

BRIGHTON & HOVE CITY COUNCIL

STANDARDS PANEL

2.00pm 6 FEBRUARY 2017

COUNCIL CHAMBER, HOVE TOWN HALL, NORTON ROAD, HOVE, BN3 3BQ

MINUTES

Independent Persons & Co-opted Member: Diane Bushell (Chair)

Present: Councillors: Druitt, A Norman and Robins

PART ONE

1 TO APPOINT A CHAIR FOR THE MEETING

1.1 Diane Bushell was appointed Chairman for the meeting.

2 PROCEDURAL BUSINESS

(a) Declaration of Substitutes

2.1 Councillor A. Norman declared that she was substituting for Councillor Taylor.

(b) Declarations of Interest

2.2 There were none.

(c) Exclusion of the Press and Public

2.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

2.4 **RESOLVED** - That the press and public were not excluded from the meeting.

3 HEARING OF AN ALLEGATION THAT A COUNCILLOR HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT FOR MEMBERS

- 3.1 The Chair provided an explanation of the role of an independent person, and then went on to invite the other Panel Members to introduce themselves, and she also explained the role of the Officers that would be supporting the Panel.
- 3.2 The Chair invited the Subject Member, Councillor Nemeth, to confirm the names of his witnesses, and to provide a very brief summary of the type of information they would be providing. The Subject Member confirmed that his two witnesses would be Mr Christopher Hawtree and Councillor Peltzer Dunn.
- 3.3 The Chair then highlighted the procedure the Panel intended to follow as set out at Appendix Two of the reports pack, with the inclusion of the opportunity to hear from and ask questions of the witnesses.

Representation from the Investigating Officer and Questions

- 3.4 The Investigating Officer presented her report and highlighted the following matters:
- The complaint was received on 9 September 2016, and related to a Tweet posted by the Subject Member. The comment in the Tweet made reference to the Subject Member witnessing the Complainant, Councillor Morgan, lying in relation to Hove Library. It was not disputed that the Subject Member had posted the Tweet, but it fell to the Panel to consider if the content was a breach of the Code of Conduct.
 - It was highlighted the current Code of Conduct and complaints procedure were not the same as the one that was in place at the time the complaint was made, as such, the Investigating Officer's report had been drafted in respect of the previous Code of Conduct and procedure that were relevant at the time.
 - The complaint had been first considered by the Monitoring Officer, and after preliminary discussions with the Independent Person it was decided that the complaint should be referred for formal investigation.
 - The report gave some contextual information in relation to the modernisation of the Library Service, and highlighted that reports in relation to this service had been considered at meetings of the Economic Development & Culture Committee on 10 March 2016; Council on 24 March 2016 and the Policy, Resources & Growth Committee on 9 June 2016. All of these meetings had been chaired by the complainant, and the debate and discussion therein had given rise to the comment made by the Subject Member in the Tweet.
 - The Complainant has asserted that the comment by the Subject Member in the Tweet was unjustifiable, derogatory, prejudice to him, and was damaging to the public opinion of all Councillors and he had brought his office into disrepute.
 - The Complainant also argued that as he had not been tagged in the post he had been given no right of reply. He also argued that if the Subject Member had been of the view that the Complainant had lied he should have referred the matter by way of a formal standards complaint.
 - It had not been possible to explore the grounds of the complaint with the Subject Member, other than by a single telephone call, as he had chosen to not disclose information to the Investigating Officer, but rather bring it before the Panel. It was noted that he was within his rights to this, and not compelled to cooperate in the investigation.

