

Minutes of a meeting of the Finance and Assets (Ethical Governance) Sub-Committee held in the Council Chamber, The Grange, Nutholt Lane, Ely on Thursday 29 July 2021 at 10.00am

P R E S E N T

Councillor Sue Austen (substitute for Councillor Paola Trimarco)
Councillor Charlotte Cane
Councillor Mark Inskip (substitute for Councillor Harries)
Councillor Dan Schumann (substitute for Councillor David Brown)
Councillor John Trapp
Councillor Jo Webber (substitute for Councillor Julia Huffer)
Mrs Gillian Holmes – Independent Person

Subject Member – Councillor Matthew Downey
Complainant – Councillor Anna Bailey

I N A T T E N D A N C E

Maggie Camp – Legal Services Manager, Monitoring Officer and
Legal Adviser to Sub-Committee
Alex Oram – External Investigating Officer, ch&i associates
Tracy Couper - Democratic Services Manager and Deputy
Monitoring Officer

A P O L O G I E S

Councillor David Brown
Councillor Simon Harries
Councillor Bill Hunt
Councillor Julia Huffer
Councillor Paola Trimarco

1. ELECTION OF CHAIRMAN

On the calling of nominations for Chairman of the Sub-Committee for the municipal year, Councillors Cane and Trimarco were duly proposed and seconded. However, prior to a vote on the two nominations, Councillor Inskip, as proposer, withdrew his nomination of Councillor Cane.

Therefore, it was resolved:

That Councillor Paola Trimarco be elected as Chairman of the Finance and Assets (Ethical Governance) Sub-Committee for the ensuing municipal year.

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As Councillor Trimarco was not present at the meeting, nominations then were called for election of a Chairman for the meeting. Councillors Austen and Cane were duly proposed and seconded. As there was a contested election and no Chair to preside, nominations were called for election of a Chair to preside. Councillors Schumann and Trapp were duly proposed and seconded and upon being put to the vote a tie was declared. A brief adjournment was called from 10.10am to 10.14am, to attempt to resolve the position. On re-convening, Councillor Cane, as proposer, withdrew her nomination of Councillor Trapp. Therefore, Councillor Schumann was elected to preside as Chair for the election of Chairman for the meeting.

Upon a vote on the two nominations for election of Chairman for the meeting,

It was resolved: (by Chair's casting vote)

That Councillor Sue Austen be elected Chairman for the meeting.

2. **DECLARATIONS OF INTEREST**

No declarations of interest were received.

3. **EXCLUSION OF THE PUBLIC INCLUDING REPRESENTATIVES OF THE PRESS**

A Member queried the reasons for the Sub-Committee being held in Exempt session. The Monitoring Officer and Legal Adviser to the Sub-Committee explained that the Sub-Committee Procedure for Members Code of Conduct Complaints approved at the meeting of the Finance and Assets Committee on 7 June 2021 and attached to the Agenda for this meeting, made a presumption that the Sub-Committee would be held in Exempt session, unless representations were made to the contrary.

It was resolved:

That the public (including representatives of the press) be excluded during the consideration of the business of the Sub-Committee because it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present there would be disclosure to them of exempt information of Categories 1, 2 and 5 of Part I Schedule 12A to the Local Government Act 1972 (as amended).

4. **COMPLAINT REGARDING BREACH OF THE MEMBER CODE OF CONDUCT – DISTRICT COUNCILLOR MATTHEW DOWNEY**

At the invitation of the Chairman, Maggie Camp, Monitoring Officer (MO) and Legal Adviser to the Sub-Committee, explained that the Sub-Committee would follow the approved procedure, as attached to the agenda. Ms Camp also highlighted a copy of E-mail correspondence dated 1 March from Independent Person giving her view that the investigation report was accurate and fair and her agreement that the matter should proceed to a Sub-Committee, together

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with correspondence dated 17 March 2021 to Councillor Downey advising that the matter was to be referred to a Sub-Committee circulated at the Sub-Committee meeting, which inadvertently had been omitted from her report.

Ms Camp introduced and summarised the content of the Monitoring Officer's report on the Standards complaint against District Councillor Matthew Downey from District Councillor Anna Bailey. Ms Camp explained that she had received a complaint on 27 July 2020 that Cllr Matthew Downey had failed to comply with the Council's Member Code of Conduct. This was in relation to tweets Cllr Downey had made on his Twitter account between 17th and 25th July 2021. These stemmed from a full Council meeting on 16th July and a meeting of Finance & Assets Committee on 23rd July 2020.

