

Minutes of the meeting of the **STANDARDS COMMITTEE: HEARING SUB-COMMITTEE** held at the Council Offices, Whitfield on Wednesday 6 October 2010 at 10.00 am.

Present:

Chairman: Mr A M Hayes

Councillors: S M Le Chevalier
D R Lloyd-Jones

Independent Members: Mr G J Fowler

Town & Parish Council Representative: Councillor B A C Curtis

Subject Member: Councillor B W Binfield

Also Present: Councillor

Officers: Monitoring Officer
Solicitor to the Council
Governance Investigator
Democratic Support Officer

1 STANDARDS COMMITTEE CASE SC023

The Standards Committee: Hearing Sub-Committee of Dover District Council held a hearing in respect of a complaint that Councillor Brian William Binfield, a member of Whitfield Parish Council, had failed to comply with:

- Paragraph 3(1) You must treat others with respect;
- Paragraph 3(2)(b) You must not bully any person; and
- Paragraph 5 You must not conduct yourself in a manner that could reasonably be regarded as bringing your office or authority into disrepute.

of the Code of Conduct as adopted by Whitfield Parish Council.

The complaint concerned correspondence (a series of notes, letters, memorandums and e-mails) sent by Councillor Binfield to other members of Whitfield Parish Council accusing them of incompetence, misconduct and conspiracy and containing innuendo of a personal nature. The primary recipients of the correspondence from Councillor B W Binfield were Councillor Jeffrey Goodsell and former Councillor David Ditcher (henceforth referred to as Mr Ditcher). Mr Ditcher resigned as a member of the authority in April 2010.

The complaint alleged that this correspondence was insulting and intimidating on both a personal and professional level and was unreasonably impacting on the operation of Whitfield Parish Council.

2 FINDINGS OF FACT

Councillor B W Binfield was in substantial agreement with the significant facts as set out in the Governance Investigators report. However, there was disagreement as to the interpretation to be placed upon them.

The Sub-Committee gave specific consideration to the following areas of dispute. Upon reviewing the evidence and the representations made to it, the Sub-Committee made the following findings of fact in respect of the disputed issues:

- (i) That it was satisfied that a report was made to the police relating to the correspondence between Councillor B W Binfield and Mrs and Mrs Ditcher. However, it found that there was insufficient evidence to determine whether the claim that a crime number had been issued could be substantiated. In the absence of evidence to the contrary, the Sub-Committee was of the opinion that it could only say with any confidence that an incident number had been issued.
- (ii) That the reference to the 'Whitfield Three' by Councillor B W Binfield in his memo dated 14 January 2009 which was used in the same sentence as the 'Birmingham Six' and the 'Guildford Three' was intended to be a disparaging reference to alleged criminality.

That the use of "without prejudice" and "private and confidential" on the correspondence from Councillor B W Binfield did not cause the contents to be considered privileged information such that it could not be relied upon by the Governance Investigator or be admitted as evidence before the Sub-Committee.

3 DECISION ON WHETHER OR NOT THERE HAD BEEN A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

The Sub-Committee heard oral representations from Councillor B W Binfield and the Governance Investigator on whether there had been a failure to comply with the Code of Conduct as adopted by Whitfield Parish Council.

Councillor B W Binfield made the following representations to the Sub-Committee as to whether a breach of the Code of Conduct had occurred:

- (i) That he felt deeply hurt by the way in which his reputation had been smeared by the actions of Mr D Ditcher.
- (ii) That the thorough way in which he addressed the issues facing Whitfield Parish Council had irritated other members of the Council.
- (iii) That there was a lack of clear and convincing evidence available to support any finding of a breach of the Code of Conduct and that evidence which there is available supports his case rather than the Governance Investigators.
- (iv) That the correspondence written to former Mr D Ditcher was for his attention only and should not have been disclosed.
- (v) That the record of the conversation with PC Harris as set out in Appendix 35 clearly states that "there was nothing PC Harris considered to be of a criminal nature."

The Governance Investigator made the following points as part of her representation to the Sub-Committee as to whether a breach of the Code of Conduct had occurred:

- (i) That the correspondence in Appendices 15 and 23-25 directly related to the business of Whitfield Parish Council and that therefore Councillor B W Binfield was acting in an official capacity and the Code of Conduct applied to his actions.
- (ii) That the correspondence was not marked 'private and confidential'.
- (iii) That the intervention of PC Harris which caused the correspondence between Councillor B W Binfield and Mr and Mrs Ditcher to cease indicated the seriousness with which the matter was considered.
- (iv) That the judgement of the Livingston Case did not apply to the context in which Councillor B W Binfield was acting.

The Sub-Committee adjourned to consider the investigation report together with the oral evidence of Councillor J Goodsell and the oral and written submissions made by Councillor B W Binfield and the Governance Investigator, as well as its own findings of fact.

Paragraph 3(2)(b) – You must not bully any other person (Councillor Brooks)

The Sub-Committee made a finding of **NO FAILURE** to comply with the Code of Conduct for Whitfield Parish Council in respect of this allegation.

