

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

Town Hall, Worthing

16 January 2020

Councillor Robert Smytherman (Chairman)

Adur District Council:

David Balfe
Ann Bridges
Andy McGregor

Worthing Borough Council:

Steve Wills
Tim Wills

JGCSC/1019-20 Election of a Chairman

Resolved,

That the Joint Governance Sub-Committee appointed Councillor Bob Smytherman to be Chairman for the meeting.

JGCSC/1119-20 Declarations of Interest

There were no declarations of interest.

JGCSC/1219-20 Procedure for the meeting

The Sub-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.

Members debated a proposed amendment for an additional stage to be added to the procedure enabling the sub-committee to consider the definition of a word included in Cllr Evans (Subject Member) Facebook post.

The Monitoring Officer (MO) advised Members that their role was not to determine the meaning of a specific word included in Cllr Evans' Facebook post, but to determine whether Cllr Evans had breached the Code of Conduct.

The Legal Advisor (LA) advised that the Sub-Committee's role was to determine whether the entire post was disrespectful, not just specific words within the post. Ascertaining the definitions of words included in the post was not relevant.

Resolved,

The Sub-Committee agreed to an amendment to the procedure for the meeting, inserting an additional item, after item 16. The evidence had not provided a definition of the word 'tossler'. A number of meanings for the word were included in the dictionary and Members felt it was important that the Sub-Committee determined which definition was appropriate, in order to ascertain whether the code had been breached.

JGCSC/1319-20 Allegation of a Breach of the Code of Conduct by Councillor Emma Evans

Prior to outlining the complaint, the MO reminded Members of their obligations, the remit of the Sub-Committee and its role.

The Sub-Committee had been convened to determine an allegation, from a member of the public, that Cllr Evans had breached Adur District Council's Code of Conduct for elected members.

The role and obligations of the Sub-Committee were:-

- Section 27 of the Localism Act 2011, imposed a statutory duty on all Members, to promote and maintain high standards of conduct by Members of the authority;
- Article 12 - Decision Making, part of both Councils Constitutions, imposed the following duties on all Members when sitting on a committee to make decisions:
 - Members should pay proper regard to professional advice from the Councils Officers;
 - Members should pay proper regard to any consultation, views of the Independent Person in this case,
 - Members need to provide reasons for the decisions they make;
 - Members must take into account all relevant matters and not take into account any irrelevant considerations when making a decision;
 - Members must not contravene Wednesbury Reasonableness;

It was noted that if any of the above principles were not complied with, it could leave the Sub-Committee's decision open to challenge.

Members were also reminded of the Joint Governance Committee's Terms of Reference:-

- to promote a culture of openness, ready accountability and probity in order to ensure the highest standards of conduct of Councillors and Co-opted Members;
- to lead on all aspects of corporate governance, by creating a norm of the highest standards of personal conduct.

The MO advised the Sub-Committee that it's decision should be based upon the evidence presented at the meeting from both parties. Members of the sub-committee should not present their own evidence and it was essential that Members came to a decision with an open mind. It was not the role of the sub-committee to consider the conduct of Mr Patmore. Mr Patmore was a Parish Councillor but was acting as a member of the public when he posted on Facebook. He made no reference to being a Councillor

in his exchange with Cllr Evans and the MO was satisfied that he was acting in his capacity as a member of the public.

The MO outlined the alleged breach in accordance with stage 5 of the procedure for the hearing advising that the Sub-Committee had been convened to determine the allegation that Cllr Evans had breached the Code of Conduct.

It was noted that the code applied to all Members when they were acting in their capacity, or holding themselves out to be, or, giving the impression that they were acting in their capacity as a councillor.

The breaches, as alleged, were in relation to paragraphs 4.2.1(a) - to treat others with respect, and 4.2.1(b) - to not conduct themselves in a manner which is contrary to the Council' duty to promote and maintain high standards of conduct of Members.

Prior to the MO providing a summary of the complaint, the subject Member was asked whether she wished to acknowledge breaching the Members Code of Conduct.

Cllr Evans stated to the sub-committee that she did not believe that her post breached the Code of Conduct.

The MO presented evidence in relation to the complaint, as outlined in the report.

The MO called one witness, the Investigating Officer (IO), in accordance with stage 6(i) of the procedure for the hearing. The MO asked the IO a number of questions in relation to the contents of her report, to which the IO replied.

In accordance with stage 6(ii) of the procedure for the hearing, Cllr Evans asked the IO questions in relation to her investigation, to which the IO replied.

The LA advised the Sub-Committee that evidence from the Subject Member would be presented at stage 10 of the procedure.

There were no questions asked under stage 6(iii) and no other witnesses called under stage 7 of the procedure.

Cllr Evans asked the MO a question under stage 8 of the procedure to which the MO replied.

