

**Decisions taken by the Standards Committee on Tuesday, 2 May 2023**

Agenda Item No	Topic	Decision
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**Part A – Items considered in public**

<b>A1</b>	Apologies for Absence	There were no apologies.																		
<b>A2</b>	Declarations of Interest	There were no declarations of interest.																		
<b>A4</b>	Code of Conduct Complaint	<table border="1"> <tbody> <tr> <td>Name of Authority</td> <td>Burnham and Highbridge Town Council</td> </tr> <tr> <td>Name of member who the allegation has been made about</td> <td>Cllr Mike Murphy</td> </tr> <tr> <td>Name of the person who made the original allegation</td> <td>Elaine Dutton</td> </tr> <tr> <td>Name of the Hearings Sub-Committee member who will chair the meeting</td> <td>Cllr John Bailey</td> </tr> <tr> <td>Name of other Members of the Hearings Sub-Committee</td> <td>Cllr Brian Smedley Cllr Hugh Davies</td> </tr> <tr> <td>Name of Independent Person</td> <td>Philip Knowles</td> </tr> <tr> <td>Name of the Monitoring Officer</td> <td>Scott Wooldridge (represented by Deputy Monitoring Officer Steven Hellard)</td> </tr> <tr> <td>Name of the Clerk of the hearing or other administrative Officer</td> <td>Steve Taylor</td> </tr> <tr> <td>Date, time and place of the hearing</td> <td>10am on Tuesday 2<sup>nd</sup> May 2023 at  The Sedgemoor Room, Bridgwater House King Square Bridgwater Somerset, TA6 3AR</td> </tr> </tbody> </table>	Name of Authority	Burnham and Highbridge Town Council	Name of member who the allegation has been made about	Cllr Mike Murphy	Name of the person who made the original allegation	Elaine Dutton	Name of the Hearings Sub-Committee member who will chair the meeting	Cllr John Bailey	Name of other Members of the Hearings Sub-Committee	Cllr Brian Smedley Cllr Hugh Davies	Name of Independent Person	Philip Knowles	Name of the Monitoring Officer	Scott Wooldridge (represented by Deputy Monitoring Officer Steven Hellard)	Name of the Clerk of the hearing or other administrative Officer	Steve Taylor	Date, time and place of the hearing	10am on Tuesday 2 <sup>nd</sup> May 2023 at  The Sedgemoor Room, Bridgwater House King Square Bridgwater Somerset, TA6 3AR
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			<p>The hearing was held in public.</p>
		<p>A summary of the allegation</p>	<p>It is alleged that on the 23rd of June 2022, at the Town Council offices, Councillor Murphy made inappropriate comments to the Complainant when discussing whether a grant application made on behalf of the Cultural Arts Development Society (CADS) could be approved.</p> <p>It is alleged that Councillor Murphy:</p> <ul style="list-style-type: none"> <li>i) questioned whether money for the grant could be taken from elsewhere in the Town Council;</li> <li>ii) suggested that the Complainant spoke to the Town Clerk to try to persuade him to change his mind by wearing a low-cut top and to push her breasts out so that they sit like a balcony,</li> <li>iii) during a further conversation on the 23rd of June, made an inappropriate comment to the Complainant by saying that she made him feel calm and he wanted to give her a cuddle,</li> <li>iv) on a previous occasion when Councillor Murphy attended the Town Council offices, he made an inappropriate comment by saying to the Complainant she was his crush for the day, and he was falling in love with her.</li> <li>v) ignored the request for Councillors to make an appointment with officers before attending the Town Council Offices and when he did</li> </ul>

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			attend, he stood in such close proximity to the Complainant as to touch her arm.
		The relevant section or sections of the code of Conduct	<p><i>'Member obligations</i></p> <p><i>When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, they have the following obligations.</i></p> <ol style="list-style-type: none"> <li><i>1. They shall behave in such a way that a reasonable person would regard as respectful.</i></li> <li><i>2. They shall not act in a way which a reasonable person would regard as bullying or intimidatory.</i></li> <li><i>3. They shall not seek to improperly confer a advantage or disadvantage on any person</i></li> </ol>
		<p style="text-align: center;"><b>Summary of the evidence considered and the representations made</b></p> <p>The Committee heard from Mrs Sinclair, Investigating Officer, who presented her report and explained that there were a number of agreed findings, namely</p> <ol style="list-style-type: none"> <li>1. Cllr Murphy attended the Town Council offices on the 23 of June 2022.</li> </ol>	

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2. The Town Council Code of Conduct was engaged for the duration of that visit.

