
**MINUTES OF THE SPECIAL MEETING OF THE STANDARDS COMMITTEE
HELD ON MONDAY 2 FEBRUARY 2015 AT 9.30 A.M. IN THE COUNCIL CHAMBER,
COUNCIL OFFICES, THORPE ROAD, WEELEY**

Present: Councillors N Stock (Chairman), R Heaney (Vice-Chairman), J Hawkins, I Johnson, F Nicholls and J White

Also Present: Councillor Mitchell

In Attendance: Corporate Director (Corporate Services) (Martyn Knappett), Monitoring Officer (Lisa Hastings), Communications and Public Relations Manager (Nigel Brown), Solicitor (Linda Trembath), Senior Democratic Services Officer (Ian Ford) and Democratic Services Officer (Michael Pingram)

Also in Attendance: Tim Earl (Head of Legal Services and the Deputy Monitoring Officer, Suffolk County Council), Clarissa Gosling and John Wolton (Independent Persons) and Reverend Doctor William Lock (Independent Remuneration Panel Member)

24. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were received on behalf of Councillor P Honeywood (Committee Member) and Councillor J Broderick (the Respondent).

25. DECLARATIONS OF INTEREST

There were no declarations of interest recorded at this time.

26. HEARING TO DETERMINE OUTCOME OF EXTERNAL INVESTIGATION – FAILURE TO COMPLY WITH THE MEMBERS’ CODE OF CONDUCT

It was reported that a complaint had been received in September 2014 from a member of the public, Mrs Elizabeth Lubin, regarding the actions of District Councillor Joy Broderick, under the Members’ Code of Conduct and Complaints Procedure, which had been adopted by the Council on 26 November 2013. A copy of the Complaint had been provided to Councillor Broderick. A copy of the Complaint Form was before the Committee as Appendix 2 to the Report of the Monitoring Officer.

The Committee was aware from the Monitoring Officer’s report that the Complaint alleged that the behaviour of Councillor Joy Broderick, in dealing with a noise complaint regarding a cockerel owned by Mrs Lubin, had breached the Tendring District Council Members’ Code of Conduct. The alleged breaches related to three aspects of behaviour:

- i. Bullying and harassment;
- ii. The disclosure of confidential information;
- iii. Conduct that could reasonably be regarded as bringing the office of Councillor or the Authority into disrepute.

The behaviour was alleged to have occurred over the period spanning the 6th to the 9th August 2014, on, or around, the property of the complainant.

The Monitoring Officer reported that, on the 24 September 2014, she had issued a Decision Notice (Appendix 3 to her report) including a summary of the response received from Councillor Broderick, who had confirmed that she did not wish to proceed down the

informal resolution route. The Monitoring Officer had decided therefore: "There is a potential breach of the Code of Conduct and it is reasonable and appropriate that this merits further investigation". The parties had informed of that decision on the same date.

The Committee was aware from the Monitoring Officer's report that she had subsequently instructed Tim Earl, Head of Legal Services and the Deputy Monitoring Officer at Suffolk County Council to undertake the investigation on this Council's behalf. Mr Earl's final report had been received on 16 January 2015, which had concluded that there was evidence that the Members' Code of Conduct had been breached. Mr Earl's final report was before the Committee as Appendix 4 to the Monitoring Officer's Report.

It was reported that, in accordance with paragraph 7.1.2 of the Council's Complaints Procedure, the Monitoring Officer had decided that this matter should be reported to the Standards Committee in order to conduct a hearing and to decide whether Councillor Broderick had failed to comply with the Members' Code of Conduct and, if so, whether to take any action.

The Committee was aware that in March 2014, it had approved the Hearings Procedure to be followed when holding a hearing. Both parties had been provided with a copy of the Mr Earl's report and the Hearings Procedure. The Hearings Procedure was before the Committee as Appendix 5 to the Report of the Monitoring Officer.

It was reported that the Monitoring Officer had consulted with the Council's Independent Person (Mr John Wolton) which had resulted as follows:

"The Independent Person (IP) supports the result of the investigation by the Lawyer at Suffolk County Council. The IP would recommend that Councillor Broderick could have made herself aware of the complaints procedure after receiving neighbour concerns.

The IP would suggest after the first visit to Mrs Lubin, Councillor Broderick did cause unnecessary confrontation with Mrs Lubin, bearing in mind the complaints procedure was already operating. Also it was noted that due to the on-going visits by Councillor Broderick, notes could have been taken to assist in clarifying the date of further events.