It did not consider that the Code of Conduct operated so as to disentitle Councillor B W Binfield to express his loss of confidence in the ability of Councillor Brooks to undertake his role on the Roads and Footpaths Committee of Whitfield Parish Council and to call for his resignation. The Sub-Committee also noted that Councillor Brooks did not make a complaint to the Standards Committee at the time of the original incident and that no one has disputed the claim by Councillor B W Binfield in his letter dated 9 March 2008 that Councillor Brooks called for his resignation in return.

The Sub-Committee also found that there was no evidence to support the complaint that Councillor B W Binfield bullied Councillor L Brooks.

Paragraph 5 – You must not bring your office into disrepute

The Sub-Committee made a finding of **NO FAILURE** to comply with the Code of Conduct for Whitfield Parish Council in respect of this allegation.

It considered that in order for conduct to be such as to bring the office of councillor or the authority into disrepute something more than a lack of good judgement or naivety was required and a high threshold should be applied. Further, a distinction had to be drawn between conduct that could reasonably be regarded as bringing the individual councillor into disrepute as opposed to the office held by the individual councillor or, the authority itself.

In order to bring the officer or authority into disrepute there would need to be conduct such as to undermine public confidence in the ability of the Councillor to conduct the office held or, the ability of the authority to discharge its functions

properly and effectively. The Sub-Committee found that there was insufficient evidence to support the proposition that the authority was unable to discharge its functions although it accepted that relationships between Councillors on Whitfield Parish Council were disrupted.

It was the view of the Sub-Committees that whilst the language used by Councillor B W Binfield in his correspondence to Mr D Ditcher was at times extremely distasteful, it only fell into the hands of a limited audience and was not of the character necessary to bring his office into disrepute.

Paragraph 3(1) – You must treat others with respect (Councillor J Goodsell and Mr and Mrs Ditcher)

The Sub-Committee found that Councillor B W Binfield had **FAILED TO COMPLY** with the Code of Conduct in respect of these allegations.

It was satisfied that Councillor B W Binfield was acting in an official capacity at the time of the events concerned. The correspondence repeatedly referred to the business of Whitfield Parish Council even when the recipients are not referred to directly as councillor. Furthermore, as late as 14 January 2009 the correspondence to Councillor J Goodsell and (the then Councillor) Mr D Ditcher contained references to the work of the Roads and Footpaths Committee of Whitfield Parish Council and was addressed to them as Councillors.

The Code of Conduct Guide for Members produced by Standards for England advises that "*ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attack*". In identifying whether a breach of the Code of Conduct has occurred, the Sub-Committee sought to satisfy itself that the correspondence made statements that could be categorised as unreasonable or excessive as opposed to robust criticism.

While the language used by Councillor B W Binfield in his correspondence with Councillor J Goodsell and Mr and Mrs Ditcher was not sufficient to bring his office into disrepute, the Sub-Committee was of the view that it could be characterised as offensive, disrespectful and intimidating and constituted an unreasonable and excessive personal attack so as to amount to disrespect for the purposes of the Code of Conduct.

Of particular concern to the Sub-Committee was the repeated innuendo of a personal nature directed towards Mr Ditcher and it felt that this comfortably exceeded the threshold required for failing to treat with respect.

In respect of Councillor J Goodsell, the Sub-Committee is satisfied that the threshold required for failing to treat with respect was reached, although to a lesser degree than in the case of Mr and Mrs Ditcher.

Paragraph 3(2)(b) – You must not bully any other person (Mr and Mrs Ditcher)

The Sub-Committee found that Councillor B W Binfield had **FAILED TO COMPLY** with the Code of Conduct in respect of this allegation.

The Code of Conduct Guide for Members characterises bullying as "*offensive, intimidating, malicious, insulting or humiliating behaviour*" that "*attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health*".

The Sub-Committee considered that the general quasi-legalistic tone, the questioning of character, the pattern of correspondence and the threats of legal action in the correspondence to Mr Ditcher when taken together constituted bullying behaviour.

The addressing of an envelope to 'Mr and Mrs Ditcher' was viewed by the Sub-Committee as an attempt to place additional pressure on Mr Ditcher to acquiesce to Councillor B W Binfield's position. This act was foreshadowed by Councillor B W Binfield in the memo addressed to Mr D Ditcher dated 8 June 2009 where he questioned if Mrs J Ditcher was aware of his threat to take potential action for libel against Mr Ditcher.

Mrs J Ditcher was not a member of Whitfield Parish Council nor had she been addressed in any of the previous correspondence concerning Parish Council business. In the view of the Sub-Committee there was no legitimate reason to address the envelope to 'Mr and Mrs Ditcher'.

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SANCTION

The Sub-Committee considered representations from the Monitoring Officer and Councillor B W Binfield in respect of whether or not it should set a penalty and what form that penalty, if any, should take.

