



Notice of Meeting of

**STANDARDS HEARING SUB-COMMITTEE**

**Tuesday, 2 May 2023 at 10.00 am**

**Sedgemoor Room, Bridgwater House, Kings Square, Bridgwater TA6 3AR**

To: The members of the Standards Hearing Sub-Committee

Chairman: Councillor John Bailey

Councillor Hugh Davies      Councillor Brian Smedley      Mr Philip Knowles

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For further information about the meeting, including how to join the meeting virtually, please contact Democratic Services [democraticserviceteam@somerset.gov.uk](mailto:democraticserviceteam@somerset.gov.uk).

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The meeting will be webcast and an audio recording made.

Issued by (the Proper Officer) on Friday, 21 April 2023

# **AGENDA**

**Standards Committee - 10.00 am Tuesday, 2 May 2023**

**Public Guidance Notes contained in Agenda Annexe** 5 - 6

**Click here to join the online meeting** 7 - 8

## **1 Apologies for Absence**

To receive any apologies for absence.

## **2 Declarations of Interest (Pages 9 - 10)**

To receive and note any declarations of disclosable pecuniary or prejudicial or personal interests in respect of any matters included on the agenda for consideration at this meeting.

(The personal interests of Councillors of Somerset Council, Town or Parish Councils and other Local Authorities will automatically be recorded in the minutes.)

## **3 Public Question Time**

The Chair to advise the Committee of any items on which members of the public have requested to speak and advise those members of the public present of the details of the Council's public participation scheme.

For those members of the public who have submitted any questions or statements, please note, a three minute time limit applies to each speaker and you will be asked to speak before Councillors debate the issue.

We are now live webcasting most of our committee meetings and you are welcome to view and listen to the discussion. The link to each webcast will be available on the meeting webpage, please see details under 'click here to join online meeting'.

## **4 Code of Conduct Complaint (Pages 11 - 108)**

To consider a Code of Conduct complaint.

## Guidance notes for the meeting

### Council Public Meetings

The legislation that governs Council meetings requires that committee meetings are held face-to-face. The requirement is for members of the committee and key supporting officers (report authors and statutory officers) to attend in person, along with some provision for any public speakers. Provision will be made wherever possible for those who do not need to attend in person including the public and press who wish to view the meeting to be able to do so virtually.

#### Inspection of Papers

Any person wishing to inspect minutes, reports, or the background papers for any item on the agenda should contact Democratic Services at [democraticserviceteam@somerset.gov.uk](mailto:democraticserviceteam@somerset.gov.uk) or telephone 01823 357628.

They can also be accessed via the council's website on [Committee structure - Modern Council \(somerset.gov.uk\)](#)

### Members' Code of Conduct requirements

When considering the declaration of interests and their actions as a councillor, Members are reminded of the requirements of the Members' Code of Conduct and the underpinning Principles of Public Life: Honesty; Integrity; Selflessness; Objectivity; Accountability; Openness; Leadership. The Code of Conduct can be viewed at: [Code of Conduct](#)

### Minutes of the Meeting

Details of the issues discussed, and recommendations made at the meeting will be set out in the minutes, which the Committee will be asked to approve as a correct record at its next meeting.

### Public Question Time

If you wish to speak or ask a question about any matter on the Committee's agenda please contact Democratic Services by 5pm providing 3 clear working days before the meeting. (for example, for a meeting being held on a Wednesday, the deadline will be 5pm on the Thursday prior to the meeting) Email [democraticserviceteam@somerset.gov.uk](mailto:democraticserviceteam@somerset.gov.uk) or telephone 01823 357628.

Members of public wishing to speak or ask a question will need to attend in person or if unable can submit their question or statement in writing for an officer to read out, or alternatively can attend the meeting online.

A 20-minute time slot for Public Question Time is set aside near the beginning of the meeting, after the minutes of the previous meeting have been agreed. Each speaker will have 3 minutes to address the committee.

You must direct your questions and comments through the Chair. You may not take a direct part in the debate. The Chair will decide when public participation is to finish. If an item on the agenda is contentious, with many people wishing to attend the meeting, a representative should be nominated to present the views of a group.

### **Meeting Etiquette for participants**

Only speak when invited to do so by the Chair.

Mute your microphone when you are not talking.

Switch off video if you are not speaking.

Speak clearly (if you are not using video then please state your name)

If you're referring to a specific page, mention the page number.

There is a facility in Microsoft Teams under the ellipsis button called turn on live captions which provides subtitles on the screen.

### **Exclusion of Press & Public**

If when considering an item on the agenda, the Committee may consider it appropriate to pass a resolution under Section 100A (4) Schedule 12A of the Local Government Act 1972 that the press and public be excluded from the meeting on the basis that if they were present during the business to be transacted there would be a likelihood of disclosure of exempt information, as defined under the terms of the Act.

If there are members of the public and press listening to the open part of the meeting, then the Democratic Services Officer will, at the appropriate time, ask participants to leave the meeting when any exempt or confidential information is about to be discussed.

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**Somerset**  
Council

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Suria Aujla	Bridgwater Town Council
Jason Baker	Chard Town Council
Lee Baker	Cheddon Fitzpaine Parish Council / Taunton Shadow Town Council
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Mike Best	Crewkerne Town Council
Alan Bradford	North Petherton Town Council
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David Fothergill	Taunton Shadow Town Council
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Pauline Ham	Axbridge Town Council
Philip Ham	Coleford Parish Council
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Hazel Prior-Sankey	Taunton Shadow Town Council
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**Their memberships of Parish or Town Councils will be taken as being declared by these Councillors to be Personal Interests in the business of the Somerset Council meeting and need not be declared verbally.**

**Any Unitary Councillor who has a Prejudicial Interest by virtue of their Membership of a Parish or Town Council, or who has a special involvement by virtue of being a Parish or Town Councillor, in a matter to be discussed by the Somerset Council will be expected to declare that prejudicial interest personally or bring to the attention of the Somerset Council meeting their special involvement.**

**H CLARKE, Unitary Solicitor, April 2023**



## Decision Report



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## Consideration of Code of Conduct complaint

Author: Steven Hellard – Deputy Monitoring Officer

Contact Details: [steven.hellard@somerset.gov.uk](mailto:steven.hellard@somerset.gov.uk)

### Summary

1. The Standards Hearing Panel is required to consider a complaint under the Burnham and Highbridge Town Council Code of Conduct against a member of Burnham and Highbridge Town Council.