- In relation to the term ‘personally witnessed’ used in the Tweet, the Investigating Officer had interpreted this as ‘seeing, hearing or knowing by personal presence or perception’, and that having personally seen usually denoted in person or having direct experience – from this interpretation the Investigating Officer took this to mean that the Subject Member have been psychically present when the Complainant was alleged to have lied.
- A leaflet circulated by the local Labour Party had been not included in the evidence considered as there was no proof that it had been written by the Complainant.
- During the investigations the Subject Member had discussed the complaint in a press interview with ‘Latest Homes’. It was noted that there was no express requirement for a Subject Member to cooperate with an investigation; however, the Panel were asked to consider if this non-cooperative position whilst being forthcoming with the press might amount to a breach of the general provision of the Code of Conduct, such as to treat other people or the Council’s procedures with respect.
- In relation to a definition of lying the Investigating Officer had taken this to mean ‘speaking untruthfully with intent to deceive’ and the implication that the Complainant had lied in a Committee meeting was a serious allegation. The minuted comments made by the Complainant were consistent with the comments in the Officer reports to the meetings mentioned, and it was the position of the Investigating Officer that this did not amount to lying. The argument that no libraries had actually closed was not considered to be proof that the Complainant had lied, as there was no evidence of mistruth or wilful intent to deceive.
- The Subject Member had not produced any evidence during the investigation to substantiate the claim that the Complainant had lied, and the Investigating Officer had been of the view to make such comments could potentially have the effect of damaging the reputation of all public officials. It was noted that failure to alert the Complainant of the comment in the Tweet, was not considered to be a breach of the Code of Conduct, and the Social Media Protocol for Members was for guidance only, not binding.
- The report had been circulated to both the Complainant and the Subject Member for input prior to its formal publication.
- The findings in the report had been made on the basis that the Subject Member was acting in his capacity as a Member, and there was no dispute that it was him who had made the comment in the Tweet. On the basis of the evidence considered during the investigation the Subject Member was considered to have breached sections 1.1 and 1.2 of the Code of Conduct on the basis that the Tweet was a comment in a public forum, and no evidence had been found to support this claim. In relation to the Subject Member’s conduct during the investigation (in that he discussed the complaint the press whilst not cooperating with the Council’s procedures) this was considered contrary to a Member behaving in a reasonable way, and could potentially be considered to bring their office into disrepute.

- 3.5 The Investigating Officer provided the following responses to questions from the Panel:
- The concept of ‘tagging’ was explained, and that this was a means to ensure another user was alerted to comment which referenced their Twitter account.
 - The Code of Conduct that was in force at the time of the complaint did not make any provision to compel a subject member to comply with an investigation. The procedure that was relevant at the time stated that the Council discouraged all parties from seeking to actively publicise the matter before it had been fully

investigated by the authority, it was noted that this wording did not prohibit, but instead discouraged. In relation to the investigation, the procedure expected that a subject member comply, but similarly they were not compelled to do so.

- The letter dated 20 September made reference to words to that the extent that parties were discouraged from seeking to actively publicise this matter, and there was an expectation that this would be complied with to ensure the process was fair to all parties and avoid the perception of 'trial by media'.

3.6 The Investigating Officer provided the following responses to questions from the Subject Member:

- Paragraph 7.4 in the Investigating Officer's report discussed the secondary matter of the Subject Member's conduct during the investigation; this and the original complaint were treated separately in the report.
- In response to a further query the Legal Advisor to the Panel explained that the Subject Member would be given the opportunity to make representations and he could at that point highlight any concern with the consideration of the secondary matter outlined in the Investigating Officer's report.

3.7 At this stage in the proceedings the Panel asked questions to the Complainant who confirmed he needed to hear the evidence from the Subject Member before being able to comment any further.

Representation from the Subject Member

3.8 During the Subject Member's submission the Panel adjourned twice for a short while to discuss the information that was being given. On both occasions the Panel asked the Subject Member to proceed and the Chair asked him to focus his submission on evidence that the Complainant had lied.

3.9 The Subject Member made representations and highlighted the following matters:

- He intended to set out how he had not breached the Code of Conduct in respect of paragraphs 1.1 and 1.2.
- The closure of Hove Library had first been discussed at the Economic Development & Culture Committee meeting held on 12 November 2015; this had then been discussed again at the 10 March 2016 meeting, and the following Council meeting on 26 March 2016. The final decision was deferred to the meeting of the Policy, Resources & Growth Committee on 9 June 2016. During this time many local articles were written, and leaflets were sent out by the local Labour Party.
- Members had been told that were Hove Library to stay open then other libraries would have to close; this was incorrect as all libraries remained open, despite this position being reiterated at the time.
- Figures provided to Members had been inconsistent, as well as the plans of floor space for the works to Hove Museum. The results of the consultation were misleading and this had been challenged by Councillor Sykes as the position stated that 'most were in favour of the closure' related to a question worded around the merger of Hove Library and Hove Museum, not the specific disposal of Hove Library.
- The concept of 'lying' was difficult to formally define.
- There had been attempts to prevent him voting on the issue, on the grounds that he stated his position before the meeting in a letter to the Argus.

