

## South Hams District Council

### Decision Notice Formal Assessment

<b>Reference Number:</b>	
<b>Complainant:</b>	Councillor C Pannell Councillor R Rafiqi Mrs K Griffiths
<b>Councillor(s):</b>	Councillor L Granados
<b>Council:</b>	South Brent Parish Council
<b>Monitoring Officer:</b>	David Fairbairn
<b>Assessment carried out by:</b>	Simon Mansell
<b>Independent Person:</b>	
<b>Confidentiality requested?</b>	No

#### 1. Documents and information considered:

- The complaint from the Complainants as received, together with supporting documentation
- The response from the Subject Member and supporting documentation
- South Hams' District Council's 'Dealing with Standards Complaints' procedure
- The views of the Independent Person

#### 2. Summary of complaint

The Complainants are of the view that through her actions the Subject Member has breached the Code of Conduct for South Brent Parish Council.

#### 3. Outcomes:

(Please refer to the Criteria in the 'Dealing with Complaints' Procedure):

- To take No Further Action (in accordance with the Criteria set out in the Dealing with Complaints procedure)

## South Hams District Council

- |   |
|---|
| <ul style="list-style-type: none"> <li>• To make no finding as to whether there has been a breach of the Code but seek to resolve the Complaint informally</li> </ul>   |
| <ul style="list-style-type: none"> <li>• To make no finding as to whether there has (or may have) been a breach of the Code and that No further Action be taken as the public interest does not merit further investigation/consideration.</li> </ul> |
| <ul style="list-style-type: none"> <li>• To refer the Complaint for investigation to determine whether there has been a breach of the Code.</li> </ul>  |
| <ul style="list-style-type: none"> <li>• A finding of a breach of the Code without an investigation.</li> </ul>   |
| <ul style="list-style-type: none"> <li>• To refer the matter to the Police (or other relevant body) where the Complaint alleges that a criminal offence may have occurred under the Localism Act 2011.</li> </ul>                                     |

#### 4. Decision and reasons:

##### **Decision:**

A finding of a breach of the Code without an investigation

##### Reasons for decision

The complaint and supporting papers submitted by the Complainants are extensive, as is the response that have been provided by the Subject Member and I do not consider it necessary to reproduce this within this assessment. The Subject Member has had sight of the complaints as made and, as I do not intend to use any additional material as part of this assessment, therefore the Subject Member is not disenfranchised by it not been reproduced.

##### Matters relating to the Assessment

As with the assessment of all ethical standards matters this is considered on the balance of probabilities, that is; would a reasonable person in possession of all the facts and viewing them objectively, consider that it is more likely than not the Subject Member has breached the Code of Conduct.

When considering the actions of the Subject Member which concern the Clerk I have taken into account that it has been a long-established principle that there is a quasi-employer/employee relationship between an officer of a Council and a Councillor. As a result, when the actions of the Subject Member towards the Clerk are assessed, it will be on this basis.

It is noted that the Subject Member has chosen to provide a response which, to a large degree sets out her concerns with regards to the way the Council is run and how other Councillors and the Clerk have conducted themselves towards her.

Whilst these points are noted it is the conduct of the Subject Member only that is reviewed in this assessment. Therefore any comments that are made in this assessment should not be take as supporting, or not, the comments made by the Subject Member with regards to her peers and if she has concerns with regards to the actions of her fellow Councillors

## South Hams District Council

and/or an officer of the Council, these must be separately considered. A complaint cannot be countered with a complaint.

### The Complaints

The Complainants are of the view that through her actions the Subject Member has breached the Code of Conduct for South Brent Parish Council.