3. During the visit Cllr Murphy discussed with the Complainant the possibility of a grant being awarded to the Cultural Arts Development Society (CADS) in relation to an event being held on 3 July 2022.

4. Cllr Murphy asked the Complainant if there was anything she could do about the grant. He asked whether funding was available from other sources. The Complainant advised Cllr Murphy that he would need to speak to the Town Clerk.

5. During that visit on 23 June 2022 the Complainant was able to resolve an issue that Cllr Murphy had in relation to the IBABS system – in response to the Complainant resolving that issue Cllr Murphy stated “You are fantastic, I’d like to give you a big cuddle but I’m sorry I can’t. You are my crush for the day/week and I could fall in love with you”.

6. It was also agreed by Cllr Murphy that he told the Complainant about a time when he was in St Tropez and described an experience he had whilst standing at a market stall explaining that a woman stood next to him wearing bikini bottoms and an open blouse, with a white bra with a fringe which meant that her breasts were at his eye level.

There was, however, a dispute as to where, when and the context in which this conversation took place. Cllr Murphy’s position was that the conversation took place at an IBABS training session in the Council Chamber in April 2023 in the context of him raising concerns with the Complainant about how she was dressed. The Complainant’s position was that the conversation took place during Cllr Murphy’s visit to the Town Council offices on 23rd June 2022 and in the context of Cllr Murphy asking the Complainant to influence the Town Clerk’s decision in relation to the CADS grant application by wearing a low-cut top with a balcony bra or that she push her breasts out.

Cllr Murphy categorically denied that he suggested to the Complainant that she dress in a particular way when discussing the CADS grant application with the Town Clerk. This was a matter of factual dispute between the Complainant and Cllr Murphy but Mrs Sinclair had

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concluded, on a balance of probabilities based on the conversations that Cllr Murphy accepted had taken place, that it was more likely than not that Cllr Murphy had made this comment to the Complainant.

The Sub-Committee heard evidence from the Complainant, Elaine Dutton. She stated that during the discussion about the CADS grant application between herself and Cllr Murphy at the Town Council offices on 23<sup>rd</sup> June 2022, Cllr Murphy had asked her to wear a low-cut top with a balcony bra when discussing the matter with the Town Clerk. She also stated that it was during that conversation on 23<sup>rd</sup> June 2022 that Cllr Murphy told the story about the time when he was in St Tropez and standing at a market stall when a woman stood next to him wearing bikini bottoms and an open blouse with a white bra with a fringe which meant that her breasts were at his eye level. Elaine Dutton explained that after the conversation she had left the room and explained the conversation to a colleague who advised her to report it and that she duly did so. She denied that there was any such conversation between them at the IBABS training in April 2022. When asked how the conversations made her feel, she stated that they made her anxious, that she would hide when Cllr Murphy came into the offices, she found the conversations embarrassing, demeaning and insulting that Cllr Murphy made her feel nervous and that she was scared to be around him or alone with him.

The Sub-Committee also heard from Mrs Martin of Counsel on behalf of Cllr Murphy and heard evidence from Cllr Murphy. Cllr Murphy explained that there were two incidents (rather than a single conversation on 23<sup>rd</sup> June 2022) from which the complaints arose, namely an IBABS training event in the Council Chamber in April 2022 and the conversation on 23<sup>rd</sup> June 2022.

He explained that on 23<sup>rd</sup> June 2022 he made an unannounced visit to the Town Council offices having been unable to contact the offices via telephone, and the conversation which took place mostly did so in one room with three persons present. There was a discussion about the possibility of the grant application being considered by a committee in time for the Picnic in the Park CADS event. Cllr Murphy accepted that he did make reference to the Complainant's cleavage, which he was very conscious of, on account of the low-cut top she was wearing as he did not want her to think that he was looking at her breasts.