- Examples were provided where the Complainant had stated other libraries would have to close if Hove Library were to remain open in an article and in his blog, and the Complainant had also made comments that the Subject Member was putting his own interests in keeping Hove Library open ahead of the wider interests in the city. The number of comments made by the Subject Member was evidence that lies were told.
- The Subject Member had a Tweet which proved the Complainant had lied.
- He had received significant support in his campaign to save Hove Library.
- The comment had been made in a post that was a response to another user's Tweet, and would not have been published to all of his followers; this suggested it was not widely seen and largely unnoticed in July.
- He had then not heard any response nor had any concern been raised in relation to the comment until September 2016.
- In summary, highly dubious information had been put into the public domain about Hove Library; the foundation of this had been set on 10 March 2016 at the Economic Development & Culture Committee. At the time the information had been the subject of significant challenge, and he had been in no doubt that lies were told.
- The language in the comment was considered to be respectful, and the language used could have potentially been damaging.
- In relation to the secondary matter, he had offered to be involved with the investigation orally, but was not willing to enter into an email chain.

Representations from the Subject Member's Witnesses

- 3.10 Mr Christopher Hawtree made representations and highlighted the following matters:
- The closure of Hove Library had been discussed at the March 2016 meeting of the Economic Development & Culture Committee, and at that time the position in relation to the closure of other libraries if Hove Library were to stay open was made.
 - The comments made during the discussions around the future of Hove Library were not seen as 'one-off' comments that could be simply deemed wrong.
 - Local residents were naturally wary of the assertion that other libraries would need to close to make up the financial gap required to keep Hove Library open.
 - All the local branch libraries remained open; which was in contrast to the position stated at 10 March 2016 Economic Development & Culture Committee.
- 3.11 Mr Christopher Hawtree provided the following responses to questions from the Panel:
- He could not recall the specific number that was stated of branch libraries that would need to close, but it was in the range of five to seven.
 - The Complainant had asserted that the branch libraries would have to close to keep Hove Library open, but the only way to do this would be to bring reports to the appropriate council committees.
- 3.12 Councillor Peltzer Dunn made representations and highlighted the following matters:
- At the 10 March 2016 Economic Development & Culture Committee a written report was presented which stated that if Hove Library was not closed it would lead to the closure of five to seven branch libraries, and the Complainant, as Chair of the meeting, put forward this case.
 - He had been at the meeting and taken what was said and in the report to be true, and based his decision on that.

- He noted that the Complainant had made the same point days later in a press interview.
- This position now appeared to be untrue and was a lie.

3.13 Councillor Pelzer Dunn provided the following responses to questions from the Panel:

- He took the position that when a statement was made by a Chair of the Administration it was true, and he would not accuse Officers of providing false information. He had believed what he was told at the time to be true and it now transpired that it was not true.
- It was not for witnesses to comment on whether the Complainant was deliberately misleading Members at committees; rather that question should have been put to the Members of the relevant committees.
- He had received a briefing before the March 2016 Economic Development & Culture Committee on the relevant report, and it had been specific that were Hove Library to remain open then branch libraries would need to close to breach the funding gap.
- He believed the Complainant to be a genuine person, and he had no previous experience of him lying. The Complainant would have relied on the Officer report and been briefed on the matter.

3.14 In response to the Complainant it was explained by Councillor Pelzer Dunn that it was not the role of witness to comment on whether one Member should publically accuse another Member of being a liar.

