

Addendum to Report

Introduction

A Standards Panel was scheduled to meet on 20th January 2020. However, in the week beginning 6th January, an indication was received from the subject member that while he was planning to attend himself, he also wished to call two witnesses to give evidence and was not sure of their availability.

In light of the late notice given of two potential witnesses whose evidence had not been taken into account during the investigative process, the Independent Person indicated (in her capacity as non-voting Chair) that she wished the Panel to be postponed until such time as those individuals' evidence had been explored and its potential relevance considered. The investigating officer was subsequently asked (via the committee lawyer) to prepare an Addendum to her Report, describing the evidence which the two witnesses had given, and indicating what impact (if any) that evidence had on the Findings included in her original Report.

1. The additional evidence provided by the subject members' witnesses

Andy Winter, Chief Executive of Brighton & Hove Housing Trust ('B&HHT'), was approached on 13.2.20 to provide evidence in this matter. During a telephone interview with the investigating officer, Mr Winter indicated that he had worked at B&HHT for some 34 years.

Mr Winter's thoughts were sought on the specific matter of the comments which were made by the subject member on social media and which form the subject of this complaint. Those were read out to him by telephone. Mr Winter indicated that he was not able to comment on the subject member's assertion that a deception had been perpetuated by the Labour-led administration which was in place in March 2019. Mr Winter stated that he had no information regarding the motives of any of the councillors in office at that time, and had no reason to doubt their or any other elected councillors' motives in relation to the matter of this city's rough sleeping issues. Mr Winter further indicated that had no evidence to substantiate the subject member's assertion that the figures generated in the count in November 2018 were 'fake figures' in the sense of being false or fabricated.

Jim Deans, a rough sleeping campaigner in Brighton & Hove, was also interviewed by telephone by the investigating officer, on 14.2.20. Mr Deans was working with homeless people and rough sleepers on the night of the 2018 street count, and sought to provide a detailed account of his concerns that such matters as the weather (amongst other factors) on that night, had impacted on the figures generated during that count.

Mr Deans' attention was drawn to the specific social media comments which form the basis of the complaint. His view was that the subject member's assertion that the figures were 'fake' was correct insofar as they were (in his view) an inaccurate representation of the situation on the relevant night. Mr Deans considered the term 'fake' to be synonymous in this context with the terms 'inaccurate' and/or

'incorrect'. He did not seek to take issue with the actions of the people who worked at the street count in November 2018 and did not indicate that he wished to challenge the integrity of the process that was followed that night. He asserted that it was simply impossible to generate a set of figures that were not 'fake' (in the sense he assigned to the term, i.e. inaccurate) from a snapshot count exercise. He considered that the only means of generating a reasonably reliable estimate would be to involve all of the outreach services in the city, via a process which would see them compare the data they possessed regarding rough sleepers in the city at a given point. An estimate as opposed to a count was in his view the only means of generating reliable numbers.

Mr Deans indicated that he had dealings with many elected members and that in his view the majority of them would concur that the figures generated via the 2018 count were 'fake' in the sense of being inaccurate. He did not provide any evidence of this, and moreover indicated that he did not agree with the subject member that this assertion could be accurately extended to 'all' councillors. Finally, when pressed on the part of the subject member's comment which alleged that the administration was 'trying to keep up' a 'deception', Mr Deans indicated that it was his view that any position or statement which relied on figures generated in a single night count event as accurate amounted to a deception.

2. Input from the witnesses, complainant and/or subject member in relation to this Addendum

The additional evidence provided by the subject members' witnesses was emailed to Mr Winter and Mr Deans in draft form, in order to check that the account that had been recorded accurately represented their conversations with the investigating officer. Neither of the two witnesses gave an indication that the in paragraph 1 of this report was in any way inaccurate.

This Addendum was emailed in draft form (with the exception of this paragraph 2) to both the subject member and to the complainant on 28.2.20. A request was made of each of them that they provide any comments by the close of play on 6.3.20 at the latest. The complainant indicated within that deadline that he had no comment(s) to make regarding the Addendum. The subject member communicated only about the separate matter of his desire to ensure that his witnesses be asked to attend the Panel hearing. He did not however make any reference to or response to the draft Addendum.