The IP felt that it was unnecessary in his view and with hindsight, that had the position been checked by Councillor Broderick, the visits were counterproductive to the complaints procedure and could be regarded as a breach of the Code of Conduct, which was unanimously agreed by Tendring District Council in November 2013.

The letter from Mrs Lubin to Tendring District Council confirmed the cockerel had been removed, and if this had been checked by Councillor Broderick beforehand, the visit on 9th August 2014 would not have been necessary and it is reasonable that this could be construed as harassment by Mrs Lubin."

The Committee was informed that the Monitoring Officer's written recommendation was as follows:

"The Investigator presents a clear summary of his investigation which provides conclusions and observations at paragraph 11 of the report. Members of the Standards Committee are encouraged to ensure that they have read the entire investigation report. The Investigator's conclusions are as follows:

- *Paragraph 11.3 – Councillor Broderick should not have disclosed the reason for her visit to the neighbour and if the Standards Committee were to determine that this was a breach of the Code, such disclosure should not attract any significant sanction. This is also reflected in 8.10 and 8.11 of the Investigator's Report.*

- *Paragraph 11.4 – there was no persistent or intentional course of harassment or bullying by Councillor Broderick, but it was felt that the behaviour was more akin to conduct that could reasonably be regarded as bringing the office of Councillor or the Authority into disrepute.*
- *Paragraphs 11.5 to 11.10 – there was evidence that Councillor Broderick behaved in what any reasonable person might regard as a confrontational manner, even if this was in response to comments attributed to her by the complainant, Councillors have a Code of Conduct to abide by whereas, in this regard, members of the public do not.*

Paragraph 3.4(a) of the Members' Code of Conduct states "you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute".

The Monitoring Officer agrees with the conclusions as presented by the Investigator that District Councillor Joy Broderick has failed to comply with the Members' Code of Conduct with respect to paragraph 3.4(a). The Monitoring Officer also agrees with the view of the Investigator that the disclosure of confidential information related more to the fact of complaints being made about the complainant rather than the existence of the cockerel."

Members were reminded that the burden of proof for civil matters, which included standards investigations was 'on a balance of probabilities' and through the investigation, the Investigator had considered the evidence submitted to him and on the balance of probabilities had found 2 of the 3 elements of the complaint proved.

The Committee was also reminded that it must reach its decision after following the Hearing Procedure and, in accordance with the Localism Act 2011, after considering the comments from the Independent Person and that, if its decision was contrary to the recommendation from both the External Investigator and the Monitoring Officer, the detailed reasons for that decision must be recorded and published within the Decision Notice.

The Committee was further reminded that if it agreed with the recommendations of the External Investigator and the Monitoring Officer it must consider what action to take with regard to the available sanctions which were set out in Paragraph 8 of the Council's Complaints Procedure.

The Monitoring Officer advised the meeting that, since the publication of her report, three further written documents had been received and had been circulated to the Committee and interested parties. They were: (1) A written statement submitted by the Respondent, Councillor Broderick; (2) A letter of apology from Councillor Broderick to Mrs Lubin; and (3) Mrs Lubin's response to that letter of apology.

The Monitoring Officer also informed the meeting that Councillor Broderick, as was her right under the Council's Complaints Procedure, had requested contact with Clarissa Gosling, one of the Council's Independent Persons, and sought an assurance on the procedural process.

The Chairman made opening remarks and explained to all persons present that:

- (i) The hearing had been convened in accordance with the Council's Complaints Procedure and that an investigation had been conducted, the outcome of which was that it was considered there was evidence of a failure to comply with the Members' Code of Conduct;
- (ii) The Parties had been aware of the content of the Investigator's Report and that this had been circulated to all Members of the Committee;

- (iii) The Monitoring Officer had referred the matter for a hearing either because upon conclusion of the investigation, informal resolution had not been successful or it was not appropriate to do so, for the reasons given within her report; and
- (iv) The purpose of the Hearing was to consider the Investigators Report, evidence in support and representations from the Parties. If the Committee departed from the recommendation from either the Investigating Officer and/or the Monitoring Officer detailed reasons would be required to be published in the Decision Notice.

The Members of the Committee, the Investigating Officer, the Independent Persons and the Officers present then formally introduced themselves.

