

Supplemental Item for Governance Committee

Tuesday 19 November 2024 at 6.30pm
in the Council Chamber Council Offices
Market Street Newbury

Part I

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| 2 | Minutes
To approve as a correct record the Minutes of the meetings of this Committee held on 29 August 2024 (to follow) and 1 October 2024. | 1 - 8 |
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Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

GOVERNANCE COMMITTEE

MINUTES OF THE MEETING HELD ON THURSDAY 29 AUGUST 2024

Councillors Present: Howard Woollaston (Vice-Chairman), Dominic Boeck, Jeremy Cottam, Billy Drummond, Owen Jeffery, David Marsh, Christopher Read and Janine Lewis (Substitute) (In place of Erik Pattenden)

Also Present: David Southgate (Parish Council Representative), Stephen Chard (Democratic Services Manager), Sam Chiverton (Apprentice Democratic Services Officer) and Nicola Thomas (Service Lead – Legal and Democratic Services)

Apologies for inability to attend the meeting: Councillor Erik Pattenden and Councillor Laura Coyle

PART I

1 Declarations of Interest

NDC0623

All Councillors declared an interest in the agenda item as the Subject Member was known to them as a fellow West Berkshire Councillor.

The Complainant was also known to many of the Members of this Committee being a former West Berkshire Councillor.

Councillor Howard Woollaston declared that he had been part of the WhatsApp group referenced in this complaint. He had therefore discussed his involvement with the Monitoring Officer and was advised there was no issue with him chairing and participating in the meeting.

As these interests were a personal or an other registrable interest, but not a disclosable pecuniary interest, Members determined to remain to take part in the debate and vote on the matter.

NDC0124

All Councillors declared an interest in the agenda item as the Complainant and Subject Member were known to them as fellow West Berkshire Councillors.

Councillor Woollaston declared that he had received the e-mails referenced in this complaint that had been sent by Councillor Tony Vickers. He had therefore discussed his involvement with the Monitoring Officer and was advised there was no issue with him chairing and participating in the meeting.

As these interests were a personal or an other registrable interest, but not a disclosable pecuniary interest, Members determined to remain to take part in the debate and vote on the matter.

2 NDC0623

The Committee considered a report (Agenda Item 3) concerning a complaint regarding an alleged breach of the West Berkshire Council (WBC) Code of Conduct.

The Committee was required to determine whether a breach of the Code had occurred after considering the Investigator's report about a complaint received from the then Councillor Steve Masters (Complainant) in respect of Councillor Ross Mackinnon (Subject Member) from WBC submitted on 23 March 2023.

Should the Committee determine that a breach of the Code had occurred they would need to determine an appropriate sanction.

The query was raised as to whether the press and public should be excluded from this agenda item.

The Deputy Monitoring Officer, Nicola Thomas, advised that although the complaint documentation was already in the public domain, Members could still opt to exclude the press and public. However, in light of the information being publicly available, she did not feel there was any reason on which the item needed to be debated in private.

Members agreed that the item be debated in public.

Presentation from Independent Investigator

The Independent Investigator, Mr Richard Lingard, presented his report and highlighted the following points:

- A primary consideration for Mr Lingard was whether Councillor Mackinnon was bound by the WBC Code of Conduct at the time of the posts and Mr Lingard considered that he was.
- Councillor Mackinnon's interpretation of the Code was contained within paragraph 7.1 of Mr Lingard's report in which he questioned whether he was indeed bound by the Code. Mr Lingard remained of the view that he was. At the time, Councillor Mackinnon was a high profile serving Councillor, standing for re-election, and the comments (which were not disputed by Councillor Mackinnon) related to a fellow serving Councillor who was also standing for re-election. The WhatsApp group was formed by other Councillors and prospective candidates. A WBC officer was also part of this group which provided a further link to the Code.
- That the comments were intended to be private did not, in Mr Lingard's view, absolve Councillor Mackinnon.
- Mr Lingard felt that the language used in the posts was disgraceful and unprofessional. He added the view that the matter should not have resulted in an investigation. An apology should have been provided by the Subject Member to the Complainant, but this had not been provided.