More specifically the Complainants have set out that the Subject Member has;

- Bullied, harassed and intimidated the Clerk and fellow Councillors;
- Used repetitive behaviour to further this conduct;
- Attacked the integrity of the Chair and the Clerk, accusing the Clerk of lying and colluding with outside bodies;
- Sent emails accusing the Clerk of not doing her job and saying that, with regards to this, she is 'disgusted';
- Accused councillors and the Clerk of not following policies and procedures;
- Set out in emails to other Parish Councillors and District Councillors that, with regards to the functioning of the Parish Council, 'standing orders, the code of conduct, financial controls and the integrity of the council have been thrown out of the window';
- Acted in an aggressive manner towards fellow Councillors and the Clerk, including blocking the exit from meetings so she could continue to question them on their actions;
- With regards to the running of the Council has said that, 'it's a mess'; and
- Overloaded other Councillors with emails and text messages to the point that some members have now blocked her.

The Subject Member has responded to the complaint by setting out that;

- The Chair, the Clerk, Councillors and non-Council community representatives have hindered and undermined Councillors officially selected to lead on council business,
- Information has not been given to Councillors;
- Council resources have been used to support the promotion of political representatives;
- The Chair, Clerk and Chairs of Sub-Committees acting together with representatives of outside bodies as the boss of the Clerk and the Council;
- She has been bullied out of meetings and not been treated with respect and supported;
- The Clerk has failed to record meetings correctly and has messed with documents submitted by a Councillor;
- The Clerk and the Chair have made statements on behalf of the Parish Council;
- There is no evidence that she has bullied any members of the Parish Council or the Clerk; and
- That the Council has acted inappropriately on matters.

The above bullet points are only an overview of the complaints and the response from the Subject Member and are set out to demonstrate the overall scope of the matter.

## South Hams District Council

### Conduct of the Subject Member towards the Clerk

As with any employer/employee relationship there is the underlying principle that a relationship of mutual trust and confidence should be maintained at all times. This is of course a two-way process and the employer has the right through employment law and practices to deal with the conduct of an employee that may not be performing in accordance with their contract. Conversely, the employee has the right to make complaints about their employer. In Local Government, as was established in *Harvey v Ledbury* there are additional restrictions placed on an employee as they can only make a complaint that may result in prohibitive measures being imposed on a Councillor, as an employer, through the ethical standards process.

Within a Parish Council it is generally accepted that the Chair will deal with the day to day management of the Clerk and whilst the Subject Member is correct in stating that the Clerk is employed by the whole Council, on a practical basis it is not possible for each action to be undertaken by the Clerk to be cleared by the Council in advance. That said, if the Council is unhappy with the actions taken by their employee, they can take any action under employment law that may be relevant to the circumstances.

I accept, in reviewing the submission made by the Subject Member that, in her view, the Council may not be correctly run and the Clerk may not be performing as the Subject Member thinks is appropriate. However, this does then give anyone in that situation the option to take matters into their own hands.

In looking at four examples of the conduct complained of;

- The volume of correspondence produced by the Subject Member to which the Clerk was either required to respond to or was copied into which would require her to read. Having considered the volume of correspondence as set out in the complaints this correspondence from the Subject Member is completely disproportionate to the size of the Council. To be the recipient of this correspondence, which lacks structure and objectivity, must as a minimum be intimidating and on its own reduce the efficiency of the Clerk to be able to undertake her duties. In seeking to put this into some form of context, were each member of the Council to adopt the same stance as the Subject Member and send out as many emails the Council would cease to function;
- The production of the minutes; the ownership of minutes rests with the Council as a whole and not the Clerk. The role of the Clerk is to produce the minutes and once minutes are produced and voted on these are then the legal record of a meeting. The Council as a whole, and not one member, can vote to amend the minutes though a member of the Council, if they are not happy with the minutes can propose an amendment if they wish. If this is after the minutes have been approved an amendment is generally done by annotating the original minutes with the amendment, rather than republishing the minutes. The only other route by which the minutes may be challenged is through the courts;
- Accusing an employee of lying; Given the status of the Clerk as the Proper Officer to the Council the accusation made by the Subject Member amounts to gross misconduct and demonstrates a breakdown in the need to maintain mutual trust and confidence between the employer and employee. Should the Subject Member have

## South Hams District Council

been of the view that the Clerk was lying, this should have been dealt with by a formal employment process; and

- Setting out that at a meeting, 'standing orders, the code of conduct, financial controls and the integrity of the Council have been thrown out of the window' thereby insinuating that the Clerk was failing in her role as the Proper Officer. It is noted that this was again done by email and copied in external councillors to the correspondence.