### Recommendation

2. It is recommended that the Hearing Panel consider the information attached to this report and presented at the hearing and determine whether or not there has been a breach of the Burnham and Highbridge Town Council Code of Conduct by the Subject Member, and, if appropriate, determine what sanction should be imposed.
3. In order to assist the Panel, the following information is attached to this report:
  - Council's Arrangements for Dealing with Code of Conduct Complaints including Hearing procedure
  - Investigator's report
  - Schedule of Evidence

### Background

4. A complaint was received by Sedgemoor District Council from a complainant (the Complainant) against a member of Burnham and Highbridge Town Council (the Subject Member) on 1st August 2022. The Complainant alleged that the Subject Member had failed to treat her with respect and that the Subject Member had bullied and harassed her.

5. The Subject Member received papers in relation to the complaint on 4 August 2022 and responded to the complaint on 23 August 2022.
6. In consultation with the Independent Person, the Monitoring Officer determined to refer the complaint to investigation on 30 August 2022. The complaint was referred to independent investigator Gill Sinclair of Bethan Evans Governance, Training and Consultancy Ltd on 30 September 2022 (the Investigating Officer).
7. The Investigating Officer undertook an investigation and produced a final report on 2 February 2023. The Investigator Officer concluded that in relation to the complaints made by the Complainant as regards conversations and comments made to her by the Subject Member on the 23rd June 2022 and in respect of comments made by the Subject Member on other occasions, specifically at a Town Council training event, that on the balance of probabilities, the Subject Member DID BREACH the Member Obligations of the Town Council Code of Conduct as follows:

1) They shall behave in such a way that a reasonable person would regard as respectful.

2) They shall not act in a way which a reasonable person would regard as bullying or intimidatory.

There is a degree of agreement as to the content of some of the conversations that took place, though in this regard there is some dispute as to the extent of the breaches concluded by the Investigating Officer to have occurred as a result. There remains dispute about other alleged conversations.

8. In respect of the allegation that the Subject Member breached the obligation not to seek to improperly confer an advantage or disadvantage on any person, the Investigating Officer found that on the balance of probabilities, the alleged conversation did take place but that the element of the conversation relating to the availability of other funding DID NOT BREACH the Code of Conduct.
9. Following receipt of the final report, the Monitoring Officer, in line with the Council's Arrangements for dealing with Complaints, considered the report and was satisfied the investigation had been conducted properly. In relation to the finding of breach, the Monitoring Officer concluded that there was evidence of a failure to comply with the Code of Conduct.

10. Following contact with both parties and consultation with the Independent Person, the Monitoring Officer resolved to refer the matter for hearing on 3 March 2023.

#### **Other options considered**

11. Having been referred for a hearing the options available to the Hearing Panel are to determine whether there has or has not been a breach of the Code of Conduct.

#### **Links to Council Vision, Business Plan and Medium-Term Financial Strategy**

12. The Council has a statutory duty to determine the complaint

#### **Financial and Risk Implications**

13. There are no financial or risk implications arising directly from this report.

#### **Legal Implications**

14. Code of Conduct complaints must be dealt with in accordance with the Council's arrangements under s.28 (6) Localism Act 2011.

#### **HR Implications**

15. None.

#### **Other Implications:**

16. None.

#### **Equalities Implications**

17. When exercising its functions, the Council must consider the three aims of the Public Sector Equality Duty. These are:
  - Eliminate discrimination, harassment and victimisation;
  - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

18. The protected characteristics are:

- Age;
- Disability;
- Gender reassignment;
- Marriage and civil partnership;
- Pregnancy and maternity;
- Race;
- Religion and Belief;
- Sex;
- Sexual orientation;

### **Community Safety Implications**

19. None.

### **Climate Change and Sustainability Implications**

20. There are no climate change and sustainability implications arising from this report.

### **Health and Safety Implications**

21. There are no health and safety implications directly arising from this report

### **Health and Wellbeing Implications**

22. There are no health and wellbeing implications directly arising from this report

### **Social Value**

23. There are no health and wellbeing implications directly arising from this report.

### **Scrutiny comments / recommendations:**

24. As this report relates to a statutory function of the Council, which is the responsibility of the Hearings Panel there are no scrutiny comments or recommendations.

## **Background Papers**

25    None

## **Appendices**

Appendix A - Investigating Officers Report

Appendix B - Index of Documents

Appendix C - Investigations and Hearings Procedures

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**INVESTIGATION REPORT  
ON BEHALF OF THE MONITORING OFFICER  
OF SEDGEMOOR DISTRICT COUCIL**

**COMPLAINANT:** ELAINE DUTTON  
**MEMBER:** Councillor MICHAEL MURPHY  
**Case Reference:** GS/03/22

Report of an investigation by Gill Sinclair of Bethan Evans Governance, Training and Consultancy Ltd, appointed by the Monitoring Officer for Sedgemoor District Council into an allegation concerning Councillor Michael Murphy in his capacity as a councillor of Burnham-on-Sea and Highbridge Town Council.