Questions of the Independent Investigator

Mr Lingard made the following points in response to questions from Committee Members:

- Mr Lingard felt it unlikely that a private conversation between colleagues in a public house would be subject to the Code of Conduct. In his view the WhatsApp 'conversation' was different as the group was formed by serving Councillors and candidates, with political discussions held.
- Mr Lingard considered there was no difference between comments being made either verbally or in writing.

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- Concerns had been raised by participants of the WhatsApp group and the posts were made public as a result of those concerns. Mr Lingard interviewed those individuals who had chosen to remain anonymous. The concerns were in relation to the 'choosing violence' comments and this led to the involvement of the Police.
- Mr Lingard acknowledged that evidence given anonymously had less probative value but he believed that there was genuine concern for some individuals on the WhatsApp group.

Mr Masters had no questions to ask of Mr Lingard.

Mr Lingard made the following points in response to questions from Councillor Mackinnon:

- He did not disagree with Councillor Mackinnon's interpretation based on the strict definitions of when a Councillor was considered to be bound by the Code. However, Mr Lingard stated the view that this definition and interpretation did not go far enough and it was necessary to look beyond these points in this case.
- Councillor Mackinnon raised concerns that his discussions with Mr Lingard had not included the reference to 'choosing violence' but this was detailed in the report. In response to that, Mr Lingard explained that he viewed the need for discussions on this point as unnecessary as Councillor Mackinnon had given comprehensive input on this element of the complaint at an earlier stage of the process.

Complainant presentation:

Mr Masters made the following points:

- He commended the clear and comprehensive report.
- Returning to the point about conversations in a public house, Mr Masters felt that a conversation being overheard in relation to violence would be of concern, in particular if a WBC officer was present in that discussion.
- Mr Masters felt the matter of violence to be the greater concern rather than him being referred to as a 'poisonous toad'.
- There was not a clear awareness of the candidates on the WhatsApp group and their background. Individuals could be radicalised and could become a threat. The references to choosing violence and joking about it were of such concern to a member of the group that they went to the Police. The Police then made him aware of this report.
- Mr Masters felt the content of the posts had been leaked in the public interest due to the genuine concerns felt.

Councillor Carolyne Culver, speaking on behalf of the Complainant, made the following points:

- Conservative Councillors at the time took the matter to the Police.
- The Covid Inquiry had stated that WhatsApp messages were relevant and this was particularly the case with this matter when considering that a WBC officer was on the WhatsApp group.
- There was the risk of radicalisation. A group member had asked if they needed to be more violent.
- The references to 'choosing violence' were of great concern and was a matter to be taken very seriously. It was sadly the case that Members of Parliament had been murdered.

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Questions of the Complainant/Complainant's Witness:

The following points were made in response to questions from the Committee:

- Councillor Culver was not aware of the rigorous selection process of Conservative candidates described by Councillor Dominic Boeck. This did not however alleviate her concerns.
- Mr Masters clarified that the Newbury Weekly News article on this matter (dated March 2024) came as a result of a statement issued by the Green Party Leader at the time following the disclosure to and contact with the Police.

The Chairman permitted a question to be asked through himself by the Subject Member on whether there was an awareness of the prevalence of the term 'choosing violence' on social media.

In turn, Councillor Culver asked Committee Members for their views on whether they felt this term meant actual violence or was a social media term.

Councillor Owen Jeffery felt that the term meant actual violence and believed that same view would be held by many people.

Councillor Mackinnon stated his view that this was a popular and widely used phrase on social media taken from the television programme Game of Thrones. He made clear there was no condoning of actual violence on the private WhatsApp group.

Mr Lingard highlighted paragraph 10.7 of his report in order to assist Committee Members when they came to debate the matter. This contained his conclusion on the use of the term 'choosing violence'.

Subject Member Presentation:

Councillor Mackinnon made the following points:

- He did not believe he was acting in his capacity as a Councillor when commenting on the private WhatsApp group. Doing so did not meet any of the Code of Conduct definitions of acting as a Councillor. Councillor Mackinnon was concerned that considerations on this matter went beyond the definitions in the Code.
- However, if he was considered to be acting in his capacity as a Councillor then he restated that the term 'choosing violence' was a widely used social media phrase. This was understood by others on the WhatsApp group. Councillor Mackinnon clarified that he would not use that term in public but this was made on a private group chat and he had assumed it would remain private.
- Councillor Mackinnon referred to relatively recent WBC caselaw following a complaint made about the statement made by one serving Councillor to another in which bad language was used. The complaint did not however come to this Committee and there was some protection afforded under freedom of speech.
- He accepted that not everyone would understand that choosing violence was a social media term, but he restating that the use of the term was only intended for the private WhatsApp group.

