



ADUR & WORTHING
COUNCILS

Joint Governance Sub-Committee
4th November 2019
Agenda Item 4

Ward(s) Affected: All

Allegation of a Breach of the Code of Conduct by Cllr Catherine Arnold

Report by the Monitoring Officer

Executive Summary

1. Purpose

- 1.1. To hear and determine a complaint by Cllr Stephen Chipp (the Complainant) about the conduct of Councillor Catherine Arnold (the Subject Member), which it is alleged was in breach of the Adur District Council Code of Conduct for Members.
- 1.2. Having heard and determined the matter, to either dismiss the complaint if no breach is found by the Sub-Committee, or if a breach is upheld, to hear any representations as to mitigation and consider any further action that should be taken, or sanction imposed, upon the Subject Member.

2. Recommendations

- 2.1. The Joint Governance Sub-Committee is recommended to determine the complaint that Cllr Arnold has breached the Adur District Council Code of Conduct and resolve either that a breach is proven or not proven.

2.2. Should the Joint Governance Sub-Committee determine that Cllr Arnold has breached the Adur District Council Code of Conduct, they are recommended to determine any further action that should be taken, including any sanction to be imposed.

3. Context

3.1 Adur District Council has a Code of Conduct for Members, in compliance with its statutory obligations. The Code of Conduct was adopted on 1st May 2015 and is reproduced at Appendix 1 to this report.

3.2 The Code of Conduct is engaged and applies to all Members of Adur District Council when they are conducting the business of Adur District Council, acting in their official capacity as a Member of Adur District Council or acting, claiming to act, or giving the impression they are acting as a representative of the Council.

3.3 Relevant provisions of the Code include the following:

A Member must:

4.2.1 (d) Not disclose the information given to them in confidence by anyone, or information acquired by them which they believe, or ought reasonably to be aware, is of a confidential nature, except where:

- (i) they have the consent of a person authorised to give it;
- (ii) they are required to do so by law;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
- (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 Council; and

(cc) they have consulted with the Monitoring Officer prior to its release.

- 3.4 On 3rd April 2019 the Council's Monitoring Officer (MO), received a formal complaint from Cllr Stephen Chipp (the Complainant), an Adur District Councillor and Chairman of the Joint Overview and Scrutiny Committee, alleging that Cllr Arnold (the Subject Member) had breached the Adur District Council Code of Conduct for Members.

In summary, Cllr Chipp's complaint was that Cllr Arnold improperly disclosed confidential information that was circulated to all members of the Joint Overview and Scrutiny Committee by Mark Lowe, the Council's Scrutiny and Risk Officer on 21 March 2019.

- 3.5 The MO carried out an initial assessment of the complaint in accordance with the Council's Standards Procedure Rules, which are produced at Appendix 2 to this report. She considered whether Cllr Arnold was acting in her capacity as a Councillor at the time of the alleged misconduct, or giving the impression or holding herself out as so acting. She found that she was and therefore the Code was engaged at the material time. The MO further considered whether, if proven, the conduct would amount to a breach of the Code and found that it would. The MO determined the assessment stage by referring the complaint for an investigation, as she considered this was appropriate in all the circumstances.

In reaching this determination, consultation took place with Mr Simon Norris-Jones, the Council's Independent Person, who agreed with the determination.

- 3.6 The MO appointed Mr Alex Oram of ch&i associates as Investigating Officer, to undertake an investigation into the complaint, and to produce an Investigator's report summarising his findings and making recommendations. The Investigator's report is produced at Appendix 3 to this report.

Email correspondence between Mark Lowe and the Subject Member, between the Chief Executive and the Subject Member, and between the Complainant and the Monitoring Officer, can be found at Appendix 4 to this report, together with other relevant documentation.

- 3.7 Cllr Arnold, the Subject Member, has not submitted witness statements.

4. Issues for Consideration

- 4.1 The Sub-Committee is required to hear the evidence (both verbal at the hearing and written evidence submitted in advance from both the Subject Member (and/or his representative) and the Monitoring Officer, and any witnesses that may be called by either party.