The complaint alleged that Cllr Downey had failed to treat the complainant and other Conservative Members with respect, had displayed bullying behaviour and brought the authority into disrepute. Copies of the tweets were appended to the MO report at Appendix 2. The tweets included assertions that the Council's Constitution had been breached both in relation to the Council meeting on 16th July and the Finance & Assets Committee on 23rd July. They also stated that the Conservative Members of the Council were racist, criticised individual Conservative Members by name for "liking" racist tweets, accused them of breaching the Council's Constitution and called on the Chair of the Finance and Assets Committee, Cllr Brown, to resign. It was also alleged that Cllr Downey had "baited" Cllr Bailey to get her to respond on Twitter and subsequently accused her of lying. The complainant stated that the tweets were untrue and therefore brought Cllr Downey and the Council into disrepute.

Ms Camp summarised the actions she took regarding the complaint in accordance with the complaints handling procedure and flowchart within the Monitoring Officer's Protocol, as evidenced in Appendices 2 to 10 of her report. This and the required consultations with the Independent Person resulted in the complaint being referred for investigation by independent external investigators, ch&I associates. The investigation was conducted by Alex Oram and Mark Hedges from ch&I associates and a copy of the investigation report was attached at Appendix 12 of the MO's report. The investigation report was very thorough and detailed and both the Subject Member and Complainant had the opportunity to comment on the draft before it was finalised.

The investigation report concluded that Cllr Downey did fail to treat others with respect contrary to paragraph 3.1 of the Member Code of Conduct, when he called members of the Conservative Group "racists", stated that Cllr Bailey and members of her group did not think that black lives mattered and accused Cllr Bailey of lying. Paragraph 5.11 of the Investigation Report detailed that "failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another". The investigators were not of the view that when doing so, Cllr Downey bullied anyone, contrary to 3.2(b) of the Member Code of Conduct, but do consider that this conduct brought his office into disrepute contrary to 3.2(e) of the Member Code of Conduct.

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Ms Camp summarised the subsequent actions she took as a consequence of receipt of the final Investigation report, in accordance with the MO Protocol and consultation with the Independent Persons, which had led to the convening of this Sub-Committee. The Monitoring Officer highlighted that the Investigating Officer, Alex Oram, was present at the meeting to provide further clarification and answer questions on the investigation report, findings and recommendations.

In response to an invitation by the Chairman, Mr Oram thanked Councillors Downey and Bailey for their co-operation on the investigation and stated that he had nothing to add to the report. In accordance with the Sub-Committee Procedure, the Sub-Committee were given the opportunity to ask questions of the Monitoring Officer and Investigating Officer.

A Member commented that the investigation report presented a thorough and fair reflection of the issues.

Another Member thanked Mr Oram for this significant piece of work, which was a difficult but clear read. The Member asked Mr Oram to explain the statement in paragraph 5.23 of the investigation report 'I am confident that Councillor Downey meant his accusation seriously and wanted it to sting'. Mr Oram stated his belief that Councillor Downey had meant his accusations seriously and in a derogatory manner that would hit home and Councillor Downey had stood by them throughout the investigation process. In response to a request for further clarification on this statement by another Member, Mr Oram highlighted the serious and damaging impact such allegations could have, particularly in a political environment, citing similar incidents recently relating to both local authority and national politicians accused of racism.

A Member queried the evidence for Mr Oram's conclusions in paragraph 5.27 of the investigation report, and Mr Oram stated that Black Lives Matter (BLM) being both a political and social movement was a recognised statement of fact. The Member indicated that the current US BLM website indicated that it was more of a social reform movement, but Mr Oram stated that he had based his conclusions on the evidence available on the website at the time of the complaint and incidents.

Some Members queried in what manner it would be appropriate for a Member to challenge racist behaviour and Mr Oram stated that he could not respond to hypothetical situations but only to the evidence presented. However, in order to comply with the requirement in the Member Code of Conduct to treat others with respect, it was acceptable to robustly challenge policies without making personal attacks upon the character of an individual. A key issue for this Sub-Committee to decide was whether they considered the comments made reasonable and fair.

A Member expressed grave concern at the fact that 15 Members of a Political Group had been accused of being racist, as this affected both their political and personal lives.

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In response to a question by a Member to Mr Oram regarding the difference between a group accusation and personal accusations, Mr Oram again stated that he could not deal in hypotheticals, but a general comment would usually be unlikely to result in a finding of disrespect, whilst specific allegations against individual(s) were likely to engage the Code of Conduct. However, other sections of the Code of Conduct might be engaged by general derogatory comments.