**Investigator's background**

The investigation has been undertaken by Gill Sinclair. I am an associate working with Bethan Evans Governance Training and Consultancy. I have over 20 years of experience of working for local authorities providing advice to Councils on decision-making, probity, standards, and the Member Code of Conduct. I have undertaken all aspects of work relating allegations of breaches of the Code of Conduct, including assessments and investigations of complaints, reporting to, and advising the Standards Committee and providing training to Councillors on the Code Conduct. I regularly provided advice to Councillors on conduct, interests and conflicts of interests and probity.

**DATE:** 2<sup>nd</sup> February 2023

## **Contents**

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- 2 Councillor Michael Murphy's official details**
- 3 The relevant legislation and protocols**
- 4 The evidence gathered**
- 5 Preliminary Issue – Jurisdiction**
- 6 Material facts relating to the complaint**
- 7 Councillor Murphy's additional submissions**
- 8 Reasoning as to whether there have been failures to comply with the Code of Conduct**
- 9 Finding**

**Appendix A Schedule of evidence taken into account and list of unused material**



## **1 Executive summary**

1.1 I have been appointed to investigate a complaint made by Elaine Dutton (ED) in respect of the alleged behaviour of Councillor Michael Murphy (Councillor MM).

### **Investigator's background**

- 1.2 The investigation has been undertaken by Gill Sinclair. I am an associate working with Bethan Evans Governance Training and Consultancy. I have over 20 years of experience of working for local authorities providing advice to Councils on decision-making, probity, standards, and the Member Code of Conduct. I have undertaken all aspects of work relating allegations of breaches of the Code of Conduct, including assessments and investigations of complaints, reporting to, and advising the Standards Committee and providing training to Councillors on the Code Conduct. I regularly provided advice to Councillors on conduct, interests and conflicts of interests and probity.
- 1.3 ED was, at the time of the complaint, the Acting Responsible Finance Officer (RFO) of Burnham-on-Sea and Highbridge Town Council (the Town Council).
- 1.4 Councillor MM is, and was, at the time of the complaint a Councillor on the Town Council.
- 1.5 On 28<sup>th</sup> July 2022, ED submitted a complaint form to the Monitoring Officer of Sedgemoor District Council, the council responsible for dealing with complaints in respect of members of the Town Council.
- 1.6 The complaint made relates to the alleged conduct of Councillor MM on the 23rd of June 2022 and his alleged behaviour towards ED on several other occasions when visiting the offices of the Town Council.
- 1.7 In the complaint ED alleges that on the 23rd of June, Councillor MM made inappropriate comments to her when discussing whether a grant application made on behalf of Cultural Arts Development Society (CADS) could be approved. ED alleges that Councillor MM:
- i) questioned whether money for the grant could be taken from elsewhere in the Town Council
  - ii) Suggested that ED 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,
  - iii) During a further conversation on the 23rd of June, Councillor MM made an inappropriate comment to ED by saying that she made him feel calm and he wanted to give her a cuddle,
  - iv) on a previous occasion when Councillor MM attended the Town Council offices, he made an inappropriate comment by saying

to ED she was his crush for the day, and he was falling in love with her.

- v) That Councillor MM ignored the request for Cllrs to make an appointment with officers before attending the Town Council Offices and when he did attend, he stood in such close proximity to ED as to touch her arm.

1.8 My findings are that in relation to the complaints made by ED as regards the conversations and comments made to her by Councillor MM on the 23<sup>rd</sup> June and in respect of comments made by Councillor MM on other occasions, specifically at a Town Council training event, I have found that on the balance of probabilities, Councillor MM **DID BREACH** the Member Obligations of the Town Council Code of Conduct as follows:

- 1) They shall behave in such a way that a reasonable person would regard as respectful.
- 2) They shall not act in a way which a reasonable person would regard as bullying or intimidatory.

1.9 In respect of the allegation that Councillor MM breached the obligation:

- 3) They shall not seek to improperly confer an advantage or disadvantage on any person.

1.10 I have found that on balance of probabilities, the conversation did take place, but that the element of the conversation relating to the availability of other funding for CADS **DID NOT BREACH** the Code of Conduct.

## **2 Councillor Michael Murphy's official details**

2.1 Councillor MM was first as a Town Councillor between 1995-1999. He was then elected as Town Councillor in 2019 and re-elected in May 2022. He serves on the following committees

- Chair of the Town Improvement Committee
- Deputy Chair of the Princess Management Committee
- HR Committee

2.2 Councillor MM is also a member of the following other relevant authorities:

- Sedgemoor District Council
- Somerset County Council

2.3 In respect of the Town Council, Councillor MM currently serves on the following committee: The Town Improvement Committee.

2.4 He serves on the following committees on Sedgemoor District Council:

- Development Control Committee
- Licensing & General Purposes Committee  
Licensing Panel
- Tree Preservation Order Sub Committee

2.5 He serves on the following committees on Somerset County Council:

- Constitution and Governance Committee
- County Council
- Regulation Committee

2.6 He is not an Executive Councillor on either Sedgemoor District Council or Somerset Council.

2.7 Councillor MM's Register of Interest in respect of Sedgemoor DC confirms that he holds positions on a number of outside bodies including, as the Chair of the Cultural Arts Development Society (CADS).

2.8 A Register of Cllr MM's interests relating to the Town Council can be found via the Sedgemoor DC website. The Register is undated.

2.9 Cllr MM confirmed that he had undertaken Equalities Training.

### **3 The relevant legislation and protocols**

3.1 In accordance with S 27 of the Localism Act 2011, the Town Council adopted a Code of Conduct in May 2015. The Code was last reviewed by the Town Council in May 2021. The Code includes the following paragraphs:

- **Introduction**

Pursuant to section 27 of the Localism Act 2011, Burnham-on-Sea and Highbridge Town Council has adopted this Code of Conduct to promote and maintain high standards of behaviour by its members and co-opted members whenever they conduct the business of the Council, including the business of the office to which they were elected or appointed, or when they claim to act, or give the impression of acting as a representative of the Council.