Questions of the Subject Member:

Councillor Mackinnon made the following points in response to questions from the Committee:

- He felt that the phrase 'choosing violence' was widely used and a moderately frequent user of social media would be aware of it. However, Councillor Mackinnon accepted that not all members of the public would be and with hindsight he would not have used that phrase.

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- Councillor Mackinnon reiterated that he was not meaning actual violence and this was not something he would joke about.
- He confirmed that the matter had been reported to the Police by an individual on the WhatsApp group but the Police involvement was minimal and it was not taken forward.
- Councillor Mackinnon regretted that he had not issued an apology at an earlier stage and with the benefit of hindsight would have done so. He had however been reluctant to do so as he did not feel he had done anything wrong, being clear on the meaning of his words on the WhatsApp group.
- Councillor Mackinnon had not taken legal advice in his dealings with this process.

(The meeting was adjourned at 6.55pm to consider if a breach had occurred. The meeting reconvened at 8.00pm.)

Councillor Howard Woollaston confirmed that after careful consideration of both the written evidence submitted and the oral evidence given at the hearing, the Committee found that, in respect of the complaint made by Mr Steve Masters (formerly Councillor Masters of West Berkshire Council) on 23 March 2023, Councillor Ross Mackinnon had breached WBC's Code of Conduct.

In reaching that decision, the Committee resolved that:

- They concurred with the Investigator's findings that Councillor Mackinnon breached paragraph 4.1(a) of the Council's Code of Conduct:

'4.1 Councillors and Co-Opted Members must:

(a) Treat councillors, co-opted members, officers, members of the public and service providers with courtesy and respect.'

- They concurred with the Investigator's findings that Councillor Mackinnon breached paragraph 4.2(f) of the Council's Code of Conduct:

'4.2 Councillors and Co-Opted Members must not:

(f) Conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.'

(The meeting was adjourned at 8.02pm to consider the sanctions to be applied. The meeting reconvened at 8.12pm.)

Councillor Woollaston confirmed that, in his capacity as Vice-Chairman of the Governance Committee, he would send a formal letter to Councillor Mackinnon indicating that Councillor Mackinnon had failed to comply with West Berkshire Council's Code of Conduct (Paragraph 4.1(a) and Paragraph 4.2(f)).

In addition, Councillor Mackinnon would be asked to apologise to Mr Masters in writing for the insult he had aimed at him and the reference made to 'choosing violence' in relation to him.

3 NDC0124

The Committee considered a report (Agenda Item 4) concerning a complaint regarding an alleged breach of the West Berkshire Council Code of Conduct.

The Committee was required to determine whether a breach of the Code had occurred after considering the Investigator's report about a complaint received from Councillor Tony Vickers (Complainant) in respect of Councillor Ross Mackinnon (Subject Member) of West Berkshire Council (WBC) submitted on 25 January 2024.

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Should the Committee determine that a breach of the Code had occurred they would need to determine an appropriate sanction.

Presentation from Independent Investigator

The Independent Investigator, Mr Richard Lingard, presented his report and highlighted the following points:

- The information shared by the Complainant had not been intended to be viewed by the Opposition party and was sent to them in error.
- The Subject Member agreed to delete the e-mail on the first occasion it was sent, doing, in the Complainant's words, 'the decent thing'. The Subject Member did not however do so on the second occasion when being aware it was not meant for him.
- Mr Lingard did not agree there was public interest in disclosing the information and was done for political gain.
- Mr Lingard felt the WBC Code of Conduct had been breached as a result of the disclosure of confidential information.