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Cllr Murphy explained the context to his accepted comments on 23<sup>rd</sup> June 2022 were that he was having difficulty with the IBABS Software and asked for the number for the technical team to assist him. However, Elaine Dutton offered to help herself so he fetched his tablet device and she was able to fix the issue with ease. He asked her to show this again and she did so. Cllr Murphy explained that he was so relieved that the computer issue was finally fixed, that he uttered the words, "I could hug you, but that would not be allowed. Instead, I think I will make you my crush for the week / day." He also said words to the effect that if she was able to fix things with such ease, he could "fall in love with her".

Cllr Murphy explained that the St Tropez conversation had taken place before the conversation on 22 June 2022, at an IBABS training event at the Council Chamber in April 2022. Cllr Murphy explained that he spoke with the Complainant at that training session which was attended by other council employees and councillors as he had noticed that she was wearing a dress which exposed her cleavage. It appeared to him that others present had noticed but no one else had mentioned it. Cllr Murphy explained that he did not think that the Complainant was dressed appropriately and he decided that he should deal with this issue himself. It was in this context that he attempted to draw an analogy with what is acceptable dress in one context may not be acceptable in another, by giving an account of the encounter he had had in St Tropez.

Cllr Murphy accepted that in hindsight the reference to the woman in St Tropez was inappropriate, that he got it wrong and that he regretted it. He stated that he did not intend to offend or insult the Complainant or make her feel uncomfortable and would not deal with the matter in that way if he found himself in the same situation. He explained that he had taken time to read literature on unconscious bias and now considered himself to be more sympathetic and empathetic and stated that he was deeply sorry that he did not empathise with the Complainant at the time of his comments.

**The findings of fact, including the reasons for them**

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The Sub-Committee made the following findings of fact which were agreed.

1. Cllr Murphy attended the Town Council offices on the 23 of June 2022.
2. The Town Council Code of Conduct was engaged for the duration of that visit.
3. During the visit Cllr Murphy discussed with the Complainant the possibility of a grant being awarded to CADS in relation to an event being held on 3 July 2022.
4. Cllr Murphy asked the Complainant if there was anything she could do about the grant. He asked whether funding was available from other sources. The Complainant advised Cllr Murphy that he would need to speak to the Town Clerk.
5. During that visit on 23 June 2022 the Complainant was able to resolve an issue that Cllr Murphy had in relation to the IBABS system – in response to the Complainant resolving that issue Cllr Murphy stated *“You are fantastic, I’d like to give you a big cuddle but I’m sorry I can’t. You are my crush for the day/week and I could fall in love with you”*.
6. That Cllr Murphy told the Complainant about a time when he was in St Tropez and described an experience he had whilst standing at a market stall explaining that a woman stood next to him wearing bikini bottoms and an open blouse, with a white bra with a fringe which meant that her breasts were at his eye level.

The Sub-Committee made the following finding of fact on the disputed facts:

7. At the meeting of 23 June 2022 Cllr Murphy suggested that the Complainant sought to influence the Town Clerk by her wearing a low cut top with a balcony bra to push up her breasts.

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In relation to finding 7, the disputed fact, the Sub-Committee considered the Complaint Form and associated documents, the response of Cllr Murphy dated 23 August 2022, the statement of the Complainant based on the interview with the Investigating Officer on 8 November 2022, the statement of Cllr Murphy based on the interview with the Investigating Officer on 16 November 2022, the evidence given to the Sub-Committee by the Complainant and Cllr Murphy and the representations made.

Having done so, the Sub-Committee concluded that on the balance of probabilities, Cllr Murphy did suggest that the Complainant sought to influence the Town Clerk in relation to the application for grant funding by her wearing a low-cut top with a balcony bra to push up her breasts. The Sub-Committee found the Complainant's evidence on this issue to be consistent with the written record of the conversation produced by the Complainant for the Town Clerk signed and dated 27<sup>th</sup> June 2022 (the Monday following the agreed Thursday meeting) at page 43 of the agenda and with the complaint form at page 34, and accepted her evidence on this issue.

