

**Minutes of a meeting of the
Joint Governance Sub-Committee
Adur District and Worthing Borough Councils**

QEII Room, Shoreham Centre, Shoreham-by-Sea

20 August 2019

Councillor Kevin Boram (Chairman)

Adur District Council:

David Balfe
Ann Bridges

Worthing Borough Council:

Rebecca Cooper
Lionel Harman
Steve Wills

Absent:

Councillor Brian Coomber

Simon Norris Jones, Independent Person, attended the meeting as the co-opted member of the Sub-Committee

Councillor Ann Bridges substituted for Councillor Brian Coomber.

JGCSC/1/19-20 Election of a Chairman

Resolved,

That the Joint Governance Sub-Committee appointed Councillor Kevin Boram to be Chairman for the meeting.

JGCSC/2/19-20 Declarations of Interest

Councillors Lionel Harman and Steve Wills declared interests as Ward Councillors for Castle Ward, which was adjacent to Northbrook Ward. Therefore, they worked closely with Councillor Sean McDonald on a number of issues.

JGCSC/3/19-20 Procedure for the Meeting

The committee were asked to approve the procedure for the meeting, a copy of which is attached to the signed copy of the minutes as item 3.

Resolved,

The Sub-Committee agreed the amended procedure for the meeting and confirmed that the hearing would be held in public.

JGCSC/4/19-20 Allegation of a Breach of the Code of Conduct by Cllr Sean McDonald

Cllr Sean McDonald requested that the hearing be dismissed on the basis that it would breach his Human Rights as follows:-

- Article 6 of the European Convention on Human Rights - Right to a fair trial;
- Article 10 of the European Convention on Human Rights - Right to freedom of expression and information.

Cllr McDonald argued that the investigators report stated that he was guilty and therefore the Sub-Committee couldn't consider it with an open mind. In addition, the advance disclosure of information requested by Cllr McDonald had been denied and Cllr McDonald stated that he could not afford legal representation at the hearing.

The Legal Adviser to the Sub-Committee (LA) advised that the meeting was not a trial. Members were being asked to determine whether Cllr McDonald had breached the code of conduct, which was more akin to a disciplinary hearing. The Investigating Officer (IO) had not made a determination. Cllr McDonald had seen the information before the Sub-Committee and the information requested by Cllr McDonald was not in the possession of the Council. Members were advised that the issuing of tickets wasn't the matter for consideration, the Sub-Committee was asked to consider whether Cllr McDonald had breached the Code of Conduct.

The Monitoring Officer (MO) advised that Worthing Borough Council had adopted its Constitution and Code of Conduct and Cllr McDonald had agreed to these processes. Cllr McDonald also had the right to Legal Representation. The MO clarified the roles of the LA and the IO. The MO advised that the IO had provided her personal opinion in the investigator's report 'I find....'. It was also noted that the MO opposed a request for an adjournment as it was not in the interests of justice or the public interest to defer the hearing.

The MO informed the Committee that the information requested by Cllr McDonald had been the names and addresses of the persons issued with tickets and the officer who had issued the tickets. The MO stated that neither were relevant and neither were in the possession of the Council. The NHS Parking Policy was not an issue for consideration either and Cllr McDonald's request had not been GDPR compliant and was therefore unlawful. The Sub-Committee noted that it was not within the MO's remit to adjourn the meeting.

The Chairman advised that it was up to the Sub-Committee to make a decision based on the evidence before it and this would be done by following the procedures as set out in the Code of Conduct and both Councils Constitutions.

The Chairman requested that the Sub-Committee determine whether the request to dismiss the hearing should be upheld by way of a show of hands. Members of the Sub-Committee voted unanimously against the hearing being dismissed.

Cllr McDonald then requested that the hearing be adjourned for a minimum of 28 days in order that:-

- the following information could be provided to Cllr McDonald:-
 - the Officers names who issued the tickets;
 - CCTV footage from the car park;
 - the addresses of all those issued with tickets which were subsequently cancelled;
 - details of the tickets issued over the past 12 months;
 - the dates / times when the surgery was used for an emergency;

- sufficient time for Cllr McDonald be provided to contact all those issued with a parking ticket.

Cllr McDonald argued that he would not receive a fair trial without this information.

The Sub-Committee was advised that the Council did not hold the information sought by Cllr McDonald and therefore, Officers were unable to provide it. In addition, Members were reminded that they were not being asked to consider the matter of issuing of tickets.

Members debated the request from Cllr McDonald and whether the information would assist with consideration of the correspondence.