Mr Earl then summarised his report and referred to various points made within the section headed "Tim Earl's Findings" within Councillor Broderick's written statement. Firstly, he disagreed that he had had only a "brief telephone conversation" with Councillor Broderick and stated that there had in fact been two telephone conversations of 20 minutes 54 seconds and 1 hour, 2 minutes and 37 seconds respectively, which in his opinion had given Councillor Broderick plenty of time to go through the issues and was not a 'Brief conversation'. Secondly, he stated that it had been Councillor Broderick's decision (which she herself had admitted) to forgo a one-to-one interview and that he had been "interrogative" in the telephone conversations as it was his duty as the Investigating Officer to be probing and he had treated the Complainant, Mrs Lubin in exactly the same way. Thirdly, Mr Earl stated that he had not been pre-determined or one-sided in preparing his report; he had presented the facts as he saw them and that Mrs Lubin had been clear and precise in the evidence that she had submitted whilst Councillor Broderick had been confused and contradictory in her evidence. This had led Mr Earl to make his conclusions in the way he had submitted them. Fourthly, Mr Earl stated that, in his opinion, in view of the nature and seriousness of the complaint, it was very regrettable that the matter had not been resolved at the informal resolution stage.

There were no questions from Members to Mr Earl on his report.

The Chairman informed the meeting that Councillor Broderick had decided not to attend the Hearing and that Councillor Joy Broderick was aware that this Hearing had proceeded without her attendance and that she was satisfied with this. The Chairman then read out, in full, the following written statement dated 15 January 2015 that had been submitted by Councillor Broderick:

"The facts leading to the complaint

Eight months ago at the start of last summer I was contacted by several neighbours of a Mrs Lubin who had ignored their pleas to restrict her rooster from waking them up at 4.30 am. In an attempt to help I obtained a leaflet on the keeping of roosters and actions that can be taken to restrict their early morning crowing and went to see Mrs Lubin. Contrary to Mrs Lubin's accusations, it was Mrs Lubin herself who was confrontational when I introduced myself and refused to accept or discuss the leaflet. In the end, unable to get her to see reason, I left the leaflet at her door.

I later heard that the rooster had been removed and took that to be the end of the matter. However some weeks later I received complaints that another rooster was now in her garden and causing a nuisance again.

I decided to go round to see her and try to find out what was happening. Unable to get an answer at the house, I enquired with the next door neighbour if she knew when Mrs Lubin would be home. The neighbour had known for several months that complaints were ongoing about the cockerel and guessed what the visit was about. There was a discussion between us about the subject and that is what Mrs Lubin objected to.

She claimed that, by discussing the subject of her visit with the next door neighbour, I had disclosed confidential information and considered that by doing so I had breached the Council's code of conduct and brought the authority in to disrepute.

It seems that I inadvertently stepped into what was an existing dispute between Mrs Lubin and Council Officials in the Environment Department of which I was unaware. One of the accusations against me is that I should have contacted the Council before going to see Mrs Lubin; in fact I had contacted the Environment Department which was where I had obtained the leaflet. No-one advised me of the dispute, but apparently the office staff are not allowed to divulge such information, even to the ward councillor.

In my view, if there is a reported problem in a ward someone from the Council should alert the local Councillor if the matter is in hand. Mrs Lubin has made false and hurtful allegations in the press which are an attack on my character. By failing to advise me, Council staff have exposed me to this kind of unfair personal attack.

Tim Earl's findings

I am baffled by Mr Earl's findings. He had a lengthy personal face to face interview with Mrs Lubin, at which she was represented, yet only a brief phone call with me which was interrogative and hard for me to follow; hence why I may have been unclear as to what he was seeking. Based on this he has accepted everything Mrs Lubin has said and nothing that I have said. The findings are completely one-sided and do not bear any resemblance to the facts. I accept that I was offered an interview at the time but decided not to incur the Council the costs of another Solicitor visit, in hindsight this may have been a mistake on my part.

I have apologised to Mrs Lubin for the misunderstanding that occurred between us and accept that I may have erred in discussing the issue with her neighbour. However the neighbour was well aware of the issue and I gave no information which was not already public knowledge between them. Other than that I maintain that I did not breach her right to privacy any more than a postman who is unable to deliver a parcel seeks advice from a neighbour as to the whereabouts of the house occupant.

Summary

I am most unhappy with the findings made by Mr Earl and publicised in the press and council website. It seems my right to privacy and right of reply is non-existent. It has really come to something when the person committing a nuisance to her neighbours is exonerated whilst her victims are ignored and the person who has tried to help is pilloried for trying to help.