In applying the Code of Conduct to the above facts the key consideration is, would a reasonable person who is an employee objectively expect their employer to treat them in the same manner the Subject Member has treated the Clerk.

I am of the view that the volume of correspondence in itself does show a lack of respect for the work of the Clerk and a complete lack of acceptance of the ability for one person to deal with this amount of correspondence. There seems to be on the part of the Subject Member an expectance that it is only her correspondence which counts, and a lack of respect for the role of the Proper Officer and the person undertaking this role if the Subject Member is not dealt with in preference to others.

As is set out, above I do agree that the Clerk is there to serve the Council as a whole but when working for a Council this does, on a practical level, require the Clerk to work closely with some members, such as the Chair, far closer than others. Were the Council as a collective, be unhappy with the time spent in one area this is for the Council to judge, rather than one member take matters into their own hands. I have no doubt that a responsible person would view the way the Subject Member approaches the Clerk in general to be unacceptable.

The situation with regards to the minutes is similar, these are owned by the Council and it is therefore for the Council as a collective to consider if they are produced to a standard which they find acceptable,

With regards to accusing the clerk of lying and insinuating she was failing in her role; I am of the view a reasonable person would consider this conduct to be completely unacceptable. No employee would expect to be treated in such a manner and this conduct on its own completely erodes the mutual trust and confidence between the employer and employee.

Whilst it is appreciated the Subject Member may not have been happy with either the actions of the Clerk or of the Council, there is a set way under employment law that such matters should be dealt with. However, the Subject Member seems happier to take matters into her own hands, regardless of the consequences.

It may be possible to put aside the volume of correspondence sent out by the Subject Member due to a member who is extremely passionate about their work. However, when the general tone of the correspondence, the lack of structure or objectivity in it, the refusal to accept a point of view and the accusations of lying and accusing the clerk of failing in her role are taken into account, this goes considerably beyond what a reasonable person would be expected to endure in the course of their employment.

## South Hams District Council

As a result, I consider that the due to the facts as stated above the Subject Member has breached the following paragraphs of the Code of Conduct for South Brent Parish Council;

- 4.1(a) failure to treat the Clerk with courtesy or respect;
- 4.2(c) for both bullying and intimidating the Clerk; and
- 4.2(h) for bringing her office into disrepute.

I do not consider that the Subject Member has breached the following paragraphs of the Code of Conduct for South Brent Parish Council;

- 4.1(b) the correspondence provided shows that the Subject Member did have 'regard' to the advice given however, the Code does not require the member to follow this advice;
- 4.2(h) I do not consider that the Subject Member has brought her Council into disrepute.

### Conduct of the Subject Member towards other Members of the Parish Council

This part of the complaint will be only a consideration of the way the other members have been treated. The reason for splitting this is that there is a higher threshold that is required for a breach of the Code to be found when the conduct is from one member directed towards another.

Again, as with the conduct exhibited towards the Clerk it is fully accepted that the Subject Member may be dissatisfied with the actions of her peers and the way the Council is run. However, the Council is about the collective view rather than one view and should the Subject Member have been dissatisfied with the conduct of other Councillors, there is a set process for dealing with this via the Monitoring Officer.

There is, within the complaints about the way the Subject Member has conducted herself towards others, a constant theme in that the Subject Member refuses to accept the reasoning of others or of the views made in Council. This, the Complainants have set out, has resulted in a barrage of emails with one of the Complainants reporting that they received over 90 emails in both February and March from the Subject Member, others report in excess of 50 emails and the conduct is therefore seen as repetitive and this is completely out of proportion given the size of the Council and any benefit that could be derived from the correspondence.

If emails, which often are sent at very obscure times and can be obsessive in terms of the way they are worded, are not responded to the Councillors set out that the Subject Member then seeks to further press the point with multiple emails using accusatory and inflammatory language. This has resulted in members taking the unprecedented step of blocking her from messaging and email them. Whilst at meetings the Subject Member has sought to challenge members after meetings have concluded.

