
Complaint: NDC0124

Committee considering report: Special Governance Committee

Date of Committee: 29 August 2024

Purpose of the Report

To consider the Investigator's report about a complaint received from Councillor Tony Vickers (*complainant*) in respect of Councillor Ross Mackinnon (*Subject Member*) from West Berkshire District submitted on 2 January 2024.

Recommendations

The Committee is asked to:

- a) consider if they agree with the outcome of the Advisory Panel that took place on 25 June 2024;
- b) identify any disputed facts;
- c) identify any aspects of the report that require further clarification;
- d) agree on a suitable sanction if they agree that a breach of the Code of Conduct has occurred.

Paragraphs of the Code of Conduct that the complaint might relate to:

Failure to adhere to the following Nolan Principles:

- Honesty and Integrity
- Leadership

General Obligations:

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

1 Monitoring Officer's Report

Introduction

- 1.1 A complaint dated 2 January 2024 was received from Councillor Tony Vickers (Complainant), concerning an alleged breach of the Code of Conduct by Councillor Ross Mackinnon (Subject Member). Councillor Vickers is a Liberal Democrat Councillor representing the ward of Hungerford and Kintbury, and was the Portfolio Holder for Planning and Community Engagement at the time of the complaint. He is presently the Vice-Chairman of the Council. Councillor Mackinnon is a Conservative Councillor representing the ward of Bradfield and is currently the Leader of the Opposition and Shadow Portfolio Holder for Strategy and Communications, Finance, Corporate Services, Regeneration, Growth and Strategy Development.
- 1.2 The complaint was considered by the Assessment Sub-Committee of West Berkshire Council's Governance Committee on 25 January 2024 where, taking account of the views of the Independent Person, the Deputy Monitoring Officer determined that the matter be dealt with via an informal resolution, namely that the Subject Member provide a public apology to the Complainant at a meeting of Council and in writing. However, should the apology not be forthcoming then the matter would be investigated fully by an independent investigator.
- 1.3 The apology was not provided and therefore the complaint has been investigated by an independent investigator.

- 1.4 Mr Richard Lingard was appointed to investigate the matter on behalf of West Berkshire Council.

2 Procedure

- 2.1 In considering the complaint, Mr Richard Lingard sets out in his report (Appendix A) that he considered the complaint, the Subject Member's response, and the YouTube link for the recording of the Council meeting that took place on 19 December 2023.
- 2.2 In addition, Mr Lingard interviewed both the Complainant (on 13 March 2024) and Subject Member (on 19 April 2024) via Zoom.
- 2.3 Mr Lingard had available to him West Berkshire Council Code of Conduct for Members.

3 Outcome of independent investigation

- 3.1 In considering the Code of Conduct paragraph 4.2 (c), the independent person found that there was evidence of a breach by virtue of Councillor Mackinnon's disclosure of confidential information.

4 Advisory Panel

- 4.1 The Advisory Panel considered the complaint and the independent assessment. In addition, they benefited from the Investigator's attendance to clarify any points in the assessment and ask questions.
- 4.2 The Advisory Panel concurred with the findings of the independent investigator and therefore referred the matter to the Governance Committee in line with the Constitution.
- 4.3 The Advisory Panel did not form a view on a suitable sanction should the Governance Committee concur with the findings that a breach of the Code of Conduct had occurred.
- 4.4 The Advisory Panel recommended that the following people be invited to attend the Special Governance Committee:
 - (a) Investigator (Mr Richard Lingard)
 - (b) Complainant
 - (c) Subject Member
 - (d) Monitoring Officer

5 Order of Business for Governance Committee

- 5.1 The Governance Committee must consider the information provided as part of the standards complaint that includes:
 - a) The original complaint
 - b) The Subject Member's response

- c) Independent Assessment by Mr Richard Lingard
 - d) Responses from the Complainant and the Subject Member
 - e) Minutes of the Advisory Panel and the recommendation
- 5.2 There is an opportunity for the Complainant or their representative to raise any issue in the Independent Report that they have disputed in their written submission, and they may wish to introduce witnesses on these points.
- 5.3 The Subject Member may make a presentation and they may only raise issues in the report that they have disputed in their written submission.
- 5.4 It will be for the Governance Committee to consider the evidence and representations and shall then make a final determination on the matter.

6 Outcome

- 6.1 Should the Governance Committee determine there is no breach then there will be no further action and the matter will be closed.
- 6.2 Should the Governance Committee determine that there is a breach of the Code of Conduct, then they must consider the sanctions available:
- a) Formal letter from the standards Committee
 - b) Remove from Committee via Group Leader
 - c) Formal censure via motion to Council
 - d) Press release
 - e) Local Resolution

Appendices

Appendix A – West Berkshire Council’s Code of Conduct

Appendix B – Complaint and associated paperwork

Appendix C – Response to complaint by the Subject Member

Appendix D – Initial Assessment Notice

Appendix E – Investigator’s Report (which includes comments from the Complainant and Subject Member on the report)

Appendix F – Advisory Panel Decision Notice

Appendix G – Sanctions which can be applied