

## Standards Sub-Committee Hearing (Appeal)

Report of Lorna McShane, Acting Monitoring Officer  
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### Purpose of this report

1. Under the Arrangements for dealing with Standards Allegations under the Localism Act 2011 detailed in the Constitution, the Standards Sub-Committee (Appeal) are required to consider appeals made by complainants or subject members from decisions of the Standards Sub-Committee.

The Standards Sub-Committee (Appeal) is asked to:

1. To consider the appeal of the Subject Member, Cllr I Robinson of Northill Parish Council and to decide one of the following in respect of the original decision of the Standards Sub-Committee dated 14 October 2014:-
  - (i) to set aside if it considers it unreasonable and substitute its own decision; or
  - (ii) confirm the decision.

## **Background**

1. Details of the original complaints made in April 2013 and **Appendix (i)** in the Report to Monitoring Officer.
2. On 5 July 2013, the matter was referred to the Standards Sub-Committee to consider how the complaints should be dealt with. It was resolved that the complaints would be investigated. The Sub-Committee asked that the report be brought back to the same panel for consideration.
3. The Report was prepared and, on 13 June 2014, the Standards Sub-Committee considered the Report of the Investigating Officer. The Sub-Committee resolved that the local resolution recommended in the Report was not considered appropriate; that a public hearing be held to decide whether there had been a breach and, if so, what action to take; that as well as the complainants and the subject member the Independent Person, witnesses for the subject member, the former Chairman of Northill Parish Council and the current Chairman of Northill Parish Council and the Central Bedfordshire Council Ward Member should be invited to attend the hearing to give evidence.
4. The public hearing took place on 29 and 30 September 2014. The full written decision of the hearing was provided to the complainants and the subject member on 14 October 2014. **Appendix (ii)**.
5. On 4 November 2014, the Monitoring Officer received an appeal from the subject member against the decision of the Standards Sub-Committee. This was accepted as being within 21 days of the Standards Sub-Committee decision notice and containing valid grounds for appeal.

## **Response to the Appeal**

6. The Appeal (**Appendix (iii)**) including its Appendices).
7. The paragraph numbers below refer to the paragraph numbers used in the Appeal.
8. The Standards Sub-Committee (Appeal) is reminded any appeal is limited to:-
  - (i) The procedure being wrongly applied;
  - (ii) New evidence has come to light since the hearing; or
  - (iii) A mis-direction in law.

## **Nature of the Complaints (numbered as per the appeal document made by Cllr Robinson)**

- 1 (a) This is not considered to be a valid ground of appeal as it is a matter for the Standards Sub-Committee (Appeal) to decide what recommendations to accept.
- 1 (b) (c) & (d) This is in relation to the involvement of the Standards Committee at the early stage of a complaint, usually dealt with by the Monitoring Officer and not that only those cases of potential criminal conduct can be handled by the Standards Committee.

- 1 (e) The subject member is claiming that there was a misdirection in law in that the definition of harassment which was used was not correct and may be outdated. The definition used was:

*“harassing a person includes alarming the person or causing the person distress” (i.e. the effect the conduct has on the person is relevant) and the person whose course of conduct is in question ought to know that it amounts to (or involves) harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to (or involved) harassment of the other.*

The subject member considers that this definition implies that the test is only subjective. This is not accepted: the second part of the above definition clearly refers to a reasonable person in possession of the same information thinking the course of conduct amounted to or involved harassment. The definition therefore also contains an objective element.

It is not considered that the above definition is outdated. It is based on the language used in the Protection from Harassment Act 1997 which is still in force. The first part is from s.7(2) of the Act and the second part is based on s.1(2) of the Act. It is acknowledged that this Act relates to criminal offences but was not used in this context. It is further acknowledged for the avoidance of doubt that the actions of the subject member were never considered in the light of a criminal offence, it was merely the definition from the Act which was used.

The Appeal suggests that a definition from 2010 used by ACAS would have been more appropriate. The current ACAS guidance refers to the definition of harassment used in the Equality Act 2010. If this is the definition referred to, it relates to harassment by reference to protected characteristics only.

The definition in the Equality Act 2010 as detailed by ACAS is:

*“unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual”.*

It was for the Sub-Committee to decide what definition to adopt and as to what constituted harassment.

- 1 (f) It is not considered this is a ground of appeal. Any differences in the individual complaints which were relevant to the issues to be decided were considered and a matter for the Sub-Committee to decide.

### **Nature of Reporting the Complaints**

- 2 (a) This is not considered to be a valid ground of appeal.
- 2 (b) This is not considered to be a valid ground of appeal.
- 2 (c) This is not considered to be a valid ground of appeal.

- 2 (d) This is not considered to be a valid ground of appeal. As stated above, it was the decision of the Standards Sub-Committee of 13 June 2014 that the local resolution recommended in the report was not considered appropriate. This was because the comments of the complainants on the draft report indicated that they believed that the conduct of the subject member had not improved.
- 2 (e) This is not considered to be a valid ground of appeal.
- 2 (f) This is not considered to be a valid ground of appeal.
- 2 (g) This is not considered to be a valid ground of appeal.
3. This is not part of the Appeal but, for completeness, the decision to hold the hearing in public is contained in the decision made by the Standards Sub-Committee and the rule is that hearings are public unless resolved otherwise.