- **Member Obligations**

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

- 1 they shall behave in such a way that a reasonable person would regard as respectful.

- 2 they shall not act in a way which a reasonable person would regard as bullying or intimidatory.
- 3 they shall not seek to improperly confer an advantage or disadvantage on any person.

#### **4 The evidence gathered**

4.1 I have taken account of oral evidence from the complainant ED and Councillor MM.

4.2 I have also taken account of documentary evidence as follows

- i) Complaint form dated 18<sup>th</sup> August 2022 and accompanying documentation:
  - Statement signed and dated 11 August made by Mr Ron Spur – Locum Town Clerk.
  - Note signed and dated 27<sup>th</sup> June relating to incident on 23<sup>rd</sup> June 2022 made by ED and Helen Hurley
  - Copy of a letter dated 27<sup>th</sup> June 2022 sent by the Locum Town Clerk to Councillor MM dated 27<sup>th</sup> June 2022
- ii) Response of Councillor MM dated 23 August 2022
- iii) Decision Notice issued by the Monitoring Officer dated 30<sup>th</sup> August 2022.
- iv) Code of Conduct of the Town Council
- v) Sedgemoor District Council's adopted Investigation Procedure.

#### **5 Preliminary Issue - Jurisdiction**

5.1 The preliminary matter that needs to be addressed is whether, and to what extent the Code of Conduct is engaged in respect of this complaint.

5.2 Councillor MM indicates in his response to the Monitoring Officer dated 23<sup>rd</sup> August, that in relation to certain aspects of the complaint, he was not acting in his capacity as a Town Councillor and as such the Code is not engaged. In particular, he argues that in relation to his attendance at the Town Council offices on the 23<sup>rd</sup> of June the Code was not engaged in relation to the following allegations:

- That he asked ED to wear a low cut top and to push her breasts out, so that they sit like a balcony to persuade the Town Clerk to change his mind.
- That he told a story about a woman in Santa Fe who was wearing a bra type top and that her breasts were at his eye level.

5.3 Councillor MM argues that on the 23<sup>rd</sup> of June he attended the offices of the Town Council in his capacity as the chair of CADS. He said that when he

attended the office on that day he did so because he was concerned about a grant application that had been made by CADS via its Secretary Eileen Shaw (previously the Clerk to the Town Council), which had not been approved. This grant was in respect of an event that was due to take place on the 3rd of July.

- 5.4 His attendance was necessitated because CADS had committed to expenditure for this event. It was the second event CADS had organised that summer, the previous event being the Party in the Park over the Jubilee Weekend, he needed to know whether funding would be available.
- 5.5 In his statement Councillor MM describes the staffing situation in the Town Council offices. He states that in around April 2022 three senior officers resigned from the Town Council. This included, the Town Clerk, Deputy Town Clerk, and the Responsible Finance Officer. This left the Town Council offices significantly understaffed and under pressure. It also meant that meetings of the Finance Committee had been cancelled. This committee would ordinarily have considered grant applications. It hadn't met in May, and this had resulted in CADS not receiving any grant funding for the Jubilee weekend event, and it appeared that the next meeting of the committee considering grant applications would be after the July event. As such it appeared CADS would not obtain any funding for this event either.
- 5.6 He describes in his statement how he had attended the Town Council offices on various occasions during May at which he had had discussions with the Locum Town Clerk about the possibility of convening meetings of the various committees so that the grant application could be considered
- 5.7 Despite all councillors having been requested to telephone or e-mail the offices to make appointments to come in and see the remaining staff, on the morning of the 23rd of June, Councillor MM, telephoned the offices and having not received a response, he decided to attend the offices in person.
- 5.8 In his statement, Councillor MM acknowledges that on his arrival at the Town Council office, he did not introduce himself or inform the staff that he was there in his capacity as Chair of CADS. His view is that the staff knew who he was and what he did.
- 5.9 As set out in section 3 above, the Code applies when a Councillor "*claims to act or gives the impression acting as a representative of the council*"
- 5.10 The question that needs to be answered is whether Councillor MM gave the impression he was acting as a representative of the Council when discussing the availability of a grant for an organisation he was closely involved with, but in respect of which he was not the applicant.

- 5.11 In her statement ED describes her employment with the Town Council. She was originally employed as a Customer Services Officer from September 2021. Following the departure of the three members of staff mentioned above ED was asked to take on the role of acting Responsible Finance Officer in April 2022. At the time of the conversation in June 2022 she had had little contact with Councillors, having attended only one Council meeting. It was her view given the nature of the conversation, that Cllr MM was talking to her in his capacity as a Town Councillor. He was not the applicant for the grant, that had been made by the secretary of CADS.
- 5.12 ED stated that all councillors had been requested to make appointments with officers, this was due to the staff shortages. Councillor MM however tended to ignore this request and had continued to attend the offices without an appointment to discuss Town Council business.
- 5.13 It was this during this conversation that ED alleges that he sought to persuade her to dress in such a way as to persuade the Town Council Clerk to change his mind about the availability of a grant. This conversation was related to the fact that meetings of the Committee which would ordinarily consider grants had been cancelled and the next available committee was scheduled to take place after the date of the event. In addition, on previous occasions Cllr MM had had several conversations with the Locum Town Clerk and other officers about the need for meetings to be called for an earlier grant application. These conversations directly related the Cllr MM's role as a councillor as opposed to a member of an organisation that had applied for a grant.
- 5.14 Whilst she knew who Councillor MM was, and that he was involved with CADS, he made no effort to clarify to her the capacity in which he was speaking to her.
- 5.15 I have, on balance, concluded that it is reasonable to conclude that Councillor MM gave the impression that he was attending the offices in his capacity as a councillor in respect of all aspects of the complaint. Therefore, the Code is engaged.