The Subject Member was invited by the Chairman to speak on the report. Councillor Downey stated that the definition of racism was constantly moving and he held a genuine belief that the Conservative Group had acted in a racist manner. It was a matter for the public to decide if his views were valid or not and to exercise their right to do so via the ballot box. It was not for the Conservatives to stifle free speech and open debate.

The Complainant then addressed the Sub-Committee and commended the thorough and fair process followed and detailed and thoughtful nature of the investigation report. Councillor Bailey stated that the accusation that she was a liar had been particularly painful and hurtful to her, and was worsened by the fact that the allegation was made in the public domain, since she had a strong personal belief in acting with honesty and integrity and in the interests of the local community. She also believed that it was a serious allegation to accuse a whole Group of being racist and wrong that such allegations remained on social media for a prolonged period. She stated that she supported the findings in the investigation report.

The Sub-Committee then were invited by the Chairman to discuss the reports of the Monitoring Officer and the Investigating Officer in the light of the representations made by the relevant parties.

A Member thanked Mr Oram for his points of clarification on the investigation report. He stated that today's meeting was about standards in public life and the need to abide by the Code of Conduct and what happened when a breach of these occurred.

Another Member commented that the report made it clear that Councillor Downey felt strongly about racism and this was what made him unable to accept the Conservative amendment to his Motion. It was important to understand his outrage at historic racist behaviour and persecution and the level of his frustration at the dilution of recognition of this by the phrase 'all lives matter'. The level of his passion needed to be taken into account when considering the complaint. Members needed to consider whether his behaviour was 'unwarranted and unreasonable' as stated in paragraph 5.27 of the investigating officer's report. The Member asserted that Councillor Downey seriously believed the actions of the Conservative Group denied that racism was a problem. Therefore, the Member could not accept the findings of the investigation report.

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In response to this a Member stated that whilst willing to take Councillor Downey's frustration into account, when considering whether his behaviour was 'unwarranted and unreasonable', a two-stage test was required:

- Was the belief genuinely held?
- Were the subsequent actions justified and reasonable?

The Member did not believe that these two tests had been proved.

Councillor Schumann moved that the findings in paragraphs 6.1 and 6.2 of the investigating officer's report be accepted and this was seconded by Councillor Webber.

An amendment was moved by Councillor Cane and seconded by Councillor Trapp that the findings in 6.2 of the investigating officer's report be accepted, but that the findings in paragraph 6.1 of the investigating officer's report not be supported as it had not been shown that Councillor Downey's behaviour was 'unwarranted and unreasonable'.

Speaking in support of her amendment, Councillor Cane stated that Councillor Downey meant his allegations seriously and believed he had grounds for them by the 'liking' of tweets by particular Councillors. Therefore, even if mistaken, they were genuinely believed by him.

Councillor Schumann stated that the two-stage test referred to above was a fairer assessment of Councillor Downey's comments and the issue was whether a 'reasonable person' would consider them appropriate and proportionate in the light of the entire train of events. Councillor Schumann did not believe that a 'reasonable person' would reach this conclusion. It was not just a question of Councillor Downey's belief but his subsequent actions. That was why Councillor Schumann supported the findings in the investigating officer's report.

At this stage, the Independent Person was asked for her views. Mrs Holmes stated that both herself and the other Independent Person, Stuart Webster, were required to consider the issues from the perspective of an objective member of the public. As such, she accepted that due to the requirements for robust debate and freedom of speech, Councillors were required to have 'thicker skins'. However, comments in the political arena needed to be balanced against when they strayed into personal attacks. Both Independent Persons believed that there had been a potential breach when applying this test. She considered the investigation report to be fair and balanced and had been guided by the legal principles in the report. Therefore, she had agreed with the findings in paragraph 6.1 of the report that there had been a breach of the Code of Conduct on the balance of probabilities and was prepared to be guided on paragraph 6.2. Nothing she had heard at today's Sub-Committee had changed her view to support the findings in the investigation report.

Some of the Members of the Sub-Committee commented generally on the deterioration of standards in public life and the possible need for training for all Members of the Council in how to treat each other with respect whilst undertaking robust debate. They reiterated their belief that Councillor Downey's views were genuinely held by him.

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However, another Member stated that this was not about the robustness of the debate, but the subsequent actions of Councillor Downey and the degree to which these were taken which had 'crossed the line', and for which he needed to be accountable.

Reference was made to the case law examples in the investigation report and there were differing opinions expressed as to their relevance to this particular complaint.

Upon being put to the vote, the amendment was lost by the Chair's casting vote.