### **Witness Statements**

- 4 (a) This raises the issue of procedure and is accepted as a valid ground of appeal. It was originally agreed that witness statements would be exchanged on 24 September 2014 and it is correct that the statement of the Clerk was not provided until Friday, 26 September 2014 as the Clerk had not agreed the contents of the Statement. The hearing commenced on Monday, 29 September 2014.

The contents of the statement did not extend beyond the information provided in the Clerk's original complaint which was included in the Report. Although agreed procedure for exchange of witness statements had not been adhered to, this did not prejudice the subject member.

- 4 (b) This is again a procedural issue. Cllr Turner was asked to provide her views at the hearing. It is believed the subject member was advised of this verbally on 24 September 2014 and this information was also available on the minutes of the Standards Sub-Committee of 13 June 2014. No witness statement was taken from Cllr Turner as the Sub-Committee had requested her attendance and views. There was therefore no statement to provide.

The reference to a witness statement of the Investigating Officer is incorrect. The Investigating Officer provided submissions to the Sub-Committee. The Investigating Officer was not a witness to the events giving rise to the complaints.

- 4 (c) and (d) It is agreed that the subject member was guided and advised that the complaints referred to the events of the meeting of 8 April 2013. Other allegations were detailed at the hearing. As the witness statements that were exchanged with the subject member referred to some of those allegations, the subject member was however aware of them. Although some of the allegations were again referred to in the submissions of the Investigating Officer, they were not taken into account in the deliberations of the Sub-Committee which made its decision based on the actions of the subject member at the meeting of 8 April 2013, as shown by the written Decision Notice.

- 4 (e) It is not accepted that the subject member was disadvantaged. The allegations were merely background information and were not considered nor made part of the Sub-Committee's decision on the complaints.
- 4 (f) This is not considered to be a valid ground of appeal.
- 4 (g) This is not considered to be a valid ground of appeal. The character witness statements were taken into account as part of the Sub-Committee paperwork.
- 4 (h) This is not considered to be a valid ground of appeal as it relates to actions of Northill Parish Council. Furthermore, it is not considered that any unfairness resulted from this. The subject member did have witnesses to support him and their evidence was considered by the Sub-Committee.

### **The Manner and Procedure of the Hearing**

- 5 (a) This is not considered to be a valid ground of appeal.
- 5 (b) This is disputed. The procedure dealing with findings of facts was carried out. At the hearing, the subject member was asked if he had any observations on the procedure. He replied he did not but did on the facts. The Sub-Committee then proceeded to paragraph 11 of the procedure and the Investigating Officer was invited to make representations which she did. The Investigating Officer then called witnesses whom the subject member was also able to question. After this, the subject member called his witnesses and did also read out a statement of comment he had prepared regarding the facts (**Appendix (iv)**). This comment was photocopied at the venue to circulate copies to the Sub-Committee. Although the defence document was not referred to by the subject member during this part of the hearing, he could have done so had he wished.
- 5 (c) The Sub-Committee did not refuse the requests of the subject member. In relation to the definition, they said they would take the advice of the Monitoring Officer. The definition was later provided. In relation to the other points, the Chairman indicated that, after hearing from the witnesses, they would decide if relevant.
- 5 (d) It is agreed that the subject member was not made aware that Cllr Turner had commented or complained about his behaviour soon after the meeting of 8 April 2013. However, any comments or complaint of Cllr Turner were not treated as a formal complaint. Neither were they considered by the Investigating Officer during the investigation. It is believed that the subject member was advised verbally that Cllr Turner had been asked to attend by the Standards Sub-Committee. The Standards Sub-Committee wanted the views of Cllr Turner, she was not considered a 'complaint witness' as both the Sub-Committee *and the Investigating Officer were unaware of the comments or complaints of Cllr Turner prior to hearing from her on 29 September 2014.* The subject member was aware of the Standards Hearing of 13 June 2014, the minutes for which set out the persons who

were to be invited to attend. It is therefore considered that this was not unfair to the subject member.

