



## GOVERNANCE SUB COMMITTEE 2

PARKSIDE, STATION APPROACH, BURTON STREET, MELTON MOWBRAY

24 MARCH 2014

PRESENT

Councillors J.M. Douglas (Chairman)  
A. Freer-Jones

Councillor P.M. Chandler – Substitute for Councillor Orson

Councillor G. Bush Subject Member  
Ms F Randle - Subject Member's Solicitor Mr. G. Pook – Investigating Officer

Monitoring Officer  
Solicitor to the Council  
Senior Democracy Officer  
Admin Assistant

### G.1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors P. Cumbers, T. Moncrieff and J.T. Orson.

### G.2. APPOINTMENT OF CHAIRMAN

Councillor Douglas was nominated as Chairman by Councillor Freer-Jones and this was seconded by Councillor Chandler. Following a vote the appointment was confirmed.

### G.3. DECLARATIONS OF INTEREST

There were no declarations of interest.

### G.4. HEARING OF COMPLAINT REFERENCE GOV 08

The Monitoring Officer submitted a report (copies of which had previously been circulated to Members) which requested the Sub Committee to

- (a) approve the Draft Procedure for a Member Code of Conduct Hearing (Appendix B) and apply the process to this Meeting;
- (b) determine the complaint relating to the conduct of Councillor Gary Bush (Subject Member) on 29 April 2013 by Mrs. L Holdsworth on behalf of a group of residents on Field Close, Melton Mowbray (Complainant). This

matter was initially considered by an Ad Hoc Meeting of the Governance Committee on 19 August 2013 and the allegations were referred for investigation.

Members of the Committee were referred to Appendix B being the Draft Procedure at a Member Code of Conduct Hearing. It was noted that the procedure would provide the Chair with guidance to manage the meeting in a fair and orderly manner.

Councillor Douglas proposed to approve the procedure, this was seconded by Councillor Chandler and following a vote the motion was carried therefore the Draft Procedure was approved for use at the Meeting.

Members were referred to the other recommendations in the report which were as follows :-

- 2.2 To consider the evidence put forward and decide whether censure is appropriate to any of the complaints listed 1-12, 14 and 15 at paragraph 3.1 of the Investigating Officer's report.
- 2.3 To accept the Investigating Officer's Statement at paragraph 7.5 with regard to Complaint 13 and agree to refer this matter to the appropriate service area to consider and deal with as appropriate.

The Monitoring Officer explained that these matters were for the Sub Committee to consider after hearing from the Investigating Officer and any representations from the Subject Member or his Solicitor. An Independent Person's view was also available at Appendix E.

The Monitoring Officer informed the Sub Committee that the Subject Member had a right of appeal within 21 days of the decision to the Appeals Committee.

The Investigating Officer presented his report and findings which were issued on 3 March 2014 and which was available at Appendix A. The Investigating Officer stated that the Complainant listed 15 numbered elements in the complaint which were presented in detail on pages 2, 3 and 4 of his report. To summarise, Councillor Bush of Melton Borough Council was alleged to have passed on confidential information to a third party, made false statements to the third party and failed to represent the views of the Complainant.

The Investigating Officer went through the report which included the following:-

- (a) The disagreement regarding the merits of a proposal to re-open the public access footpath which ran near to Meadow Way, a recreational area which was previously part of the King Edward VII School, and across a number of the gardens located on Field Close;
- (b) There was a history of problems related to this particular alleyway. The alleyway was closed during school hours in 2009 due to complaints received and following the King Edward VII School closure in 2011 the alleyway was closed entirely;