The Monitoring Officer made the following points as part of his representation to the Sub-Committee on what sanction, if any, should be applied:

- (i) That the Standards Committee be mindful of the need to resolve this matter so as to improve relations between all Members of Whitfield Parish Council and that a substantial penalty would not be appropriate.
- (ii) That Councillor B W Binfield should be required to make a formal written apology for his actions.

Councillor B W Binfield made the following points as part of his representation to us on what sanction, if any, should be applied:

- (i) That he accepted his situation.
- (ii) That he would be willing to apologise for his actions.
- (iii) That he would be willing to accept mediation to resolve matters between the members of the Parish Council.

Notwithstanding the submissions made to the Sub-Committee, it also had regard to the guidance issued by Standards for England in their publication entitled "Standards Committee Determinations". This said that, "the action taken by the Case Tribunal should be designed either to discourage or prevent the particular Respondent from any future non-compliance and also to discourage similar action by others". The guidance also stated that "suspension may be appropriate for more serious cases such as those involving ... bullying".

The Sub-Committee was concerned about the tone and content of the correspondence from Councillor B W Binfield to Councillor J Goodsell and Mr D Ditcher which it regarded as being disrespectful.

The Sub-Committee's concerns were greater in relation to the correspondence from Councillor B W Binfield to Mr Ditcher. Having regard to, its tone and content, the insinuations contained within it, its intimidatory nature the length of time over which it continued and to the fact that one item of correspondence was addressed to both Mr and Mrs Ditcher, it was in no doubt that the actions of Councillor B W Binfield could only fairly be described as having all the attributes of bullying. It regarded the content of this correspondence as highly inappropriate to have emanated from a holder of public office in his official capacity. The circumstances in which that envelope addressed to both Mr and Mrs Ditcher was delivered only serve to heighten the Sub-Committee's concerns.

It also had regard to the views of the Monitoring Officer as to the need to resolve this matter so as to improve relations between all Members of Whitfield Parish Council and also, to the representations of Councillor Binfield. However, the need to balance this against the clear guidance which has been issued by Standards for England and which reminded the Sub-Committee to bear in mind an aim of upholding and improving the standards of conduct expected of members of the various bodies to which the Codes of Conduct apply. It was the Sub-Committee's view that an appropriate and proportionate sanction required a period of suspension.

The Sub-Committee would have been minded to suspend Councillor Binfield for a period of three months. However, having regards to all of the circumstances and in particular to:

- (i) The fact that the comments made by other Parish Councillors over the course of the episode which has been placed before the Sub-Committee had not been helpful in resolving the issues with which Whitfield Parish Council has had to deal with;
- (ii) Councillor B W Binfield's willingness as expressed to the Sub-Committee to accept this situation and his immediate offer to apologise to the members concerned; and
- (iii) The representations of the Monitoring Officer as to sanctions.

The Sub-Committee imposed a suspension of two months pursuant to Regulation 19(3)(d) of the Standards Committee (England) Regulations 2008 (full suspension) to take effect from the date specified on the covering letter accompanying the notice issued under Regulation 20 of the Regulations.

Further within that period the Sub-Committee required Councillor B W Binfield to:

- (i) Submit a written apology to Councillor Goodsell, Mr Ditcher and Mrs Ditcher which acknowledges his failure to treat them with due respect and his general behaviour towards them; and
- (ii) Meet with the Monitoring Officer at a time and place to be determined by the Monitoring Officer to undergo training as to the behavioural requirements of the Code of Conduct for Members.

5 RECOMMENDATIONS TO THE AUTHORITY

The Sub-Committee recommend to Whitfield Parish Council that it hold a conciliatory meeting with all Members and Officers of the authority.

6 PUBLICITY OF THE DECISION

In accordance with Regulation 20(4) of the Standards Committee (England) Regulations 2008, where a Standards Committee makes a finding under Regulation 19(1)(c) that the subject member has failed to comply with the Code of Conduct, a notice shall be issued under Regulation 19(1)(a) stating:

- (i) That the Standards Committee has found that the member who was the subject of the hearing had failed to comply with the Code of Conduct of the authority concerned;
- (ii) Specifying the details of the failure;
- (iii) The reasons for the Standards Committee's findings;
- (iv) Specifying the sanction imposed in accordance with Regulation 19(2) or (3); and
- (v) That the subject member concerned may apply under Regulation 21 for permission to appeal against the finding or sanction imposed.

In accordance with Regulation 20(1)(a) the written notice of the finding of the Standards Committee will be given to:

- (i) The subject member of the finding;
- (ii) Standards for England;
- (iii) The Standards Committee of any other authority concerned (if applicable);
- (iv) Any Parish Council concerned (if applicable); and
- (v) Any person who made an allegation that gave rise to the investigation.

In accordance with Regulation 20(1)(b) a summary of this notice will be published:

- (i) In one newspaper circulating in the area of every authority concerned; and
- (ii) On the website of any authority concerned.

The meeting ended at 4.30 pm.