## **5 Material Facts Relating to the Complaint**

- 5.1 The detailed statements of ED and Councillor MM are attached [Appendix A].
- 6.2 On the face of the statements there is a degree of agreement between the parties as to the nature of the events, there is however disagreement about who was present and the order of the events.
- 6.3 The following facts are undisputed:
- i) Councillor MM attended the Town Council offices on the 23rd of June 2022, and he had two conversations with ED

- ii) he discussed with ED the possibility of the grant in relation to the July event being awarded
- iii) they discussed the need for Councillor MM to make contact and discuss the grant directly with the Locum Town Clerk.
- iv) that ED was able to resolve an issue that Councillor MM had in relation to access to the IBABS system
- v) that because of the help ED provided, Councillor MM made a comment to ED That either he made her feel calm, or that he said *“you are fantastic I'd like to give you a big cuddle but sorry I can't. Let me just say you are my crush for today and I think I could fall in love with you”*
- vi) that he had had previous conversations with ED

6.4 The following facts are disputed:

- i) That Councillor MM asked if money could be taken from other Town Council funds.
- ii) That he suggested ED sought to change the Locum Town Clerks' mind by wearing a low cut top with a balcony bra, or that she pushes her breasts out.
- iii) That on the 23<sup>rd</sup> June he had a conversation with ED about a lady in Santa Fe. Councillor MM does not dispute that he had a similar conversation about a lady in St Tropez, but he does dispute having this conversation on the 23<sup>rd</sup> of June.

6.5 Councillor MM has been extremely open and clear about the conversations he had had with ED on 23<sup>rd</sup> June and over the previous couple of months. There may be disagreement about when, and in front of whom, the conversations took may place, but by Councillor MM's own admission, several of the conversations that are complained about did take place.

6.6 In relation to his attendance at the offices on 23<sup>rd</sup> of June 2022, he confirmed that he did attend the offices without an appointment. His recollection is that he was met by HH, a Customer Services Officer. The first conversation that he recalls was a conversation with HH, in which he remarked that he really liked the colour of her hair. He confirms this conversation then expanded to include ED and the colour of her hair. He described this conversation as “banter”.

6.7 After he had finished discussing the hire of chairs for the July event with HH, Councillor MM recalls that he then had a conversation with ED. He confirmed that at that point in time ED was sat at her desk and he was stood in front of her. In his statement he said:

*“I am about 6ft tall and she quite small and was sitting at her desk, I was conscious that she was pushing out her breasts, forming a circle with her face. I felt I needed to say something, I said to her, “I am really sorry to mention this to you, but I am a bit uncomfortable, I don’t want you to think I am staring at your breasts, I am actually looking at your face, I am really sorry to say this to you, it’s just what you are wearing, it’s pushing up your breasts”. My mission was for her not to feel badly of me.”*

*I moved away from her desk, ED said she wasn’t bothered.*

- 6.8 Councillor MM also confirmed that following that conversation he had a second conversation with ED. This related to difficulties he was experiencing accessing the Town Council IT system IBABS. He explained that ED offered to help him. He got his tablet from his car and gave it to ED. She very quickly was able to access the system and Councillor MM was delighted. He asked her if she could show him how she had gained access to the system. At that point ED suggested that he stood by her desk so that he could see what she was doing. Councillor MM said in his statement:

*“I couldn’t believe what she had done, so I asked her to do it again, she repeated the process and opened the system up again. I was beside myself. I then stood back from the desk and said Look, thank you very much, I then uttered this nonsense,” I’d love to give you a cuddle, but I can’t, it’s not allowed, but what I can say is that you can be my crush for the week, I think I’m falling love with you – fantastic”*

*I should say that when I gave ED the tablet, she invited me to stand behind her. I said, “I’m really nervous about that, I don’t want to look down on you and be in the same position staring down at you instead of ...ED said Come and Stand here”. I thought Oh right, OK, I walked around, stood on the corner looking at the screen and saw what she did, I then walked away.*

- 6.9 When asked whether he thought that type of language in a workplace was appropriate, Councillor MM said as follows:

*“I haven’t used the language before or since and in terms of whether I would use it again, it depends, this was a youngish person, much younger than me, I didn’t think badly of it, it was meant to be a compliment to her, it was a throwaway line, she had achieved something that no one else had achieved,*



*I obviously couldn't imagine that she would take it literally, maybe it seemed strange coming from an older man. I am used to those cool conversations with my grandchildren."*

- 6.10 ED's complaint makes general allegations relating to the conduct of Councillor MM towards her on a number of occasions, but she does not specify any particular dates or events, nor does she give any detail of the specific behaviour about which she complains.
- 6.11 Councillor MM, was, as noted above, very open and provided details of other conversations he had had with ED. In his statement he confirms that he had previously spoken to ED at a training event he had attended in the Town Council. During that event, he confirmed that he spoke to ED about the way in which she dressed. Councillor MM confirmed but it was during this conversation, not the conversation of the 23rd of June that he referred to a lady he had seen in St Tropez. Councillor MM said:

*'The conversation with ED about St Tropez took place during an IBABS training event. I spoke to her about the way she dressed. I had been called to attend an IBABS training session, ED came in and sat down she was wearing a black dress, she wore it every day. I think she wore same dress when working in her other part time job in a hair salon where she can wear what she wants.*

*The dress had a scooped neckline, and her breast were almost out on the table, very exposed. I spoke to her and said that I thought her dress was not appropriate for her work at the Town Council. I thought she might be in breach of the Town Council dress code, clause 2.1 says I agree to wear something appropriate to work in a public office. No one had said anything to her, but I felt it had to be said. I felt embarrassed, I spoke to her very kindly and quietly.*

*I may have overstepped the mark, but something had to be said, it was staring at us all. Subsequently I have felt that I could have spoken to Sharon, but when I spoke to ED, she didn't seem bothered. I thought she was used to it, that it was part of her daily thing. But as she was new to the Town Council, I thought something had to be said, I used the conversation about St Tropez to illustrate the point about appropriate dress.*