In considering this conduct against the Code;

#### *4.1(a) Failure to treat others with courtesy and respect*

## South Hams District Council

Whilst members of Parish Councillors may not be members of a political party they operate in a political environment and therefore there is a need to have respect for the views of others in order to allow the democratic process to operate effectively. Members can be critical and challenging, indeed this is intrinsic to the role of a Councillor, but in doing this they must not be overly personal and must show respect both for the democratic process and the views of others. This is of course a two-way process but there has to be a balance and an objective reasonableness to the way this is approached to ensure that the will of the majority prevails.

I do consider that the Subject Member has broken this balance and, were all members of the Parish Council to adopt the same stance as her, as is set out above, the situation would have become untenable. In reviewing the correspondence there is a clear lack of respect on the part of the Subject Member towards the views of others.

I have no doubt that, in adopting the reasonable person approach viewing this part of the complaint objectively, such a person would consider the actions of the Subject Member to be well in excess of what is reasonable, and due to this there is a lack of respect and courtesy demonstrated towards to other members of the Council and for the overall processes that are set in place by members of the Parish Council.

As a result I am of the view that due to the Subject Members challenging and repetitive conduct that has been demonstrated towards other Councillors the Subject Member has breached paragraph 4(1)a of the Code of Conduct for South Brent Parish Council.

### *4.2(c) bullying and intimidating any person*

There is no fixed way by which bullying can be judged in considering this against the Code, and whilst guidance is drawn from employment law this is still something that requires an objective consideration of the facts.

Bullying can be one act but it is more likely to be a pattern of behaviour that can occur face to face or virtually, it can be verbal or can be done in writing but it is conduct that makes someone feel frightened and upset.

Intimidation can often be tied into bullying but it can be more subtle as it is designed to send a message that the person who is conducting the intimidation can control matters and can disrupt another persons' life which can result in a person feeling powerless to stop the actions of another. Intimidation can often be used to impose one persons will on either one or several people through a relentless approach of seeking to undermine the sense of security one may have in undertaking their role, whatever that role is.

The approach of the Subject Member towards her fellow Councillors has, in the main, been relentless and, whilst the volume of correspondence may be something a Councillor may expect in a month, this is for all Council business, and not from one member.

Sending emails to the Chair setting out the Council is not run properly, saying she is disgusted with the way the Council is run, accusing her peers of not following procedures, is not acceptable and there is a definite pattern of the Subject Member seeking to use the excessive volume of correspondence sent and the terminology with the correspondence to disrupt matters by seeking to undermine other members of the Council.

## South Hams District Council

It is, as has been stated, accepted that the Subject Member may not consider the actions of her peers to be correct, but at the same time when operating in a democratic environment it is the view of the majority that is required to prevail.

I have no doubt that the conduct exhibited by the Subject Member would be seen by a reasonable person as both bullying and intimidatory and therefore the Subject Member is in breach of paragraph 4.2(c) of the Code of Conduct for South Brent Parish Council.

### *4.2(h) Bringing the office of Councillor or Council into disrepute*

In considering disrepute this is something that objectively can be considered to damage the reputation of the Subject Member within the community and therefore one has to look at all the facts.

It is a fact that the Subject Member has concerns with regards to the way business is transacted at the Parish Council but in seeking to raise these concerns has gone about this the wrong way. No reasonable person would expect to be subject to the volume of correspondence and criticism that has been raised by the Subject Member and this in turn has had an increasingly negative influence on the Parish Council, which I have no doubt has further compounded the problem as seen from the Subject Members perspective.

The conduct of the Subject Member is then added to by the way she has bullied and intimidated the Clerk and her peers. The Subject Member has said she has not bullied them but the objective consideration of the facts shows this has taken place.

Combining the above findings it is clear that a reasonable person would view the actions of Subject Member to have brought her office into disrepute and to have breached paragraph 4.2(h) of the Code of Conduct for South Brent Parish Council.