- (c) By re-opening this footpath it would clearly allow a public right of way across the field at any time. The Sherard Primary School had its own entrance on Meadow Way and the Primary School grounds bordered this alleyway. It was pointed out that Councillor Bush was also a Governor at the Sherard Primary School but was not nominated by the Borough Council to this role;
- (d) A public right of way had been established through the field as a case of previous long term use which did not appear on the Definitive Map Modification Order. Members were asked to bear in mind that the decision making body as far as the footpath was concerned was the Leicestershire County Council who owned the relevant land and not Melton Borough Council. Leicestershire County Council had resolved to make a definitive map and was awaiting a decision by the Secretary of State;
- (e) The key events and facts took place during February, March and April 2013. None of the parties knew each other prior to these events taking place;
- (f) Person A, the Lead Campaigner, was successful in putting their argument forward to Leicestershire County Council to get the footpath re-opened and provided Councillor Bush with the papers and processes generated from the meeting at Leicestershire County Council;
- (g) Councillor Bush had a letter published in the Melton Times on 14 March 2014 which showed his support for the re-opening of the public pathway. Councillor Bush then circulated a note to residents within his Ward (Craven) to inform them of current events and invite them to a meeting scheduled for 25 March 2013 regarding the footpath proposal;
- (h) On 28 March 2013, Person A also had a letter published by the Melton Times relating to the footpath;
- (i) Between 23-28 April 2013 there were a number of emails between Councillor Bush and Mr and Mrs Holdsworth;
- (j) Councillor Bush admitted that he did in fact identify Mr and Mrs Holdsworth by name to Person A via an email dated 19 March 2013 and he indicated that they might be opposed to the footpath proposal. On 20 March 2013, Mr and Mrs Holdsworths' names were disclosed again in an email along with a summary of the meeting Councillor Bush had attended with the Holdsworths;
- (k) Paragraph 4a of the Code of Conduct for Members stipulates 'You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature';
- (l) Councillor Bush confirmed that he did not disclose the Holdsworth's home address. Person A managed to source the address of Person B;
- (m) Members were drawn to Paragraph 6.2(c) where Councillor Bush allegedly falsely described the residents' view on where the youths came from.

The Investigating Officer concluded the following :-

- In paragraph 7.2(m) Councillor Bush consistently denied having disclosed any information to anyone. It was clear that Councillor Bush did disclose information to Person A on 19 and 20 March 2013, which was considered a breach of Paragraph 5 of the Code of Conduct;
- In relation to Complaint 2 – an alleged false statement of how youths accessed the field and from where they came from. The Investigating Officer considered it to be a case of clumsy wording rather than a deliberate or careless mistake. The issue was not substantial to a breach of the Code of Conduct. Therefore, Councillor Bush did not act in breach of Paragraph 5 by making a false statement about something said at the meeting held on 20 March 2013;
- In respect of the original complaints numbered 3 to 12 inclusive, 14 and 15, the Investigating Officer found no breaches of the Code of Conduct;
- Complaint 13 does not relate to behaviour which was within the scope of the Code of Conduct as Councillor Bush was not conducting the business of the Authority or acting as a representative of the Authority.

Members were asked to consider Appendix E which was the report submitted by Mr Grimes, an Independent Person appointed by the Council.

Members were then given the opportunity to raise any questions.

One of the Sub Committee stated that in one of the items for complaint, Councillor Bush did not represent the views for the complaint or complainants.

The Investigating Officer replied that the complaint was made on behalf of a group of residents by Mrs Holdsworth who shared the same views.

Clarification was sought as to who had instigated the proposal for re-opening the footpath. The Investigating Officer confirmed it was Person A who was the lead person in this respect.

It was noted that Councillor Bush had been a Councillor for a period of three years and at the time of the incident in question he had been a Councillor for 2 years. It was felt that Councillor Bush had stepped over the mark but this was mainly due to his lack of experience as a Councillor.

It was asked how the emails contained within the report were sourced. The Investigating Officer confirmed that the emails had been supplied by Person A. They were also forwarded to Councillor Bush during the course of the investigation. It was asked what was Councillor's Bush's response was to the emails. The Investigating Officer confirmed that Councillor Bush acknowledged receipt of the emails and that his response was neither positive or negative.

The Subject Member's Solicitor confirmed that Councillor Bush did not fail to represent their views as Councillor Bush's role was to work for both sides and he endeavoured to get the two parties together. It was not unusual for a Member to disagree with some of their electorate's views and there was a system in place to enable the views of all parties to be put forward.

There was no forum to represent the views of the Complainant.

Members were referred to the Independent Person's Report at Appendix E and in summary the Independent Person agreed with the Investigator's conclusions regarding complaints 2 - 12 and 14 and 15. Complaint 13 did not relate to behaviour within the scope of the Code of Conduct as Councillor Bush was not acting as a representative of the Authority or conducting the business of an Authority.