*I said to her that I had just come back from St Tropez, in St Tropez, dress may not matter, I told her about an experience I had had whilst standing at a market stall, I explained that a tall willowy 6ft model type woman stood next to me, she was wearing yellow bikini bottom and a white cotton blouse that was open, she had a white bra with a fringe, it was like a shelf, perfectly like a shelf on to which her bosom was placed – completely out. I was shocked, but in a town like St Tropez, you can wear what you want, in a Town Council you need to be more discreet."*

- 6.12 As noted in paragraph 6.4 (i) and (ii) above, Councillor MM disputes that he either asked that funds be taken from elsewhere in the Town Council, or that he asked ED to wear a low cut top and push her breasts up, “so they sit like a balcony” to persuade the Locum Town Clerk to award the grant to CADs. In respect of the allegation that he sought to use his position to gain an advantage for CADs, what is clear is that no grant was made in respect of the event that CADs organised in July.
- 6.13 In respect of the allegation that the ED dressed in such a way as to persuade the Town Clerk to award funding, Councillor MM in his statement said:

*“I absolutely did not ask her this. It’s ridiculous, it’s implausible for me to say that she should dress like a tart, it’s reprehensible. I simply asked if she could ask the Town Clerk about it, she said she couldn’t, it was entirely up to me to do.”*

## **7 Councillor Murphy’s additional submissions**

- 7.1 Councillor MM was categorical in his statement that in respect of each conversation he had with ED, about her appearance, he made the comments to ensure that she didn’t think badly of him. He did not intend to coerce any one to do anything. And his view is that on each occasion he spoke to her, he did so in a quiet and kind manner.
- 7.2 He raised concern that ED has jumbled events up.

## **8 Reasoning as to whether there have been failures to comply with the Code of Conduct**

- 8.1 The Town Council Code includes the obligations to:
- i) treat everyone with respect and
  - ii) not to bully or intimidate
  - iii) not to use the position as councillor to confer an advantage or disadvantage on anyone.

### **Treat Everyone with Respect**

- 8.2 The most appropriate definitions of what types of behaviour constitutes treating someone the respect and harassment can be found in the LGA document – Guidance on LGA Model Code Councillor Code of Conduct. Whilst the Town Council has not adopted this Model Code, its Code includes almost identical provisions in relation to treating others with respect and not harassing others.

8.3 The LGA Guidance describes respect as follows:

*“Examples of ways in which you can show respect are by being polite and courteous..... in a local government context this can mean using appropriate language in meetings and written communication...”*

8.4 Disrespect is described 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 the relationship of the people involved and the behaviour of anyone who prompts the alleged disrespect... 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”*

8.5 Applying these definitions to the conduct of Councillor MM who admits he had several conversations with ED, details of which are quoted in the report at Section 6 above, I conclude that these conversations were inappropriate by virtue of the highly personal nature of the comments. They related to her personal appearance, the way she dressed, and the use of her appearance to seek to persuade a third party to act in a particular way. In addition, the reference to the incident in St Tropez, which was by Councillor MM’s admission an attempt by him to demonstrate the inappropriateness of her dress in the workplace. His conversations were inappropriate, they contained inappropriate remarks about an individual’s appearance, and lewd comments.

8.6 The concept of respect is subjective. Any behaviour that a reasonable person would think would influence the willingness of the recipient (in this case ED), to speak up or interact with the person making the comments (in this case Councillor MM), because they expect the encounter will be unpleasant or highly uncomfortable, fits the definition of disrespectful behaviour.

8.7 Applying the test set out in para 8.6 above to the circumstances of the complaint, I conclude that an individual who is spoken to in such a way in their workplace, about their personal appearance, the way in which they dress, and who is forced to listen to lewd comments, including the description of the way in which the lady in St Tropez was dressed would feel demeaned by it, and it is reasonable to conclude that they would find the encounter to be unpleasant or highly uncomfortable.

## **Not to Bully or Intimidate**

8.8 The LGA Guidance describes bullying as follows:

*“Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour, and abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated denigrated or threatened”*

8.9 Applying this definition to the comments and conversations of Councillor MM as set out above in Section 6 above, in particular his comments that he would like to give her a cuddle, that she could be his crush for the day and that he thought he was falling in love, these comments could amount to bullying behaviour when taken in the context of other comments and conversations he had had with ED. I conclude that a reasonable person would find them insulting and humiliating, and could make a person feel vulnerable, upset, undermined, and denigrated. I also consider it to be disrespectful as a reasonable person would feel such an encounter will be unpleasant or highly uncomfortable.

8.10 The Guidance on LGA Model Code Councillor Code of Conduct does not refer specifically to intimidation. The Oxford English Dictionary meaning of intimidation is:

*“To frighten or overawe someone, especially in order to make them do what one wants”*

8.11 In relation to the allegation that ED dresses in such a way as to persuade the Town Clerk to award funding, I have carefully considered Councillor MM’s categorical denial that he made this statement. However, in the light of the conversations that he has acknowledged to have had with ED, I have concluded that on the balance of probabilities, it is more likely than not that Councillor MM did make this comment to ED.

8.12 The content of the conversations Councillor MM has had with ED were entirely inappropriate and offensive for any councillor to have with a member of staff in a workplace. I do consider this conversation to be disrespectful. I do not however consider that it amounts to intimidatory behaviour.

## **Not to use the position as councillor to confer an advantage or disadvantage on anyone.**

8.13 In relation to the allegation that Councillor MM sought to use his position to confer an advantage on CADS by securing funds from the Town Council other than through the grant, there is disagreement as to whether this request was made. What is clear is that CADS did not receive any grant funding from the Town Council for either the Jubilee weekend or the event in early July.