The MO advised the Sub-Committee that the complainant was an employee of the NHS Trust. The Sub-Committee had no jurisdiction to require the parking contractor to attend and it would be unlawful for the MO to provide the information requested, even if she was in possession of it. The Sub-Committee was reminded that the complaint before it was that Cllr McDonald had breached the Code of Conduct by making unfounded allegations to the NHS and through the sending of emails that were intimidating in nature.

Cllr McDonald clarified that his emails had been sent to the Parking Enforcement Team, not to Mr Brown.

The MO advised Members that the complaint before it was about intimidating emails being sent by Cllr McDonald to NHS employees, not to Mr Brown.

The Chairman requested that the Sub-Committee determine whether the request to adjourn the hearing should be upheld by way of a show of hands. Members of the Sub-Committee voted unanimously against an adjournment.

The Chairman adjourned the meeting at 7.34pm.

The Meeting was reconvened at 7.35pm.

Cllr McDonald addressed the Sub-Committee, advising that he was going to leave as he did not believe he would receive a fair trial.

The Chairman of the Sub-Committee stated that Members had an open mind in relation to the matter before them but Cllr McDonald had the right to leave if he wished.

The MO proposed that the hearing continue in Cllr McDonald's absence as Members had determined not to adjourn the hearing.

The Chairman adjourned the meeting at 7.38pm in order for Members to consult the LA.

The meeting was reconvened at 7.53pm.

Before outlining the Council's case, the MO recommended that the evidence submitted by Cllr McDonald from Ann Findlay should not be considered as it was not relevant. The evidence focused on the issuing of the ticket rather than the correspondence after the event.

The Sub-Committee agreed that the evidence was in relation to the cause, not the correspondence that followed.

The MO Advised that the complaint received from Mr Brown was twofold:-

1. That Cllr McDonald had made unfounded allegations about NHS employees; and
2. That Cllr McDonald had sent emails to NHS employees that were intimidating in nature.

The MO then provided Members with a detailed timeline of events.

The MO advised that the remit of the Sub-Committee was not to review NHS parking policy or to review the conduct of the NHS or its employees but it was to determine whether Cllr McDonald had breached the Code of Conduct.

Members were referred to Appendix 1 and the provisions of the code. It was noted that Section 2 set out the Nolan Principles: Seven Principles of Public Life were applicable to all those who worked in public life. It was suggested that Selflessness, Integrity and Leadership were particularly important to this matter. In addition, Members were referred to section 4 of the Code of Conduct with the MO highlighting the relevance of paragraphs 4.2.1 (a) and 4.2.1 (b) to this matter.

The MO called the complainant, Mr Jason Brown, as her first witness, in accordance with stage 5 of the procedure for the hearing. The MO asked the complainant a number of questions to which Mr Brown replied.

The Sub-Committee asked Mr Brown a number of questions including:-

- Was the surgery used by staff or for clinics on a Sunday? - Mr Brown confirmed that there were clinics on a Sunday morning and the surgery was used by staff on a Sunday afternoon.
- Had the NHS had examples of people doing this on weekends previously? - Mr Brown advised that the NHS had not received any other complaints.
- Should CCTV evidence have been provided earlier? - The Chairman advised that it was not relevant to the case.
- Had there been any successful appeals due to signage? - Mr Brown advised that there had been no appeals due to the signage in the car park.
- Had there been any complaints from anyone else at all? - Mr Brown replied that no other complaints had been received.

The MO called the IO, Edwina Adefehinti, as her second witness, in accordance with stage 5 of the procedure for the hearing. The MO asked the IO a number of questions in relation to the investigator's report, which was attached as exempt appendix 3 to the report.

The Sub-Committee asked Ms Adefehinti a number of questions including:-

- Were the people ticketed members of the Worthing Symphony Orchestra or members of the public? - Ms Adefehinti confirmed that they were members of the public.
- Did Cllr McDonald say how he knew those who had been ticketed? - Ms Adefehinti replied that Cllr McDonald had said that he didn't know them personally but he was aware that one person knew him as a councillor, one as a trustee of the WSO and he was not sure in what capacity the third person knew him.

The Sub-Committee sought clarification as to whether it needed to consider and make a judgement on each alleged breach of the Code of Conduct. The LA advised that it was for the Sub-Committee to determine the principles identified and whether they have been breached or not.

In the absence of the subject member, the MO was provided with an opportunity for final comment in accordance with stage 14 of the procedure for the hearing.

The MO confirmed that there were several matters not in dispute. The only matter that was in dispute was the conduct of Cllr McDonald. Members were reminded that Article 12 of the constitution set out that the Sub-Committee must not take into account any irrelevant matters but must take into account all relevant matters. It was alleged that Cllr McDonald was acting on behalf of those attending the WSO event, rather than the wider public. It was also noted that nobody ticketed had appealed their tickets, however, the parking tickets had been cancelled following press coverage of this matter.