Under stage 9 a member of the Sub-Committee asked the MO whether anyone had asked Cllr Evans about the meaning of her Facebook post. The MO replied that Cllr Evans had not raised any queries about the meaning of the post or the disrespectful nature of it.

Cllr Evans sought to submit additional evidence to support her defence.

The LA advised that Cllr Evans had been written to, requesting that evidence be submitted in advance of the hearing. Therefore, Cllr Evans' request to submit further evidence at the hearing should be refused.

The Sub-Committee considered whether the additional evidence should be admissible. After some discussion, Cllr Evans agreed to withdraw the evidence.

Cllr Evans outlined her defence in accordance with stage 10 of the procedure, providing insight into Mr Patmore's behaviour on social media, suggesting that Mr Patmore's posts were politically motivated and vexatious in nature and that her use of the word 'tosser' was the same as calling someone unpleasant as per the dictionary definition. Cllr Evans maintained that her actions and use of the word in context did not constitute a breach of the Code of Conduct.

Cllr Evans called on 3 witnesses to provide evidence on her behalf, in accordance with stages 11 and 12 of the procedure for the hearing. They were:-

1. Cllr Neil Parkin
2. Cllr Joss Loader
3. Cllr Carol Albury

The Sub-Committee were advised that the submission from Cllr Parkin was not relevant in regards to whether there had been a breach of the Code of Conduct. It may however, be considered as mitigation in relation to possible sanctions should the Sub-Committee determine there had been a breach. The LA informed Members that their role was to determine whether Cllr Evans had breached the Code of Conduct. It was not in their remit to consider the conduct of the complainant.

Members discussed the relevance of Cllr Parkin's submission and agreed that it would only be considered as possible mitigation, should Cllr Evan's be found to have breached the Code of Conduct.

Cllr Loader was called as Cllr Evans' second witness and read her witness statement to the Sub-Committee. Cllr Evans, the MO and the Sub-Committee asked the witness questions to which Cllr Loader replied.

Cllr Carol Albury was called as Cllr Evans' third witness and read her witness statement to the Sub-Committee. Cllr Evans and the MO asked the witness questions to which Cllr Albury replied.

The Sub-Committee asked Cllr Albury whether her suggested definition of the word 'tosser' was relevant in this situation and was the likely interpretation of Cllr Evans' post. Cllr Albury replied that the context in which the word had been used was important and she felt that the post from Cllr Evans was open to interpretation.

The MO and the Sub-Committee asked the Subject Member questions in accordance with stages 13 and 14 of the procedure.

The MO asked what was in Cllr Evans' mind when using the word 'tosser'. Cllr Evans replied that she had meant that Mr Patmore was a thoroughly unpleasant, mischief making individual who was politically motivated and vexatious.

When asked by the MO *'if the situation arose again, would you give the same response'*, Cllr Evans replied that it would depend.

The MO was provided with an opportunity for final comment in accordance with stage 15 of the procedure for the hearing.

The MO stated that the Sub-Committee needed to make a determination as to whether the Code of Conduct had been breached. It was not necessary for the Sub-Committee to consider the definition of the word 'tosser', as it was the comment in its entirety that was intended to be disrespectful.

The Sub-Committee was reminded that Mr Patmore's conduct was not a relevant consideration in regards to whether there had been a breach of the code. His conduct may be considered as mitigation should a breach be determined.

Members were informed that Cllr Evans had an opportunity to resolve the matter informally and that time and costs had been incurred as a result of Cllr Evans' decision not to resolve the matter informally.

The Sub-Committee was asked how a reasonable member of the public would interpret the post. It was also suggested that there were other ways Cllr Evans could have chosen to respond, including:-

- ignoring Mr Patmore's comments
- providing a factual response
- providing a tempered response
- requesting the site's admin to remove Mr Patmore's posts

The MO suggested that ignoring Mr Patmore's comments may have been more prudent.

Cllr Evans was provided with an opportunity for final comment in accordance with stage 16 of the procedure for the hearing.

Cllr Evans stated that in her opinion respect was earned, not just handed out. Cllr Evans felt that providing a written apology to Mr Patmore would have vindicated his belief that he's correct in the way he goes about his business. Cllr Evans reiterated that she had already responded to Mr Patmore in the thread of posts regarding the legal requirement for dogs to be on leads and therefore this was simply mischief making.

Cllr Evans apologised to residents of Adur and Worthing that the politically motivated and vexatious complaint had wasted taxpayer's hard earned money. It could have been spent on vital public services which the Councils provide to them. Cllr Evans apologised to Members of the Joint Governance Sub-Committee for them having to sit through the hearing. Cllr Evans was also sorry that Mr Patmore's preoccupation with Facebook and Cllr Evans and his negativity on it, detracted from all the good work needed from him by his community. Cllr Evans also thanked her colleagues for their support.

The Sub-Committee had agreed under item 3 on the agenda, to give consideration to the definition of the word 'tosser', as it had been included in Cllr Evan's post.

