



BASINGSTOKE AND DEANE BOROUGH COUNCIL
APPEAL DECISION NOTICE

DECISION NOTICE: APPEAL PARTIALLY UPHeld

Reference: 048555/FT

Complainant: Cllr Onnalee Cubitt and Cllr David Potter

Subject Member: Cllr Simon Bound

On 4 February 2021, the Deputy Monitoring Officer, Independent Standards Assessor and Independent Person considered a complaint concerning the alleged conduct of Cllr Simon Bound, a member of Basingstoke and Deane Borough Council.

A general summary of the complaint is set out below:

On the 18th December 2020 the Complainants submitted two complaints under the Council's Arrangements for Considering Complaints (the Arrangements). The first against the Subject Member and the second against Cllr McCormick which was dealt with in a separate decision letter.

The complaint stated that the subject member and Cllr McCormick in submitting their complaint against the Complainants on the 7th December 2020 breached the Code of Conduct in that

- They failed to abide by the Nolan principle of openness under paragraph 1(2)(e)
- They attempted to intimidate the Complainants by using the Code of Conduct as a tool of punishment contrary to paragraph 2(2)(c)
- That without acting in good faith they disclosed confidential information contrary to paragraph 3(a)(iv)

Decision

The decision was that the Subject Member had not breached paragraph 2(2)(c) of the Councillors' Code of Conduct or conducted himself contrary to the Nolan principle of openness. As the Subject Member did not pass the email to the Gazette the allegation relating to breach of paragraph 3(a)(iv) of the Code did not apply to his actions

Appeal

An appeal was made on 16 February 2021 by the Complainants on the following grounds:

In the decision notice 048555/AGR dated 18 December 2021 regarding Subject Member Cllr Bound it stated on page 3:

“As the Subject Member did not pass the email to the Gazette the allegation relating to breach of paragraph 3(a)(iv) of the Code does not apply to his actions and is not covered in this decision letter.”

The Complainants contend that Cllr Bound did send a redacted version of the email to the Gazette and that the allegation relating to breach of paragraph 3(a)(iv) of the Code does apply to his actions and should therefore be addressed in the decision notice.

The Complainants' state that the Subject Member in sending a redacted version of the email shows that he believed sending the email in its entirety was disclosing confidential information. They also maintain the Subject Member was acting in his capacity as Deputy Leader when committing the alleged breach. In addition they believe the quotes attributed to the Subject Member in the Gazette demonstrate that the Subject Member did not act in good faith.

This appeal was considered by the Monitoring Officer in consultation with the Independent Person

Appeal Decision

For the reasons set out below, the Monitoring Officer has concluded that the appeal should be partially upheld.

Reasons for appeal decision

The sentence in the Decision Notice referred to above in the grounds of appeal, states that:

“As the Subject Member did not pass the email to the Gazette the allegation relating to breach of paragraph 3(a)(iv) of the Code does not apply to his actions and is not covered in this decision letter.”

Although, the Subject Member did not send the email in its entirety, he did confirm to the Deputy Monitoring Officer in his response to the complaint that he did send an extract from the email to the Basingstoke Gazette on 7 December 2020. This was three days after Cllr McCormick had originally sent the email to the Gazette.

The Deputy Monitoring Officer and Independent Standards Assessor were of the view that the Subject Member did not “disclose” the email as it had already been shared with the Gazette and the Subject Member knew this to be the case. The Subject Member forwarded an extract in his correspondence with the Gazette in which he makes a statement, which is not the same as “disclosing”. On that basis it was decided that the allegation that he breached paragraph 3(a)(iv) did not need to be addressed.

The sentence in the Decision Notice, however, that states that “as the Subject Member did not pass the email to the Gazette, the allegation relating to breach of paragraph 3(a)(iv) of the Code does not apply to his actions...” does not accurately reflect the consideration of the issue detailed in the paragraph above, and the issue should have been addressed more fully in the Decision Notice. For this reason the appeal is partially upheld.

As the issue was not addressed in the original Decision Notice, it is appropriate for the Monitoring Officer to address the allegation that “without acting in good faith [the Subject Member] disclosed confidential information contrary to paragraph 3(a)(iv)” in this appeal.”

Relevant Provision of the Code of Conduct

Paragraph 3 (a) (iv)

3. You must not:

- (a) 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, except where:
 - (iv) the disclosure is:
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority.

Decision

The Subject Member has not breached paragraph 3(a)(iv) of the Code of Conduct for Councillors

Reasons for the decision

The Complainants state that the disclosure of the extract from the email to the Gazette by the Subject Member was a disclosure of confidential information. They accept that there was public interest in the disclosure of the email but state that the disclosure was not made in good faith but rather to gain a greater political advantage than they could secure through open and fair debate of Cllr Cubitt’s proposal. They state it was an attempt to besmirch rather than to engage.

In their appeal the Complainants are of the view that the Subject Member must have believed that if he had sent the email in its entirety to the Gazette he would have been disclosing confidential information.

In response to the appeal, the Subject Member states that he only shared the parts of the email with the Gazette which he considered relevant and does not agree with the Complainants’ view that only part was shared because he considered the entirety of the email to be confidential.

In considering paragraph 3(a) (iv) it is the Monitoring Officer's view that the allegation that the Subject Member "disclosed confidential information" is not made out on two grounds.

Firstly, the meaning of "disclose" is the act of giving people new or secret information. The email was sent to the Gazette three days prior to the Subject Member providing the Gazette with an extract of the email and the Subject Member was aware of this prior to providing the extract. Therefore, there could not be said to be a "disclosure" by the Subject Member.

Secondly, there is no evidence to substantiate the suggestion by the Complainants that in sending a redacted version of the email this shows that the Subject Member believed sending the email in its entirety was disclosing confidential information. It appears to be an extract to support the Subject Member's point rather than a carefully redacted document.

The Monitoring Officer agrees with the rationale in the Decision Notice concerning Cllr McCormick that it is a reasonable belief on the Subject Member's part not to consider the email to be confidential. Relevant factors in that decision were considered to be the wide distribution of the email, the subject matter of the email and there was no indication on the face of the email that it was intended to be confidential.

Since the test in paragraph 3(a) is not met whether actions were or were not taken in good faith is not relevant. The statement in the appeal that the Subject Member was acting in his capacity as Deputy Leader is not relevant for the purposes of this determination.

For the above reasons the Monitoring Officer concurs with the original decision notice that the Subject Member has not breached paragraph 3(a)(iv) of the Code of Conduct for Councillors.

Right of Appeal

There is no right of appeal against this decision.

Additional Help

If you need additional support in relation to this or future contact with us, please let us know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Disability Discrimination Act 2000.

We can also help if English is not your first language.

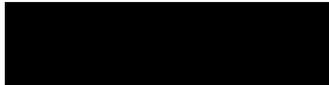
Access to the complaints process

Certain groups of customers may find it more difficult to make a complaint for example due to English not being their first language, sight impairment etc. It is our duty to assist the complainant in gaining access to the complaints procedure but we must not make the complaint for them or misrepresent their complaint. The Council do not insist that a complaint is made in writing, particularly where this would hinder an individual in making their complaint.

The following services are available to assist customers in making their complaint.

Translation
Interpreting
Braille/Large Print
Minicom
Text
Online form

Signed ...



Date ...31 March 2021.....

Fiona Thomsen
Monitoring Officer