At the end of the day, the indisputable facts are:-

- 1. Mrs Lubin does keep one or more roosters at her premises*
- 2. They do make a noise in the early hours of the morning, disturbing her neighbours sleep and causing them significant stress*
- 3. They have been the subject of numerous complaints by her neighbours*
- 4. She did at one time remove the rooster(s) only to replace it later*
- 5. She continues to be the subject of ongoing council enquiries at the time of writing as the problem is ongoing."*

The Chairman then read out, in full, the following letter of apology dated 26 January 2015, that Councillor Broderick had sent to Mrs Lubin:

"Dear Mrs Lubin,

I have been reflecting on the difficult time we had last summer and regretting the way we misunderstood each other.

My only motive in coming to see you was to help resolve a problem that appeared to be causing difficulties for yourself and your neighbours, the last thing I had on my mind was to cause you distress, or to start an 'argument' between us.

I had not realised that after my first visit the council officers had been involved, or I would not have returned. I now understand, having read your statement, that I might have appeared to have been part of a continuous process - so I can see how it was easy for you to have felt that I was pressing you too hard.

I do regret that my actions and words may have appeared in a way I had not intended, and hope we could put this behind us.

I wish you well in the future,

Yours sincerely,

Cllr. Joy Broderick."

The Chairman then read out, in full, the following response from Mrs Lubin to Councillor Broderick's letter:

"Dear Ms Hastings

Please find below my response to the letter I received from Councillor Broderick on Thursday 29 January at 12.30 pm.

The letter of apology from Councillor Broderick is a welcome development. It is disappointing that it has not come sooner as this would have saved a lot of time, effort and upset over the last 5 months for me, Tendring District Council and no doubt Councillor Broderick. The way she dealt with the initial situation which led to my complaint and the way she has then dealt with that complaint has added to the cost to the public and caused further upset to me. In particular her report to the police of assault, which was completely unfounded, which she stated was in "retaliation" for my complaint has wasted police time and resources and caused further distress to me and my family.

I am grateful to TDC for responding to my complaint so thoroughly and considerately in all the circumstances and look forward to the committee's decision on Monday.

Yours sincerely

Elizabeth Lubin"

In summing up, Mr Earl stated that he had nothing further to add except to say that the points 1 – 5 listed as "indisputable facts" at the end of Councillor Broderick's written statement were not relevant to the complaint or whether the Code of Conduct had been breached or not.

The Committee, then retired to deliberate and reach its decision. The Monitoring Officer also accompanied them to advise on any legal points raised and to record the decision.

Following such deliberations the hearing resumed.

RESOLVED that the unanimous decision of the Committee be as follows:-

“That Councillor Broderick’s behaviour was conduct that could reasonably be regarded as bringing her office as a Councillor or the Council into disrepute and therefore, in breach of paragraph 3.4(a) of the Code of Conduct.

Reasons:

The Committee’s reasons for the decision were expressed as their agreement with the findings of the Investigator and recommendation from the Monitoring Officer, which were referred to on pages 2 and 3 of the Committee report, in that:

- Councillor Broderick should not have disclosed the reason for her visit to the neighbour. The disclosure of confidential information related more to the fact of complaints being made about the Complainant rather than the existence of the cockerel. Although, this was a breach of the Code, such disclosure should not attract any significant sanction.
- There was no persistent or intentional course of harassment or bullying by Councillor Broderick, but it was felt that the behaviour was more akin to conduct that could reasonably be regarded as bringing the office of Councillor or the Authority into disrepute.
- Councillor Broderick behaved in what any reasonable person might regard as a confrontational manner, even if this was in response to comments attributed to her by the Complainant, Councillors have a Code of Conduct to abide by whereas, in this regard, members of the public do not.

The Committee wished to express their thanks to the Investigator and the quality of his report.

In consideration of the sanctions, the Committee did acknowledge the apology which had been provided by Councillor Broderick, and noted from the Complainant’s response, it was a shame that this had not been issued some while ago under informal resolution, as this would have prevented the cost of an investigation and hearing of the Standards Committee.

That the sanctions to be imposed are:

- (1) That the Committee’s findings in respect of District Councillor Joy Broderick’s conduct be published on Tendring District Council’s website; and
- (2) That the Committee’s findings and outcome of the hearing be reported to the March meeting of full Council for its information.

The meeting was declared closed at 11.02 a.m.

Chairman