The Sub-Committee received advice from the LA that Cllr Evans had already stated what she interpreted the word to mean.

The MO suggested that the definition of the word 'tosser' was not relevant and that the allegation related to the post in its entirety. It was not possible for the Sub-Committee to determine the public's interpretation, the Sub-Committee could only hear evidence from Cllr Evans in order to ascertain her intention and hear evidence from Mr Patmore to ascertain his interpretation. Furthermore, there wasn't a dispute over the definition, as Cllr Evans had already stated what she had intended her post to mean.

It was proposed and seconded that the Sub-Committee did not see a presentation from a Member of the Sub-Committee. This was lost on a vote 2 in favour, 3 against and 1 abstention.

A Member of the Sub-Committee presented their findings in relation to the definition of the word 'tosser' and provided examples of the word being used in various advertising campaigns.

The MO stated that the Member was submitting evidence to the Sub-Committee which was inadmissible and had not been shared prior to the meeting, and that the role of the sub-committee member was as a decision maker, not to present evidence. The MO reminded the Chairman that their role was to uphold and promote high standards of conduct. The evidence being presented was not relevant, was not upholding or promoting high standards of conduct by Members and potentially could affect the reputation of the Councils.

The Member stated that they did not believe that they were presenting evidence in relation to the breach but were simply trying to ascertain what appropriate meaning should be given to the word 'tosser'. The Member also stated that in no way had they predetermined the matter before the Sub-Committee.

The MO urged the Chairman to rule the evidence presented by the Member as inadmissible, saying it was not appropriate and was irrelevant as there was no dispute between the parties as to the meaning of the language used in the social media post.

The Chairman deemed the evidence inadmissible in view of the advice received.

The Chairman adjourned the meeting at 8.22pm in order for Committee Members, the Independent Person and the Legal Advisor to the Committee, to retire and deliberate.

The meeting was reconvened at 8.50pm.

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 the political parties in the case were unknown to him. He believed that the language used in the Facebook post was a big feature in proceedings, although dictionary definitions were not relevant, the context in which the word(s) had been used was.

Mr Norris-Jones was of the opinion that the word 'tosser' would not be used to mean unpleasant, or, for tossing things around. The term was used to be disrespectful and / or derogatory.

Mr Norris-Jones stated that although a lot had been said about Mr Patmore's behaviour, this was all irrelevant when considering whether there had been a breach of the Code of Conduct. The question was 'was it ok for a Councillor to act in this way'? Mr Norris-Jones stated that in his opinion, it was not acceptable for a Councillor to act in this way.

The sub-committee took a public vote on the alleged breach, as required under stage 19 of the procedure for the hearing.

Vote:- In Favour 6, Against 0, Abstentions 0

Resolved,

That the Joint Governance Sub-Committee:-

1. agreed that Cllr Evans had failed to comply with paragraphs 4.2.1(a) and 4.2.1(b) of the Code of Conduct. Cllr Evans' post had been disrespectful, and the language used should not have been used by a Councillor.

The LA outlined some of the possible sanctions available to the Sub-Committee, as set out in paragraph 14.5 of the report. It was noted that this was not an exhaustive list of sanctions and that any sanction imposed should be proportionate and reasonable to the matter.

The MO made no representations in relation to mitigation. As for aggravating factors, the MO pointed out that the matter could have been resolved informally and it was the subject member's decision not to go for informal resolution that had led to the hearing. The Mo highlighted that there were other courses of action available to the subject member, including ignoring Mr Patmore, and it was suggested that Cllr Evans had failed to choose the appropriate response. It was noted that Cllr Evans was a very experienced, long-standing, Executive Member who had not attended Code of Conduct training since 2010.

In view of the circumstances, the MO advised that appropriate sanctions in this case would be:

- to undertake Code of Conduct training;
- to make a public apology;
- a censure, published for 28 days, outlining the Sub-Committee's decision and the reasons for it.

Cllr Evans addressed the Sub-Committee in accordance with stage 23 of the procedure. She agreed that training and a censure were appropriate but stated that an apology would not be forthcoming because Mr Patmore continued to be unpleasant to colleagues and Cllr Evans.

Cllr Parkin, Leader of Adur District Council, provided a witness statement on behalf of Cllr Evans.

The Chairman adjourned the meeting at 9.04pm in order for Committee Members, the Independent Person and the LA for the Committee to retire and consider appropriate sanctions.

The meeting was reconvened at 9.20pm.

Resolved,

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

1. That Cllr Emma Evans should be censured, to include the findings of the Sub-Committee and the reasons for them;

2. Instructed the Monitoring Officer to arrange training for Cllr Emma Evans;
3. That it was recommended that Cllr Emma Evans apologise, as was normal in these circumstances. However, having heard the mitigation and circumstances, the Sub-Committee was not going to insist upon it.

The meeting was declared closed by the Chairman at 9.22 pm, it having commenced at 6.30 pm

Chairman