Questions to the Subject Member

3.15 The Subject Member provided the following responses to questions from the Panel:

- The comment in the Tweet had related to the 10 March 2016 Economic Development & Culture Committee and 9 June 2016 Policy, Resources & Growth Committee, these were the times the Complainant was considered to have lied.
- He had not considered making a formal standards complaint in relation to allegations that the Complainant had lied as he felt that the matter had been satisfactorily resolved, nor did he think it would be in the public interest to pursue the matter.
- He had not considered tagging the Complainant in the comment as it had not occurred to him at the time, and this was part of a response to another user's Tweet. It was not his intention to make a public statement, nor had it been pre-mediated.
- In relation to cooperating with the investigation it had been his position that were the complaint to go a Standards Panel then he would give it his full consideration, he was not of the view that the investigation was a justified use of his time. The comment made in the interview was in response to a question he had been asked, and he had not brought up the subject matter first himself.
- He did not believe that many people would have seen the comment as it was sent late at night, and in response another Tweet.
- He not made any conscious decision to not refer his allegations of lying as part of a standards complaint.

- He had not been willing to offer an apology as he was of the view that the Complainant had lied, and that all Members involved in the decision in relation Hove Library had a duty to ensure they were very familiar with relevant facts.
- He been aware quite early in the process of the secondary matter raised by the Investigating Officer, and he did not believe it right that additional matters could be raised in this manner.

3.16 The Subject Member provided the following responses to questions from the Investigating Officer:

- He confirmed that the comment had been in public, and was recorded and publically accessible.
- He had not been fully aware, when asked about the complaint in an interview that the recommended position was not to discuss the complaint; in hindsight he might have made a different response.

3.17 Before the Panel moved on to hear summaries; they wished to ask the Complainant additional questions; the following responses were provided:

- As set out in the Investigating Officer's report the Complainant's comment were consistent with those in the Officer report at both the 10 March 2016 Economic Development & Culture Committee and 9 June 2016 Policy, Resources & Growth Committee.
- If he had misled Committees and Members the appropriate course of action should have been to refer the matter to the Monitoring Officer by way of a standards complaint. He stood by the record and the Officer reports, and the central issue to his complaint was the language Members used about each other in public.
- The statements at the time had been made in good faith, the libraries were still open as the Complainant had stated at the 9 June 2016 Policy, Resources & Growth Committee that the Administration would work with the opposition parties to look at other ways to close the budget gap, which had been done.

Summaries

3.18 In summary the Investigating Officer highlighted that it was not her role to put forward a view, but rather provide a critical starting point for the Panel to consider the matter. It was noted that no new substantial evidence had been put forward to quantify the allegation of lying.

3.19 In summary the Subject Member made the following points:

- It was important that any Member on any Committee involved in taking a discussion about the future of Hove Library to be in the full possession of the correct facts.
- Officer reports on the matter at the time had used qualifying statements, and the Complainant had not done this.
- There was more to lying than simply being incorrect, this was why the background to the whole matter was important.
- At the time the campaign to save the library was represented in a negative light by the Administration, and there had been attempts to prevent the Subject Member from voting on the matter.
- The Tweet was in response to another user's Tweet and was made late at night.

- It was up to the Subject Member to refer something to the Monitoring Officer for consideration as a standards complaint.
- He was of the view that the Tweet was not disrespectful, and a reasonable comment to make.
- There was no obligation for him to comply with the investigation, and his comments had been in response to a question initiated by an interviewer during a phone interview, he had not been seeking to actively publicise the complaint.

3.19 In summary the Complainant made the following points:

- It was clear that the Subject Member disagreed with the reports to Committees in relation Hove Library.
- The statements he had made were consistent with the information provided to the Committees in the Officer reports, they were not deliberately misleading.
- Making such comments put into question the honesty of all Members and Officers.
- Tweets and comments on other user's Tweets were public, they were searchable and sharable, and the argument that the comment might not have noticed did not justify the language.
- To allege that someone was lying could be damaging to their character and integrity.
- No evidence had been presented that the Complainant had lied.
- The Complainant was approached by the media about the complaint and he declined to comment.
- Exchanges between Members needed to be challenging, but the Council had protocols on what was acceptable.
- If a Member believed another Member had deliberately attempted to mislead in a committee the matter should be referred to the Monitoring Officer as a formal standards complaint.
- Such comments could alienate members of the public and potentially discourage them from participating in the decision making process or standing for office.