### **The finding as to whether the member failed to follow the Code, including the reasons for that finding**

#### **Respect**

The Sub-Committee concluded that Cllr Murphy had breached the Burnham-on-Sea and Highbridge Town Council Code of Conduct in that he had failed to comply with the following member obligation:

*'They shall behave in such a way that a reasonable person would regard as respectful'*

Firstly, the Sub-Committee considered whether the Code was engaged in relation to Cllr Murphy's conduct. The Code applies *'When a member of the Council acts, claims to act or*



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*gives the impression of acting as a representative of the Council...'*

It was accepted on behalf of Cllr Murphy that the Code was engaged throughout Cllr Murphy's visit to the Town Council offices. The Sub-Committee was satisfied that throughout the visit in discussing both a grant application made to the Town Council for which he was not the applicant and the IBABS system, Cllr Murphy was acting or giving the impression of acting in his role as a member of the Council and the Code was therefore engaged.

It was accepted on behalf of Cllr Murphy that the Sub-Committee's findings of fact gave rise to a breach of the obligation in the Code to behave in such a way that a reasonable person would regard as respectful and in reaching its decision the Sub-Committee also had regard to the Local Government Association's Guidance on Model Councillor Code of Conduct ('the LGA Guidance'). Whilst the Town Council Code is not the Local Government Association Model Councillor Code of Conduct, both contain similar provisions requiring respect and the content of the LGA Guidance is therefore appropriate.

The LGA Guidance provides

*'Examples of ways in which you can show respect are by being polite and courteous... having consideration for other people's feelings... In a local government context this can mean using appropriate language in meetings and written communications...'*

Disrespectful behaviour is stated as

*'Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurs are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurs, who observes the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompts the alleged disrespect.'*

*Disrespectful behaviour can take many different forms ranging from overt acts of abuse and disruptive or bad behaviour to insidious actions such as bullying and the demeaning treatment*

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*of others. It is subjective and difficult to define. However, it is important to remember that any behaviour that a reasonable person would think would influence the willingness of fellow councillors, officers or members of the public to speak up or interact with you because they expect the encounter will be unpleasant or highly uncomfortable fits the definition of disrespectful behaviour.*

*Examples of disrespect in a local government context might include...use of inappropriate language in meetings...'*

The Sub-Committee considered Cllr Murphy's comments towards the Complainant to demonstrate a lack of consideration for the Complainant's feelings. Comments relating to the Complainant's personal appearance, that she should dress in a particular way, references to wishing to give the Complainant a cuddle, her being his crush and that he could fall in love with her are entirely inappropriate in a work context from a Member to an officer. The comments were highly personal, entirely unnecessary and associated with the Complainant's gender.

The comments were entirely unreasonable and the Committee unhesitatingly accepted the impact of those comments were to make the Complainant feel uncomfortable, embarrassed, and demeaned such that she would hide from Cllr Murphy, clearly demonstrating an influence on her willingness to interact because of the expectation that the encounter would be unpleasant or highly uncomfortable. The Sub-Committee therefore concluded that Cllr Murphy had blatantly breached the requirement to behave in such a way that a reasonable person would regard as respectful.

### Bullying or intimidation

The Sub-Committee concluded that Cllr Murphy had not breached the obligation in the of the Burnham-on-Sea and Highbridge Town Council Code of Conduct providing that Members shall not act in a way which a reasonable person would regard as bullying or intimidatory.

The Sub-Committee carefully considered the LGA Guidance which provides:

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*'Bullying may be characterised as offensive, intimidating, malicious, insulting, or humiliating behaviour, an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Power does not always mean being in a position of authority and can include both personal strength and the power to coerce through fear or intimidation. Bullying may be obvious or be hidden or insidious. Such conduct is usually part of a pattern of behaviour which attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.*

...

*'Like disrespectful behaviour, bullying can be difficult to define. When allegations of bullying are considered it's likely that the person handling the complaint will consider both the perspective of the alleged victim, and whether the councillor intended their actions to be bullying. They will also consider whether the individual was reasonably entitled to believe they were being bullied.*

...