- 8.14 It is not unreasonable for a councillor to seek to establish whether there were alternative funding routes available to support the event. There may have been other forms of funding that could have been available. Councillor MM is a very experienced Councillor, and in his capacity as a councillor it was not unreasonable to ask the question. What was unacceptable was the suggestion as to how ED should seek to persuade the Town Clerk in respect of this matter.
- 8.15 Councillor MM refers on several occasions throughout his statement to ED saying she was “not bothered” by his comments. This does not justify or make the comments made by Councillor MM any more acceptable. ED used this language to bring conversations to an end as swiftly as possible. Such comments should not be taken as an indication that she considered the conversation or comment to be acceptable.
- 8.16 Councillor MM describes comments he made about wanting to give ED a cuddle, that she could be his crush for the day and falling in love with her as modern language he uses with his grandchildren. He fails to see acknowledge the very different roles and settings in which he has used this language, i.e., a workplace.
- 8.17 The language used demonstrates a lack of respect for ED. Councillor MM gives no consideration to the impact his language could have on others. His justification, or mission was to ensure that ED did not think badly of him. The fact that he may have spoken to her quietly and in a kind manner does not excuse his behaviour.

## **9 Findings**

- 9.1 In conclusion I have found that on the balance of probabilities, Councillor MM has **BREACHED** the following Member Obligations of the Town Council Code of Conduct:

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

They shall not act in a way which a reasonable person would regard as bullying or intimidatory.

- 9.2 In relation to the allegation that Councillor MM sought to use his position to seek to improperly confer an advantage, I have found **NO BREACH** of the Member Obligations of the Town Council Code of Conduct:

they shall not seek to improperly confer an advantage or disadvantage on any person.

**Comment:**

The Town Council Code of Conduct does not include any obligation relating to equalities or discrimination. Most modern Codes include these provisions. The Guidance on LGA Model Code Councillor Code of Conduct provides various examples of behaviour that could if proven amount to a discriminatory behaviour. This includes:

*“Where a councillor engages in unwanted conduct on grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation, which violates another person’s dignity, or creates a hostile, degrading, humiliating or offensive environment”*

Had the Town Council Code included an obligation to promote equalities and to not discriminate, it is my opinion that I would have concluded that the behaviour complained about would have amounted to a breach of such an obligation.

**Schedule of evidence taken into account**

**Core documents**

Doc No	Description	
1	Complaint form	
2	Response of Councillor MM dated 23 August 2022	
3	Decision Notice issued by the Monitoring Officer dated 30 <sup>th</sup> August 2022.	
4	Relevant Extract from the Code of Conduct of the Town Council	

**Notes of telephone conversations, letters, and interviews with witnesses**

Doc No	Description	Pages
5	Statement of ED based on interview of 8 <sup>th</sup> November 2022 conducted via Teams	
6	Statement of Cllr MM based on interview in person on 16 <sup>th</sup> November 2022	

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## **INDEX**

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**CODE OF CONDUCT FOR COUNCILLORS  
COMPLAINT FORM**

(Before completing this form please read the attached Guidance Notes)  
To enable you to type into this form please go to 'Tool'; 'Fill and Sign'

**A. Your details**

1. Please provide us with your name and contact details. Anonymous complaints will only be considered if there is independent evidence to substantiate the complaint.

<b>Title:</b>	Miss
<b>First name:</b>	Elaine
<b>Last name:</b>	Dutton
<b>Address:</b>	[REDACTED]
<b>Daytime telephone:</b>	[REDACTED]
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	[REDACTED]

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

The following people may see this form:

- Members of the Standards Committee
- Monitoring Officer of Sedgemoor District Council
- The Council's Independent or Reserve Independent Person

A copy or brief summary of your complaint will also be shared with the councillor(s) you are complaining against. If we release a copy of the complaint form and any attachments, we will ensure that your contact details

(address, telephone number, e mail address) are removed. If you have serious concerns about your name and/or details of your complaint being released, please complete Section C of this Form and also discuss your reasons or concerns with the Council's Monitoring Officer.

2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted councillor of an authority
- An independent member of the Standards Committee
- Member of Parliament
- Local authority monitoring officer
- Other council officer or authority employee
- Other (.....)

B. Making your complaint

The sanctions available to a Standards Committee are governed by law and were significantly reduced by the Localism Act 2011. For a brief summary of sanctions available and other information about the process and time scales, please refer to the attached Guidance Notes.

3. Please provide us with the name of the councillor(s) you believe have breached the Code of Conduct and the name of their authority:

Title	First name	Last name	Council or authority name
MR	Michael	Murphy	Burnham-on-Sea & Highbridge Town Council

4. Please explain in this section (or on separate sheets) what the councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one councillor you should clearly explain what each individual person has done (with dates / witnesses) that you believe breaches the Code of Conduct. As a result of the Localism Act 2011 local authorities were given the power to adopt their own form of code of conduct so the content particularly amongst town and parish councils may vary significantly. This means that you do need to know what is in the code of conduct for the relevant council/authority and how it relates to the subject matter of your complaint. It is important that you provide all the information you wish to have taken into account by the Monitoring Officer or Standards Committee

when they decide whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the councillor said or did. For instance, instead of writing that the councillor insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information or other relevant documentary evidence to support your allegation(s).

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

I am writing to report Cllr Mike Murphy has been verbally sexually harassing me whilst trying to perform my work duties at Burnham-on-Sea and Highbridge Town Council.

I feel he has breached the code of Conduct as follows:

#### Member obligations

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.

1. They shall behave in such a way that a reasonable person would regard as respectful.
2. They shall not act in a way which a reasonable person would regard as bullying or intimidatory.

Here are the events that have occurred;

On Thursday 23<sup>rd</sup> June 2022 Cllr Mike Murphy came into the offices at Jaycroft Road, where Helen Hurley greeted him, he asked to see myself so Helen showed him into the waiting room, to wait until I was free.