The Subject Member's Solicitor, thanked the Investigating Officer for the well organised presentation of his report and made the following response :-

- (a) The Subject Member's Solicitor agreed the report reached the right conclusions. However, she did not agree that complaints 1 and 2 breached the Code of Conduct and considered that Councillor Bush did not bring the Council into disrepute;
- (b) Councillor Bush did not deny he disclosed the names and accepted it did look bad in black and white. She said that Councillor Bush had encountered difficulties with individuals on this footpath matter previously before. Due to this when Councillor Bush heard that the Holdsworths wanted to meet with him, Councillor Bush asked Person A if they knew them and Person A did know them. Also the Solicitor explained that the initial email contact between Councillor Bush and the Holdsworths was friendly. Councillor Bush met the Holdsworths at their home with their neighbours who Councillor Bush had previously met. At no point during these discussions or over the six weeks consultation period for the footpath did anyone stipulate that this was a private matter. Many residents had given their names in public documents, photographs and a petition was in the public domain for getting the footpath closed off. At no point was Councillor Bush asked to keep the Holdsworths' names to himself;
- (c) After Councillor Bush had met the Holdsworths, he gave a rough account of the discussion to Person A. The point Councillor Bush was conveying was about the copse located at the bottom of the gardens and not the footpath. It was not Councillor Bush's intention to mislead Person A. It was evident from the emails sent in April 2013 that Councillor Bush was keen to get the sides to communicate with each other, as both parties had different concerns;
- (d) A great deal had been made about Councillor Bush divulging the Holdsworths' names. However, they did not have any qualms about requesting information about other people as they requested Person A's address and requested the addresses of the youths who occupied the grounds;
- (e) There was quite a rapid exchange of emails on 13 April from Person B asking how Person A got the name and address of the Holdsworths. Councillor Bush confirmed that he did not give the address and stated that lots of people approached him with highly confidential information and personal matters and he would never divulge anything of a confidential nature. He did not feel this information was confidential;

- (f) When asked, Councillor Bush had reiterated it wasn't him who had divulged the address. He considered that addresses could be found on the internet or perhaps the address was available on the electoral roll;
- (g) The fundamental problem outlined on page 20 of the report was paragraph 4a of the Code of Conduct concerning the disclosure of Confidential Information. The Sub Committee needed to look at the Common Law; was the disclosure of a person's name a disclosure of confidential information. Councillor Bush was not given the Holdsworths' names in confidence;
- (h) Councillors were asked to assess whether Councillor Bush's actions were in breach of the law of confidentiality. The legal test was the Coco vs Clark case. The three elements to satisfy were:-
- Information must have a quality of confidence about it (being information that was not widely known)
  - The information must have been passed on with an obligation of confidence
  - There must be an unauthorised use of that information to the detriment of the party communicating it

In applying the above, she explained no one requested Councillor Bush to keep the Holdsworths' names or views confidential and there was nothing to suggest there was any detriment to the Holdsworths in this information being shared therefore there was no breach of confidentiality.

- (i) The Freedom of Information Act and Data Protection Act were not relevant in this case. However, the guidance from the previous Standards Board for England 2011 Code could be applied if the information was deemed as being confidential. Examples of personal information related to an individual's employment, financial position, any enforcements or legal privileges. Information was not confidential solely because the person would prefer it not to be in the public domain. Councillor Bush did not believe this information was confidential;
- (j) It was confirmed that in respect of Paragraph 4, there was no breach of the code. In respect to Paragraph 5 which related to bringing the Council into disrepute, behaviour covered within this part of the code could be of quite a serious nature including all criminal convictions and physical violence. The previous Standards Board for England guidance stated a Tribunal would need to be persuaded that the conduct was sufficient to damage the reputation of the Council. This was not a petty theft or drink driving matter, but if someone was putting private interests above the public interest to make personal profit;
- (k) Therefore she considered it unreasonable to consider a breach of the Code of Conduct under Paragraph 5 in these circumstances as the Holdsworths had provided their names to Leicestershire County Council.

A Member considered that Councillor Bush had acted as an intermediary on a County Council footpath matter and therefore asked how much of this complaint came within Melton Borough Council's Code of Conduct.

The Monitoring Officer confirmed that the complaint had been considered under the Code of Conduct and had been referred for investigation by the Governance Committee.

The Solicitor to the Council reiterated that this case had been through the correct procedure and the complaint related to the conduct of a Councillor which was within the remit of the Code of Conduct. She explained that the Sub Committee needed to consider all of the information and listen to the responses to enable a decision to be made.

A Councillor sought clarification as to whether the names were provided prior to the meeting. Councillor Bush confirmed that they were provided before the meeting.