I have, as part of this assessment also considered if the Subject Member has brought her Council into disrepute and as part of this have taken into account the fact that some of the emails relating to the perceived failings of the Clerk and the Council have been copied to others outside of the Parish Council.

However, I am of the view that a reasonable person would see this as the act of the Subject Member alone and not the Parish Council as a whole and I do not consider at assessment that the Subject Member has brought her Council into disrepute.

The Subject Member should note; for both this finding and the similar finding with regards to her conduct towards the Clerk, this is based on the facts provided and, on this occasion, I consider that the balance of probabilities tips this to the Subject Members favour. Further conduct which may be the subject of a complaint would be considered separately.

### Summary and Sanctions

In considering the recommended actions arising from this breach I have to again split the complaint into the conduct of the Subject Member towards the Clerk and the Members. I have also taken into account the disquiet that the Subject Member has expressed with regards to the way the Parish Council has been run, and the way others have conducted themselves towards her.



## South Hams District Council

I have no doubt with regards to the conduct that has been exhibited towards the Clerk that this could carry with it the risk of a constructive dismissal claim.

As was established in Harvey v Ledbury the only way restrictive provisions can be placed on a member is if the employee brings a complaint under the Code of Conduct, which has been done and I have to therefore take this into consideration when setting the sanctions.

Whilst I am mindful that the person who made the complaint is no longer in the role of the Clerk I do consider that the sanctions should be used in a manner that would assist with this situation arising in the future.

As a result my advice to the Monitoring Officer is that the Subject Member;

- Should write a meaningful apology to the Clerk that is to be approved by the Monitoring Officer;
- Should be denied direct access to the new Clerk for a period of at least 12 months;
- Should be censured by the Parish Council.

With regards to the way the Subject Member has conducted herself towards her peers as is mentioned several times above I understand the frustration the Subject Member feels with regards to the way the business of the council has been conducted and the way her peers may have conducted themselves towards her.

However, this does not then give the Subject Member the ability to take matters into her own hands. The volume of correspondence and the emotive language used within this correspondence can only be directed to ensuring that the Subject Member has her way.

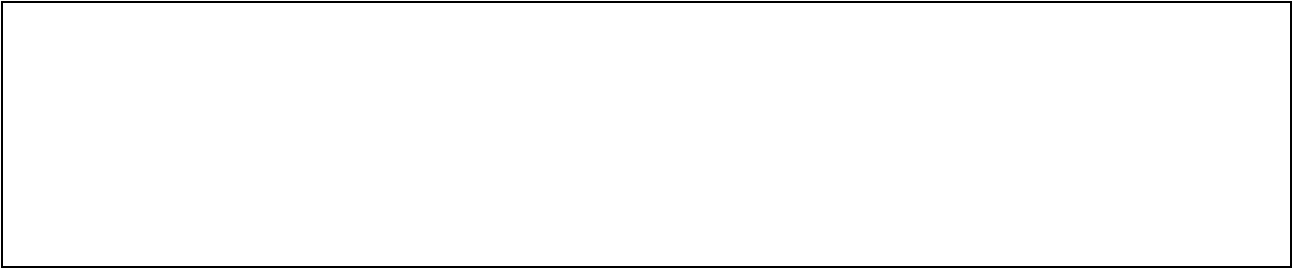
This is not how a Council should operate, at times members can be passionate about things but they also have to accept that things may not go their way. Also there may be times when members are unhappy with the way that their peers conduct themselves but on these occasions they have to follow the formal process of the ethical standards regime and should not take matters into their own hands.

I am particular concerned with the intimidatory approach taken by the Subject Member with regards to Council business and because of this the recommended actions are;

- The Subject Member should apologise to Parish Council;
- The Subject Member should be censured for her conduct towards her peers.

I would also recommend a written protocol is put in place with regards to the way the Subject Member can interact with the Clerk and her peers, and they with her, as this can help to ensure that there is a clear expected standard of conduct for all parties.

## South Hams District Council



Date: 10 March 2021

Signed by *Peter Boreham*

Independent Person for South Hams District Council

*Simon Mansell*    Date 11 March 2021

For the Monitoring Officer for South Hams District Council