's membership which differed to that of her own. Furthermore, Councillor Foster dismissed the opinion and comments of others and at times, refused to allow others to speak. Members also found that Councillor Foster had no clear or obvious reflection on the comments being made or the impact of appearing to completely ignore the comments.

Members noted the LGA guidance in relation to respect, published to accompany the 2021 Model Code of Conduct and found that the conduct displayed by Councillor Foster at the meeting, met the definition of what was considered to be disrespectful, given her demeaning conduct towards the Clerk, the Director of Place, the Head of Governance and other Members present.

4.2 (c) You must when reaching a decision on any matter, do so on the merits of the circumstances and in the public interest and have reasonable regard to any advice provided to you by an officer of the Council.

Reasons:

It was very clear to Members, having viewed the recording, that Councillor Foster failed to accept or follow the clear and impartial advice provided to her by senior and experienced Officers present at the meeting and gave no compelling reason at the Standards Hearing Sub-Committee, to justify this failure. It was only when the Chief Executive joined the meeting, almost an hour after the meeting commenced, that Councillor Foster changed her approach. In doing so, Members determined that Councillor Foster failed to have reasonable regard to the previous advice given to her.

4.3(a) You must not bully or harass a person.

Reasons:

Having viewed the recording and in the absence of a compelling representation by Councillor Foster at the Standards Hearing Sub-Committee to the contrary, Members found that Councillor Foster's conduct met the definition of bullying used by The Independent Advisory, Conciliation and Arbitration Service, and used by the LGA to accompany the 2021 Model Code of Conduct.

Cllr Foster in her submission to the Standards Hearing Sub-Committee, said she was considering whether to adjourn the meeting in question or to continue with the vote. However, in Members opinion, at no point during the recording observed by them, did Councillor Foster indicate that she was even considering adjourning the meeting. In Members opinion, Councillor Foster showed no compassion or regard for the distress of Clerk and furthermore dismissed this distress, in what they determined as a persistent and forceful approach to move to the vote. This coupled with the refusal to permit the Director of Place to speak and dismissing the suggestion by the Head of Governance, in Members opinion, amounted to bullying of Officers.

4.3(b) You must not attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

Reasons:

Councillor Foster, accepted in her submission to the Standards Hearing Sub-Committee that an advantage for the Conservative Group would have been secured, had she been successful in concluding the vote on the Panel membership of the meeting. Members were unequivocal in their determination, that this was Councillor Foster's main driver in conducting herself in the manner that she did.

4.3(h) You must not conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.

Reasons:

Members found Councillor Foster's conduct at the meeting would have reduced the public's confidence in the Council. In coming to that determination, Members noted the persistent approach taken by Councillor Foster, despite repeated clear and impartial advice given to her by Officers, resulted in the meeting becoming protracted, with almost an hour spent considering the issue of Panel membership, rather than the matter for which the meeting was called. Members were unanimous in their opinion, that any reasonable bystander, would have been horrified and disgusted by the conduct, especially given the meeting was convened to debate a topic as important as housing.

Sanctions:

Having determined that Councillor Foster had failed to follow the paragraphs of the Code of Conduct for Members set out above, Members of the Standards Hearing Sub-Committee resolved it appropriate and proportionate, to impose the following sanctions:

1. That Councillor Foster undertake acceptable behaviour training, to be arranged by the Head of Governance.
2. That Councillor Foster write an unequivocal apology to the Clerk, Director of Place and the Head of Governance for her conduct during the meeting of the Torbay Housing Crisis Review Panel held on 27 September 2021.
3. That Councillor Foster make a unequivocal apology at full Council on 21 July 2022 for her conduct during the meeting of the 27 September 2021.
4. That the Leader of the Council, be recommended to consider suspending Councillor Foster from the position of Member Champion for Domestic Violence, until Councillor Foster has undertaken and successfully completed acceptable behaviour training.
5. That the Conservative Group Leader be recommended to consider suspending Councillor Foster from all Committees and Council appoints to Outside Bodies on which she represents the Council, until acceptable behaviour training has been undertaken and completed successfully. This sanction does not prohibit Councillor Foster from continuing her duties as a ward Councillor during this period

Chairman of the Standards Hearing Sub-Committee