



ADUR & WORTHING
COUNCILS

Joint Governance Sub-Committee
20 August 2019
Agenda Item 4

Ward(s) Affected: n/a

Allegation of a Breach of the Code of Conduct by Cllr Sean McDonald

Report by the Monitoring Officer

Executive Summary

1. Purpose

To hear and determine a complaint by Mr Jason Brown (the Complainant) about the conduct of Councillor Sean McDonald, which it is alleged was in breach of the Worthing Borough Council Code of Conduct for Members.

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 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 McDonald has breached the Worthing Borough 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 McDonald has breached the Worthing Borough 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 Worthing Borough 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 Elected Members of Worthing Borough Council when they are conducting the business of Worthing Borough Council, acting in their official capacity as a Member of Worthing Borough 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:
- 2.1 Selflessness: Holders of public office should act solely in terms of the public interest.
 - 2.2 Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their duties.
 - 2.7 Leadership: Holders of public office should promote and support these principles by leadership and example.
 - 4.2.1 (a) a Member must treat others with respect.
 - 4.2.1 (b) a Member must not conduct themselves in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct of Members.
- 3.4 On 25 January 2019 the Council's Monitoring Officer (MO), received a formal complaint from Mr Jason Brown (the Complainant), an employee of the Sussex Community NHS Foundation Trust, alleging that Cllr McDonald (the Subject Member) had breached the Worthing Borough Council Code of Conduct for Members.

In summary, Mr Brown's complaint was that Cllr McDonald had made unfounded allegations and sent emails that were intimidating in nature in relation to parking issues that occurred on an NHS Site in Worthing.

- 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 McDonald was acting in his capacity as a Councillor at the time of the alleged misconduct, or giving the impression or holding himself out as so acting. She found that he 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 determining 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 Edwina Adefehinti as Investigating Officer, to undertake an investigation into the complaint, and to produce an Investigator's report summarising her findings and making recommendations. The Investigator's report is produced at Appendix 3 to this report.
- 3.7 Cllr McDonald, the Subject Member, has submitted a witness statement from Ann Findlay, which is attached as appendix 4 to this report.

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.
- 4.2 The Sub-Committee is required to determine whether the allegation of breach of the Code by Cllr McDonald 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 McDonald is not proven, they are required to dismiss the complaint.
- 4.4 Should the Sub-Committee determine that Cllr McDonald 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.

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 is 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. Worthing Borough 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

- Worthing Borough 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

Issues relating to equalities, including parking for disabled persons, are addressed within the report.

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.