*Examples of bullying include but are not limited to:*

*verbal abuse, such as shouting, swearing, threats, insults, sarcasm, ridiculing or demeaning others, inappropriate nicknames, or humiliating language  
physical or psychological threats or actions towards an individual or their personal property  
practical jokes  
overbearing or intimidating levels of supervision, including preventing someone from undertaking their role or following agreed policies and procedures  
inappropriate comments about someone's performance  
abuse of authority or power, such as placing unreasonable expectations on someone in relation to their job, responsibilities, or hours of work, or coercing someone to meet such expectations  
ostracising or excluding someone from meetings, communications, work events or socials*

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*sending, distributing, or posting detrimental material about other people, including images, in any medium  
smear campaigns.*

The Sub-Committee considered the perspective of the Complainant, the Member and whether a reasonable member of the public who looks at the conduct objectively would regard it as bullying.

The Sub-Committee found this to be a difficult and borderline case. The Sub-Committee had no doubt whatsoever that Cllr Murphy's comments made the Complainant feel uncomfortable, upset, insulted, intimidated and demeaned. The Sub-Committee also considered that Cllr Murphy genuinely did not intend to make the Complainant feel that way. That is not in any way whatsoever to excuse his conduct but, on balance, the Sub-Committee concluded that that there was no or no sufficient pattern of behaviour demonstrating an intent to undermine or coerce the Complainant and that Cllr Murphy's behaviour though entirely inappropriate was not a result of an abuse or misuse of power and that accordingly, it fell just short of bullying.

### Improperly conferring an advantage or disadvantage

The Sub-Committee concluded that Cllr Murphy had not breached the obligation in the Burnham-on-Sea and Highbridge Town Council Code of Conduct providing that Members shall not seek to improperly confer an advantage or disadvantage on any person.

Whilst the Sub-Committee found, as an agreed matter of fact, that Cllr Murphy asked the Complainant whether funding was available from other sources, the Sub-Committee found it proper for Cllr Murphy to have asked about the availability of other sources of funding to support the event. There may have been alternative funding routes available of which he was unaware and it was proper for him to ask that question.

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### The sanctions imposed, if any, including the reasons for any sanctions

The Sub-Committee noted Cllr Murphy's regret at his comments and his acceptance that they were disrespectful and therefore a breach of the Code. The Sub-Committee also had regard to the character references provided on behalf of Cllr Murphy. Whilst the Sub-Committee also noted that it was not Cllr Murphy's intention to upset the Complainant or make her feel uncomfortable, the Sub-Committee concluded that the nature and seriousness of the breach together with the impact upon the Complainant was such that Cllr Murphy should be sanctioned in order to improve standards of conduct.

As Cllr Murphy's conduct was in his capacity as Town Councillor, the Sub-Committee's role is to recommend sanctions to the Town Council. The Sub-Committee agreed the following sanctions:

1. Report the findings to Burnham-On-Sea and Highbridge Town Council.
2. Recommend that the Burnham-On-Sea and Highbridge Town Council issue a formal censure to Cllr Murphy.
3. Recommend that the Burnham-On-Sea and Highbridge Town Council arrange training for Cllr Murphy, by a reputable trainer, to include:
  - Equalities
  - Member/Officer relationships
  - Professional boundaries
  - Interpersonal relationships

We would suggest that the content of the course and the provider is agreed in discussion with the Monitoring Officer.

The training to be completed within a period of three months and the completion to be reported to Somerset Council.

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4. Recommend to the Burnham-On-Sea and Highbridge Town Council that as soon as possible Cllr Murphy issue a genuine written apology to the Complainant for his conduct as found by the Sub-Committee.
5. Recommend to the Burnham-On-Sea and Highbridge Town Council that it excludes Cllr Murphy from the Council's offices, with the exceptions of meeting rooms as necessary for attending Council meetings, until he has undertaken the training.
6. Recommend to the Burnham-On-Sea and Highbridge Town Council that Cllr Murphy be removed from any committee/sub-committee until he has completed the training recommended.

The Sub-Committee considered that the above recommendations were both reasonable and proportionate in seeking to improve standards of behaviour and to protect the Complainant in the meantime.

The Burnham-On-Sea and Highbridge Town Council are requested to report back to the Monitoring Officer within three months of the date of this Decision Notice to confirm whether they have met to discuss the sanction and providing a copy of their decision.

### Recommendation to the Burnham-on-Sea and Highbridge Town Council

The Sub-Committee noted that the Town Council Code of Conduct does not include any obligations relating to equalities or discrimination and recommended the Town Council to adopt a code that included such obligations (such as the Somerset Council Code of Conduct).

10/05/2023