- 5 (e) At the hearing, there was a request by the Chairman of Northill Parish Council, as the Clerk's employer, that the subject member was not allowed to question the Clerk directly. This was pursuant to a grievance procedure which had decided that the subject member was not to have contact with the Clerk. The subject member had also raised this prior to the hearing and had been advised that it would be up to the Chairman. The Standards Sub-Committee did not go into the specifics, nor did they make any judgment on the matter apart from stating that it would be more helpful if the subject member could ask directly. The Chairman agreed that questions would be put to the Sub-Committee panel who would re-direct them to the Clerk. All questions put by the subject member were put to the Clerk who answered them. The subject member was able to hear the answers of the Clerk and ask further questions. Whilst more time-consuming and inconvenient, it is not considered that this was prejudicial in any way.
- 5 (f) This is not considered to be a valid ground of appeal.
- 5 (g) It is accepted that this was not part of the written procedure as every eventuality cannot be catered for. However upon receipt of a request from the employer of a witness giving evidence, the Chairman and the panel must consider any such request. As the subject member's questions were put to, and answered by, the Clerk in the presence of the subject member, it is considered that there was no prejudice to the subject member and was acceptable in the circumstances of the request from an employer.
- 5 (h) This is not considered to be a valid ground of appeal. For ease, it is accepted that Cllr Turner did not provide details of any criminal-like behaviour.
- 5 (i) The Investigating Officer did not provide any witness statement. The Investigating Officer did make submissions to the Standards Sub-Committee by introducing her Investigations Report, then on the findings of fact, the Code of Conduct and the sanctions to be imposed. The subject member was also able to make submissions, all in accordance with the procedure. This part is not considered to be a valid ground of appeal. It is accepted that the Investigating Officer was allowed to ask the subject member questions and that this was not in the procedure. The Standards Sub-Committee had asked the Investigating Officer if she had any questions for the subject member. The subject member was aware that he could be asked questions at any time by the Sub-Committee. This did not cause any unfairness to the subject member as he did not need to prepare anything for the questioning. The procedure will be altered to reflect this possibility in the future however.
- 5 (j) This is not considered to be a valid ground of appeal. The Appeals Sub-Committee is however asked to note that, at no time during the hearing, was

it considered necessary to stop questioning, apart from on the basis of relevance.

- 5 (k) This is not considered to be a valid ground of appeal.
- 5 (l) The submission statement of the Investigating Officer is just that and it is for the Sub-Committee to accept or reject the submissions made.
- 5 (m) This is not considered to be a valid ground of appeal. The Investigating Officer was not a witness to the events of 8 April 2013. The Standards Sub-Committee were to decide on facts, decide if those facts gave rise to a breach of the Code of Conduct and, if so, decide on appropriate sanctions in relation to the events of 8 April 2013.
- 5 (n) This is not considered to be a valid ground of appeal. See 5 (m) above.
- 5 (o) Events outside of 8 April 2013 were put before the Sub-Committee to provide background or context to the events of 8 April 2013. The questioning of witnesses by the subject member gave much more detail to the Sub-Committee than contained in the paperwork and did provide a much better context. None of the background information was taken into account in deciding what had happened on 8 April 2013, although some of it was in relation to the sanctions that were imposed.

### **Evidence not apparently fully considered at the Hearing, Including fresh evidence**

- 6 (a) Although not considered at the hearing, this was background information about why the subject member wanted information and was asking questions at the meeting of 8 April 2013. That the subject member was not aware of the full process, and that he should have been, was however taken into account during the deliberations of the Standards Sub-Committee.
- 6 (b) This is not considered to be a valid ground of appeal. The subject member did raise this at the hearing. The article referred to was not taken into account in deliberations in any event. Neither the Chairman at the time of the meeting of 8 April 2013 nor the subsequent Chairman attended the hearing despite being asked to attend. Therefore they did not provide any evidence or information which was taken into account by the Standards Sub-Committee.
- 6 (c) This is not considered to be a valid ground of appeal. The minutes were not considered by the Standards Sub-Committee. The Standards Sub-Committee was considering whether the behaviour of the subject member breached the Code of Conduct and not whether the then Chairman was breaching the Code of Conduct.
- 6 (d) This is not considered to be a valid ground of appeal. It is confirmed that this information was discussed thoroughly as background information.
- 6 (e) This is not considered to be a valid ground of appeal.

- 6 (f) This is not considered to be a valid ground of appeal. For the avoidance of doubt, Cllr Shadbolt had checked the Northhill Parish Council website on the evening of 29 September 2014 and found a document which detailed the terms of reference and powers of each of the Committees of Northhill Parish Council. This document is separate from the Standing Orders of Northhill Parish Council. It is believed that the document was titled Terms of Reference Committees May 2013 and this remains on the website. It is noted that there may have been no such document prior to May 2013 but it was available at the time of the hearing.
- 6 (g) This is not considered to be a valid ground of appeal. Whilst the grievance panel was mentioned, it was not within the remit of the Standards Sub-Committee to consider the legality or otherwise of the grievance panel, its decisions, fairness or to question Northhill Parish Council in its capacity of employer.
- 6 (h) This is not considered to be a valid ground of appeal for the reasons mentioned in 6 (f).
- 6 (i) This is not considered to be a valid ground of appeal.
- 6 (j) This is not considered to be a valid ground of appeal.
- 6 (k) This is not considered to be a valid ground of appeal.
- 6 (l) This is not considered to be a valid ground of appeal.
- 7 and 8 and 9 and 10. Do not seem to contain any grounds for appeal but do contain a number of statements, opinion and submissions, the majority of which are not relevant to the substantial reason for the complaints in the first place which were due to the behaviour of Cllr Robinson at the meeting of 8 April 2013.

## **Appendices**

- (i) Documents originally submitted to Standards Sub-Committee (Hearing)
- (ii) Decision Notice dated 14 October 2014
- (iii) Appeal by Cllr Robinson with Appendices
- (iv) Submissions by subject member at hearing