The Chairman adjourned the meeting at 8.43pm in order for Committee Members, the Independent Person and the Legal Adviser to the Committee, to retire and deliberate.

The meeting was reconvened at 9.32pm.

The views of the Independent Person, Simon Norris-Jones, were sought by the Chairman in accordance with stage 18 of the procedure for the hearing.

Mr Norris-Jones stated that he had been satisfied that Cllr McDonald was acting in an official capacity. He was also satisfied that Cllr McDonald's behaviour had been intimidating at times, showing a lack of respect and that he had made a number of unfounded allegations which demonstrated poor leadership.

Resolved,

That the Joint Governance Sub-Committee:-

1. Did find that Cllr McDonald was acting in his official capacity as a member of Worthing Borough Council. Members concluded that because Cllr McDonald had used his Worthing Borough Council email and the resources of Worthing Borough Council, the Sub-Committee did need to look at his behaviour in respect of the Code of Conduct. In addition, Cllr McDonald had presented himself as a Councillor in one of the emails.
2. Did not find that Cllr McDonald had failed to comply with paragraph 2.1 of the Code of Conduct. The Sub-Committee was satisfied that Cllr McDonald had been acting on behalf of the public.

3. Did not find that Cllr McDonald had failed to comply with paragraph 2.2 of the Code of Conduct. The Sub-Committee was satisfied that Cllr McDonald was not going to benefit from the parking tickets being waived and that there had been no financial benefit to the Worthing Symphony Orchestra.
4. Did find that Cllr McDonlad had failed to comply with paragraph 2.7 of the Code of Conduct and that his behaviour did not exemplify leadership. The Sub-Committee appreciated that Cllr McDonald had not approached the Worthing Herald and that they had approached him. Even so, Cllr McDonald did state in emails, a number of unfounded allegations that the NHS was targeting the vulnerable in society. As a result of Cllr McDonald's behaviour and non-compliance with NHS policy, the Sub-Committee found that he did not show leadership.
5. Did find that Cllr McDonald had not complied with paragraphs 4.2.1 (a) and 4.2.1 (b) of the Code of Conduct. The Sub-Committee found that Cllr McDonald had failed in regards to 4.2.1 (a) that Councillors were to treat others with respect and 4.2.1 (b) that Councillors were not to conduct themselves in a manner which was contrary to the Council's duty to promote and maintain high standards of conduct of Members.
6. Did find that Cllr McDonald had not complied with paragraph 4.2.2 of the Code of Conduct, when using the resources of Worthing Borough Council because he failed to act in accordance with the Council's reasonable requirements, procedures, policy and Constitution, including the requirements of the Council's Internet and Email Policy.
7. Did not find that Cllr McDonald used the Council's resources (email) to pursue a benefit / advantage for WSO, for which he was a trustee and was beyond the scope of what Cllr McDonald was authorised to use Council emails for.

In accordance with the procedure for the hearing, as the Sub-Committee had determined that there was a breach of the code of conduct, procedure stage 20 applied. Therefore, the legal adviser to the Sub-Committee outlined the possible sanctions that could be applied, as set out on page 34 of the report.

The Monitoring Officer also made a representation to the Sub-Committee relating to appropriate sanctions. She confirmed that the sanctions outlined on page 34 of the report were not an exhaustive list and that the Sub-Committee could determine a sanction as long as it was proportionate and lawful.

The Monitoring Officer stated that Cllr Sean McDonald should attend Code of Conduct training, apologise for his conduct and that a Censure be published.

The Sub-Committee sought clarification regarding what was meant by a Censure. The Monitoring Officer confirmed that a Censure was a public telling off which could be published on the front page of the Council's website for example.

The Independent Person raised concerns about imposing sanctions that Cllr McDonald could choose not to carry out. He believed that this was a serious matter and that formal publication of a Censure was important.

The Chairman adjourned the meeting at 9.55pm in order for Committee Members and the LA to the Committee to retire and deliberate appropriate sanctions in this case.

The meeting was reconvened at 10.06pm.

Resolved,

The Joint Governance Sub-Committee agreed the following sanctions:-

1. That Cllr Sean McDonald should be censured, to include findings of the Sub-Committee and the reasons for them;
2. Instructed the Monitoring Officer to arrange Code of Conduct training for Cllr Sean McDonald;
3. Recommended that the Worthing Conservative Group Leader provide Cllr Sean McDonald, with a Mentor;
4. That Cllr Sean McDonald should apologise for his unfounded allegations and his use of intimidating tactics.

The meeting was declared closed by the Chairman at 10.11pm, it having commenced at 6.30 pm

Chairman