Councillor Bush was asked that by disclosing the names of Mr and Mrs Holdworth did he feel there was any personal gain. Councillor Bush responded there was none.

It was asked whether the residents lived close to each other. Councillor Bush responded that they did.

It was asked why Person A wished to know about people in the street. The Subject Member's Solicitor confirmed that Person A provided a witness statement and unfortunately due to work commitments could not attend the Sub Committee meeting. There had been no fall out between Person A and Councillor Bush. The Subject Member's Solicitor had expected the Witness Statements to be available prior the Sub Committee meeting as Person A had provided all of the information.

Both the Subject Member's Solicitor and Investigating Officer agreed that the latest complaints regime was a new process to them both.

The Investigating Officer raised a question with reference to the Holdworths' name entering the Public Domain.

The Subject Member's Solicitor confirmed that her records showed they were on the Electoral Register enforced at the time and were currently on the Electoral Roll.

The Investigating Officer summarised by stating that this was an issue of the relevant weighting being applied to the circumstances, there was no doubt to him that the Melton Borough Council Code of Conduct was engaged as Councillor Bush had been contacted initially as a Ward Councillor however at no stage within the report had it been suggested that Councillor Bush acted with any malicious intent.

Mr and Mrs Holdsworth became aware of the Leicestershire County Council proposal following Councillor Bush's letter in the Melton Times on 14 March 2013. Mr and Mrs Holdsworth wished to know how to get involved and Councillor Bush urged them to respond.

The Investigating Officer also agreed that from the emails of April 2013 it was evident that Councillor Bush was urging the Holdworths to discuss the proposals with Person A.

Person A was very clearly in the public domain as that individual had had a letter published in the Melton Times which included Person A's email address.

It was suggested that Councillor Bush could have responded better to the question "How did they get hold of our name and address?" For example "I might have given you her name but not the address".

The Investigating Officer's understanding was that Mrs Holdsworth was not on the Public Electoral Register. Paragraph 4a of the Code would not expect names to be divulged at the material time being 19 March 2013. It would be reasonable to have treated those names as being confidential. Coco and Clark stated a person's name was as confidential as it could get.

The connection to names being on the Electoral Register was not always reliable as a lot of people chose to be on the private version of the Electoral Register and at the time of the incident in question, the Holdsworths were not on the public version of the Electoral Register.

In conclusion, the Investigating Officer asked Members to consider all of the issues and think about whether there was a disclosure and if there was, the impact of it in this case. He went on to state that it was reasonable to assume that the names of those present at a meeting in someone's home, would not be divulged to a third party but remain confidential.

The Subject Member's Solicitor drew Members' attention to the People Tracer 2010/12 website which included the Holdsworths' address. Therefore she considered, Paragraphs 4 and 5 could not have been breached.

The Meeting adjourned at 12.15 pm and reconvened at 2.24 pm.

The Chair proposed the following :-

1. The Sub Committee accept the complaint within the scope of Melton Borough Council's Code of Conduct.
2. The Sub Committee accept the Investigating Officer's recommendations that there has been no breach of complaints 3-12, 14 and 15.
3. The Sub Committee find a technical breach by giving out names. Paragraph 4 relating to Confidentiality. Because there is a reasonable assumption that the name would be kept confidential. However, we do not find censure appropriate. Because, although technically a breach it is agreed that there was no malicious intention. Councillor Bush was inexperienced as a Councillor at the time.
4. The Sub Committee do not accept that Paragraph 5 has been breached.

The motion was seconded by Councillor Freer-Jones and on being put the vote the motion was carried unanimously.

**RESOLVED** that

- (1) the Draft Procedure at a Member Code of Conduct Hearing be approved;



- (2) the complaint be accepted within the scope of Melton Borough Council's Code of Conduct;
- (3) the Investigating Officer's recommendations be accepted that there has been no breach of complaints 3-12, 14 and 15;
- (4) a technical breach is found by giving out names. Paragraph 4 relating to Confidentiality. Because there is a reasonable assumption that the name would be kept confidential. However, the Sub Committee did not find censure appropriate. Because, although technically a breach it is agreed that there was no malicious intention. Councillor Bush was inexperienced as a Councillor at the time;
- (5) it not be accepted that Paragraph 5 has been breached.

The meeting which commenced at 10.05 a.m., closed at 2.30 pm

Chairman