If the Subject Member were to admit the breach of the Code of Conduct to the Sub-Committee, they may consider that this would negate the need to hear the evidence and the Committee may wish to move straight to considering mitigation and potential sanctions.

- 4.2 The Sub-Committee is required to determine whether the allegation of breach of the Code by Cllr Arnold is proven, or not, on the balance of probability.
- 4.3 Should the Sub-Committee determine that the complaint of breach of the Code of Conduct by Cllr Arnold is not proven, they are required to dismiss the complaint.
- 4.4 Should the Sub-Committee determine that Cllr Arnold has breached the Code of Conduct, they are required to determine whether any action in relation to the breach should be taken, and if appropriate, determine any sanctions that should be imposed upon the Subject Member.
- 4.5 Any sanctions imposed must be reasonable and proportionate to the circumstances of the matter. Action that could be taken or sanctions that could be imposed by the Sub-Committee, should they find a breach of the Code of Conduct, include:-

- Determining to take no action
- Censure or issuing a formal reprimand
- Publication of the Decision
- Recommendation by the Joint Governance Sub-Committee to the Group Leader or the Council that the Subject Member be removed from a Committee
- Recommendation by the Joint Governance Sub-Committee to the Group Leader or the Council that the Subject Member be removed from an outside body appointment
- Withdrawal of facilities
- Recommendation that the Subject Member provide a formal written apology.

- Recommendation that the Subject Member undertake training.

5. Engagement and Communication

- 5.1 Consultation has taken place with the Council's Independent Person at the assessment stage of the complaint.
- 5.2 The Joint Governance Sub-Committee are further required to seek, and take account of, the views of the Independent Person in making their determination of this complaint.

6. Financial Implications

- 6.1 There are no specific financial implications arising out of the recommendations in this report.

7. Legal Implications

- 7.1 The Localism Act 2011 introduced new processes for maintaining good standards of conduct and ethics in local government.
- 7.2 Section 27 Localism Act 2011 places local authorities under a duty to promote and maintain high standards of conduct.
- 7.3 Section 27 Localism Act 2011 requires local authorities to adopt a Code of Conduct. Adur District Council has adopted a Code of Conduct which forms part of its Constitution and is reproduced as Appendix 1 to this report.
- 7.3 Section 28 Localism Act 2011 requires that local authorities have in place arrangements for investigating allegations of breaches of the Code. Adur & Worthing Councils have adopted Standards Procedure Rules which govern the procedure for investigating such allegations; they form part of each Council's Constitution and are attached as Appendix 2 to this report.
- 7.4 Section 28 (7) provides that a local authority's arrangements must include the appointment of at least one Independent Person whose views must be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate. The Joint Governance

Sub-Committee is therefore statutorily obliged to take account of the views of the Independent Person present at the hearing.

- 7.5 The Local Authorities (Executive Arrangements)(Meeting and Access to Information)(England) Regulations 2012 provide some circumstances where information may be deemed to be exempt, and therefore potentially not disclosed to the public, subject to the public interest test. Consequently, some information in the appendices to the report may have been redacted where it contains exempt information, which is not material nor relevant to the Committee's decision.

Background Papers

- Adur District Council Constitution
- Localism Act 2011

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Sustainability & Risk Assessment

1. Economic

Matter considered and no issues identified.

2. Social

2.1 Social Value

Matter considered and no issues identified.

2.2 Equality Issues

Matter considered and no issues identified.

2.3 Community Safety Issues (Section 17)

Matter considered and no issues identified.

2.4 Human Rights Issues

The Subject Member has the right to a fair hearing before the Standards Sub-Committee. The hearing will be conducted in accordance with the principles of natural justice.

3. Environmental

Matter considered and no issues identified.

4. Governance

The meeting of the Sub-Committee of the Joint Governance Committee will be held in accordance with the Councils' constitutional and governance arrangements.