The letter appending draft Addendum (which was the same for both the complainant and the subject member) is attached as Appendix 1 to this Addendum.

3. Reasoning

The views of the two new witnesses were reflected upon, and reviewed alongside the Reasoning (para 5) Findings (para 6) sections of this Report.

While the co-operation of both witnesses was appreciated, it was noted that general comments on the context of the street count in November 2018 and on the challenge of assessing number of rough sleepers were largely outside the remit of this Report.

The evidence of Mr Winter was noted but was not considered to impact on the reasoning or findings arrived at in the Report. The evidence of Mr Deans was noted, including his view that the subject member's reference to the figures acquired during the street count could legitimately be referred to as 'fake'. Mr Deans considered the term 'fake' to be synonymous with the terms 'incorrect' or 'inaccurate'. However Mr Deans' interpretation was not considered to be a universally accepted one. This was because the term 'fake' was considered to be one which lends itself to a reading that a false impression is being deliberately (as opposed to accidentally) generated. It was not considered on balance that the term 'fake' was synonymous with the arguably more neutral terms 'inaccurate' or 'incorrect'. It was considered on balance to be more likely than not that the term 'fake' would create an impression in readers' minds that falsified figures were being used by the administration. This interpretation was considered to be reinforced by the reference in the online comment which immediately followed to 'a deception': a term associated with conduct involving active duplicity.

Consideration was then given to Mr Deans' view that the subject member's comments to the effect that the administration was trying to keep up 'a deception' were legitimate. However for the reasons given in the Report, that assertion was not accepted. The subject member had available to him the option of making a specific comment about any aspect of the council's choice of methodology and/or the figures which that process had generated. Instead he chose to make a general assertion alleging the perpetuation of a deception involving 'fake' figures: an assertion considered to be problematic for the reasons outlined in the Report.

It was noted that although Mr Deans thought that the majority of councillors would agree with the subject member's statement, no evidence of said councillor views was provided. As a result, no information has been identified to suggest that 'all' (or indeed the majority of) councillors would choose to label the figures from the 2018 count 'fake' in the sense of the term which Mr Winter and the subject member ascribe to it.

It was moreover noted that Mr Deans' view that any attempt to assess numbers of rough sleepers via a count exercise as opposed to an estimate based methodology was necessarily flawed and would result in false data were not shared by the relevant government department, which generated the statistical release noted in the Report. No evidence or information was identified which was considered to merit the conclusion that data generated in the above way, following a proper process, would necessarily amount to a deception.

4. Findings

The witness evidence did not cause the investigating officer to change her finding that on balance the subject member had breached para 1.2 of the Code of Conduct.

Insofar as the allegation that the subject member had breached para 1.8 of the Code by failing to co-operate with the investigation is concerned, it is noted that the communications appended here evidence the subject member's engagement with this process from January 2020. However, that engagement was not forthcoming

until less than two weeks before the date on which a Panel was scheduled to convene to determine the complaint. This was several months after the investigation had been completed and a final report generated, following its circulation in draft to the subject member. As a result, it is considered that evidence exists of a failure to engage with this investigation between the time of the subject member's email of 22.5.19 and his communications in the week beginning 6.1.20, including as a result of his not providing information regarding witnesses who he considered able to provide information relevant to the investigation. As a result, a substantive breach of the Code in relation to paragraph 1.8 is considered to have taken place during the above period.

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Appendix 1 - Email sent on Fri 28/02/2020 at 14:58

Dear Robert,

Please find below a draft addendum to the Report previously circulated to you. This draft addendum has been prepared following my telephone conversations with your two witnesses. Those witnesses' accounts are reflected in the draft below.

As previously indicated, both witnesses have at your request been asked to attend the Panel, and have said they are available to attend the Panel on the re-scheduled date. The officers responsible for supporting the Panel process will liaise with them regarding what time they will need to attend.

In terms of next steps, I am circulating the draft addendum to you and to the complainant for you to review, on the basis that as the process provides you both with the opportunity to review the investigation report, it is logical for you to receive any addendum in the same way.

If you have any questions or comments to make then I would be grateful to receive those by the end of next week (ie by close of play on Friday 6th March). I will be in the office on Monday if you'd like to speak.

Thanks in advance, Victoria

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