3.20 At 1700 hours the Panel retired to deliberate.

3.21 At 1832 hours the Panel delivered its decision, and offered the Subject Member the opportunity to make any representations on potential sanctions; the Subject Member declined to do so.

3.22 At 1835 hours the Panel retired to deliberate in relation to potential sanctions.

3.23 At 1857 hours the Panel delivered its decision in relation to sanctions.

3.24 **RESOLVED** – The decision of the Panel, together with the reasons and the imposed sanctions on the Subject Member, is as follows:

Decision

In relation to the allegations, the Panel determined that:

Through his comment on Twitter on 19.7.16, Councillor Nemeth–

- a) Did fail to comply with paragraph 1(1) of the council's Code of Conduct for Members ('You must treat others with respect');
- b) Did fail to comply with paragraph 1(2) of the council's Code of Conduct for Members ('You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute');

In relation to Cllr Nemeth's conduct during the investigation, the Panel made no findings.

Reasons

1) The Post on Twitter on 19 September 2016

The Panel considered the allegations that Cllr Nemeth had failed to comply with the council's Code of Conduct for Members, specifically paragraphs 1.1 'you must treat others with respect' and paragraph 1.2 'you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

The Panel noted that the facts of case were not in question insofar as the tweet was in the public domain and Councillor Nemeth did not dispute being responsible for posting it. The Panel was satisfied that it was reasonable for members of the public to assume that by issuing his tweet under the name of 'Cllr Robert Nemeth', Councillor Nemeth was not acting solely as a member of the public but as a councillor, and therefore that the Code applied.

The Panel noted the complaint which the tweet had generated from Councillor Morgan, and the grounds on which he considered it breach the Code of Conduct.

The Panel considered the post made on twitter by Councillor Nemeth. The Panel noted that tweets are published comments capable of a wide circulation and that – as is noted in the Social Media Protocol – they are capable of amounting to a breach of the Code.

The understanding to be applied to the reference to 'lying' was also explored in detail by the Panel. It agreed that the term is commonly understood to describe conduct involving untruthful conduct which is necessarily carried out with intent to mislead or deceive.

While the context of the complaint was noted, the Panel wished to be clear that they were interested in the context of the post only insofar as it was relevant to the complaint. The Council's decision-making regarding future library provision was a separate matter, which was outside the Panel's remit.

Having heard from Councillor Nemeth and his witnesses, the Panel concluded that Cllr Nemeth had not substantiated the claims he made in his tweet of 19th July 2016. In addition the Panel considered that the use the language of 'liar' or 'lying' is disrespectful and of itself is a breach of the Code. The Panel also considered that if Cllr Nemeth believed Cllr Morgan had lied, that was a matter that could have been brought

through the Council's Code of Conduct as a Standards complaint to be formally investigated.

2) Conduct During the Investigation

The Panel considered the allegations that Cllr Nemeth had failed to comply with the council's Code of Conduct for Members, specifically paragraphs 1.1 'you must treat others with respect' and paragraph 1.2 'you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

The Panel made no findings in regard to these allegations as the Panel's view was that any such complaint would need to be brought as a separate complaint under the Code.

Sanctions

Having made its findings, the Panel offered the opportunity to Councillor Nemeth to make representations in relation to any sanctions that the Panel may wish to make. Councillor Nemeth made no representations.

The Panel considered the range of sanctions available to it and determined the following in respect of both breaches of the Code of Conduct.

- i) That Councillor Nemeth deletes the post of 19 July 2016;
- ii) That Councillor Nemeth be offered the opportunity for training in relation to the Code of Conduct for Members and Social Media Protocol for Members.
- iii) The Panel recommends that the Social Media Protocol for members be reviewed to include the importance of enabling a right to reply, for example through tagging.

The meeting concluded at 7.00pm

Signed

Chair

Dated this

day of

2014