A further amendment then was moved by Councillor Trapp and seconded by Councillor Inskip to vote separately on the three elements of paragraph 6.1 of the investigating officer's report.

The Sub-Committee was adjourned from 12.25pm to 12.50pm to confirm the nature and validity of the amendment.

On re-convening, the Democratic Services Manager apologised for her confusion and confirmed the amendment. Upon being put to the vote, the amendment was lost by the Chair's casting vote.

Speaking on the Motion, a Member commented that they could agree with paragraph 6.2 of the investigation report but not 6.1, as the removal of the phrase Black Lives Matter from the motion that was the subject of the issues, indicated to her that they did not matter.

Upon being put to the vote, the motion to accept the findings in the investigating officer's report was carried by the Chair's casting vote.

The Sub-Committee then moved onto the consideration of sanctions.

Councillor Cane moved that Councillor Downey apologise to the complainant in writing and this was seconded by Councillor Trapp.

An amendment then was moved by Councillor Schumann and seconded by Councillor Webber that the following sanctions be imposed from the list in the Sub-Committee Procedure:

2. That the Councillor apologises in writing to the complainant
3. That the Councillor receive appropriate training
5. That the Councillor be censured
8. That a Press Notice be issued

The Independent Person was consulted on sanctions at this stage and she stated that she had nothing more to add.

Speaking on the amendment, a Member commented that this had been a difficult meeting at which everything had been decided on the Chair's casting vote. Therefore, a written apology seemed a proportionate sanction, whilst censure

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and a Press Notice were much more serious sanctions bearing in mind the divided nature of the Sub-Committee. Some other Members concurred with this view.

With the agreement of the seconder, Councillor Schumann agreed to remove the sanction of censure from his amendment.

However, other Members commented that a Press Notice was appropriate, since the actions of the Subject Member had been carried out in the public domain.

A Member queried what the nature of the training would be. The Independent Person commented that the issues seemed to relate to the difference between robust political debate and where this crossed the line into personal attack, so training on robust debate and respect and the use of social media seemed to be appropriate.

Councillor Cane then proposed a further revision to the amendment which was seconded to include training for all Councillors as indicated by the Independent Person above.

Other Members commented that it was not appropriate for this Sub-Committee to consider the imposition of general training on Councillors and that there were other mechanisms by which this issue could be taken forward.

Speaking on her further revision to the amendment, Councillor Cane stated that the imposition of too many sanctions on the Subject Member could be regarded as putting too heavy an opprobrium on his actions.

Upon being put to the vote, Councillor Cane's further revision to the amendment was declared to be lost by the Chair's casting vote.

With regard to the original amendment (as amended by the proposer and seconder), Members discussed how the Press Notice would be drafted. Following discussion of the options, Councillor Schumann and his seconder agreed to amend the amendment again to delegate the drafting of the Press Notice to the Monitoring Officer.

Upon being put to the vote, the amendment, as amended, was carried by the Chair's casting vote.

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Therefore, it was resolved:

1. That the Sub-Committee agrees with the findings in Investigation Report as follows:

Paragraph 3.1 You must treat others with respect

Paragraph 3.2 (e) You must not conduct yourself in a manner which could be reasonably be regarded as bringing your office or authority into disrepute

Finding: Breach: When Councillor Downey called Conservative Group 'racists'; stated that Councillor Bailey and her Group did not think that Black lives mattered; and accused Councillor Bailey of lying.

Paragraph 3.2 (b) You must not bully any person

Finding: No Breach: Do not consider that Councillor Downey bullied anyone when he called Conservative Group 'racists'; stated that Councillor Bailey and her Group did not think that Black lives mattered; and accused Councillor Bailey of lying.

Paragraph 3.1 You must treat others with respect

Paragraph 3.2 (e) You must not conduct yourself in a manner which could be reasonably be regarded as bringing your office or authority into disrepute

Paragraph 3.2 (b) You must not bully any person

Finding: No Breach: Do not consider that Councillor Downey failed to comply with the Code of Conduct when he asserted that the way in which his motion was handled breached the Council's Constitution, or for calling on the Chair of a particular Committee to resign as a result. However, this should not be viewed as an endorsement of Councillor Downey's comments or the veracity of his concerns, but that a finding that he had failed to comply with the Code with regard to these matters would represent a disproportionate restriction on his right to free speech.

2. That the Sub-Committee agrees the following sanctions:

- the Councillor apologises in writing to the complainant
- the Councillor receive appropriate training
- a Press Notice be issued, the wording of which to be delegated to the Monitoring Officer

The meeting concluded at 1.30pm.