Questions of the Independent Investigator

Mr Lingard made the following points in response to questions from Committee Members:

- He had produced his report and formed his views based on the information he had available to him at the time of the investigation. However, the determination rested with the Committee who could form a different view if, for example, they considered that the matter had become in the public interest.
- Mr Lingard drew Members' attention to the definition of confidentiality in paragraph 5.9 of his report. This included 'information confided should not be used or disclosed further, except as originally understood by the confider'. The mistaken sharing of the information should not have resulted in it being taken advantage of.
- The fact that the information had been shared on two occasions did not make it any more acceptable to release it publicly.

Mr Lingard made the following points in response to questions from the Complainant:

- He accepted the point that Councillor Vickers had believed the e-mail group to have been corrected and the fact that it was not was due to a system error. Mr Lingard did however feel that Councillor Vickers could have exercised more caution when resending the e-mail.

Mr Lingard made the following points in response to questions from the Subject Member:

- He felt that Councillor Mackinnon was aware that the information shared should have been considered as confidential, having used the words '*I'm sure you didn't intend to send it to us*' when the e-mail was sent on the first occasion.
- In reference to the second occasion, Councillor Mackinnon had made the point during the investigation that '*it gave the Conservatives a very good insight into the internal thinking of the Lib Dems*'.
- In terms of the definition of confidentiality, Mr Lingard did not consider the definition used in the Constitution, rather statutory provisions and common law.

Complainant presentation:

Councillor Jeff Brooks, speaking as the witness for the Complainant, made the following points:

- He put to Mr Lingard that it was the system which had let down Councillor Vickers and it was not carelessness that had led to the e-mail being sent to the wrong

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recipients, particularly when an assurance had been given that the e-mail group had been updated. Members should be able to rely on the Council's IT systems.

Mr Lingard was aware and agreed this was an unfortunate set of circumstances and Councillor Vickers was not at fault. He made clear that the matter before the Committee was the conduct of Councillor Mackinnon.

Committee Members did not ask questions of the Complainant.

Subject Member presentation:

Councillor Mackinnon made the following points:

- He reiterated that when he received the e-mail on the first occasion, he deleted it and informed Councillor Vickers of the fact, although it would have been politically useful.
- He did not delete the second e-mail, but neither did he use it or plan to use it. This changed when it became apparent to Councillor Mackinnon that the approach of the Administration appeared to conflict with the points that Councillor Vickers had made in his e-mails. Councillor Mackinnon therefore considered it to be in the public interest, at the same time as accepting that the information was advantageous to the Conservative Group and disadvantageous to the Liberal Democrats.
- Councillor Mackinnon stated the e-mail contained no personal information or information relating to a business. He therefore questioned, and felt there was a greater need for clarity on, what was considered confidential.

Questions of the Subject Member:

Councillor Mackinnon made the following points in response to questions from Committee Members:

- He understood, from the first e-mail, that Councillor Vickers had used an out of date e-mail group and made him aware of that.
- On the second occasion, he did not inform Councillor Vickers, but took no action until the time referenced in his presentation. Councillor Mackinnon did not believe it fell to him to give Councillor Vickers notice on a second occasion.

(The meeting was adjourned at 6.55pm to consider if a breach had occurred. The meeting reconvened at 8.00pm.)

Councillor Howard Woollaston confirmed that after careful consideration of both the written evidence submitted and the oral evidence given at the hearing, the Committee found that, in respect of the complaint made by Councillor Tony Vickers on 25 January 2024, Councillor Ross Mackinnon had breached WBC's Code of Conduct.

In reaching that decision, the Committee resolved that they concurred with the Investigator's finding that Councillor Mackinnon breached paragraph 4.2(c) of the Council's Code of Conduct:

4.2 Councillors and Co-Opted Members must not:

(c) Disclose information given to them in confidence or information acquired by them which they believe or are 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;
- (iv) the disclosure is reasonable and in the public interest;

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(v) the disclosure is made in good faith and in compliance with the reasonable requirements of the Council or its professional advisers.

(The meeting was adjourned at 8.02pm to consider the sanctions to be applied. The meeting reconvened at 8.12pm.)

Councillor Woollaston confirmed that, in his capacity as Vice-Chairman of the Governance Committee, he would send a formal letter to Councillor Mackinnon indicating that Councillor Mackinnon had failed to comply with West Berkshire Council's Code of Conduct (Paragraph 4.2(c)).

(The meeting commenced at 5.30pm and closed at 8.14pm)

CHAIRMAN

Date of Signature