When I was free I entered the room and instantly took a chair to create space between myself and Cllr Mike Murphy and indicated for him to take a seat. This was so I could keep a distance between us, so I could immediately establish a personal space.

Cllr Murphy wanted to discuss a grant for Party in the Park that he had been told he couldn't have as he hadn't applied for it before the closing date of 5<sup>th</sup> May 2022.

Cllr Murphy proceed to ask me if there was a way I could use council money for the party in the park or if I could give him an advance of £1500.00. I told him I could not do this and he would need to speak with Ron. I told him Ron was in on Monday, and I would tell him Cllr Murphy had been in and asked if there was another way round the situation, but couldn't promise a happy outcome. Cllr Murphy continued to repeat the conversation, trying to change my mind.

Cllr Murphy then made a very inappropriate comment asking me if I can wear a low-cut top and push my boobs up so they sit like a balcony, to then walk into the room and try and persuade the locum Town Clerk Ron Spur's mind. He was adamant this would work and was very serious about me doing this for him to get the outcome he wanted.

He then proceeded to carry on talking about the party in the park situation and said I made him feel calm and he wanted to give me a cuddle. I declined.

He then went on to disclose about a time when he was in Santa Fe and a tall lady stood beside him when he was at a stall making a purchase. He said she was in a bra type top and this meant her boobs were at his eye level. I have no idea why he felt I should no this information and felt very uncomfortable, I then bought the conversation to an end as quickly as I could.

After he left I immediately left the room and spoke with my colleague Helen Hurley about my concerns and she said I should now report this as he was saying more each time I seen him, which she had been witness to on previous occasions.

For a couple of weeks prior to this Cllr Mike Murphy has been turning up at the office without an appointment and making comments of how I'm his crush and he's falling in love with me, my colleague Helen Hurley was witness to this, he also tends to walk behind our desks where he has no need to be and stands very close to us with arms touching or looking over our shoulder, making us both feel very uncomfortable in his presence.

On a few occasions he was asked to not just turn up to the offices and to make an appointment first, but this was being ignored.

I would like to point out that these instances of harassment have caused me stress and anxiety, and they have been affecting my performance at work. Whenever I see his car arriving in the car park, I hide in another room, or get my colleague to say I'm busy. so I can avoid seeing him.

I find Cllr Mike Murphy highly inappropriate and his comments unwelcome, he has violated my dignity and created an intimidating, degrading environment, this has been one of the most difficult times I've ever had to face within the workplace.

**C Confidentiality of complainant and the complaint details**

**Only complete this next section if you are requesting that your identity is kept confidential**

5. In the interests of fairness and natural justice, we believe councillors who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary or copy of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have justifiable grounds:-

- to believe you may be at risk of physical harm from the councillor(s) against whom you are submitting a written complaint (or by a person associated with the same); or
- to believe your employment may be jeopardised if your identity is disclosed; or
- where there are medical risks (supported by medical evidence) associated with your identity being disclosed.

Please note that requests for confidentiality or requests for suppression of complaint details will only be granted in exceptional circumstances. The Monitoring Officer or Standards Committee will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will allow you the option of withdrawing your complaint.

However, it is important to understand that in certain very exceptional circumstances where the matter complained about is very serious, we may proceed with an investigation or other action and disclose your name even if you have expressly asked us not to. We will contact you where this situation arises to discuss the matter first.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

(Continue on separate sheet(s), as necessary)

**D. Remedy sought**

Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint. Please first read the guidance notes for details of the sanctions available to the Standards Committee. (Continue on separate sheet(s) as necessary)

This kind of behavior is unacceptable, and I am sure that the council does not condone this activity. I ask you to properly investigate this matter and put an end to this inappropriate treatment and take reasonable steps to protect me and my colleague from further instances, we should be treated with respect and decency.

Cllr Mike Murphy needs to know this kind of behavior is unacceptable and is offensive.

I feel he should not be allowed to be chair or vice chair of any committee.

**E. Additional information**

6. Complaints must be submitted in writing. This includes fax and electronic submissions. Frivolous, trivial, vexatious and politically or personality motivated tit-for-tat complaints are likely to be rejected by the Monitoring Officer.
7. In line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please contact the Monitoring Officer as soon as possible:

Melanie Wellman  
Group Manager (Legal and Democratic) and Monitoring Officer  
Sedgemoor District Council  
Bridgwater House  
King Square  
Bridgwater  
Somerset  
TA6 3AR

Tel: 01278 435734  
Fax: 01278 435500  
E-mail: melanie.wellman@sedgemoor.gov.uk

Please sign and date this Complaint Form and return it to the Monitoring Officer at the above address.

Signed  Date 18/07/2022



## Statement

Statement of Ronald Spurs, [REDACTED]

Email: [REDACTED]

Dated : 11<sup>th</sup> August 2022.

Signed: [REDACTED]

Between 4<sup>th</sup> May 2022 and 12<sup>th</sup> August 2022, I was employed by a company named Local Government Resource Centre, (LGRC), on contract to Burnham on Sea and Highbridge Town Council to work as a Locum Town Clerk to the Council. I am a qualified Town Clerk and have been a Town Clerk for seven years.

Burnham on Sea and Highbridge Town Council is undergoing a period of change and Ms Elaine Dutton and Ms Helen Hurley were the only members of administrative staff working for the Council. (The Deputy Clerk informed me of her resignation on 4<sup>th</sup> May 2022). I believe the Council had six full or part time managers and staff until recently.

Ms Dutton is employed as the Responsible Financial Officer and Ms Hurley is employed as an Administrative Officer.

On Monday 27<sup>th</sup> June 2022 Ms Dutton asked to see me as soon as I arrived in the building. She was visibly upset and was exhibiting signs of stress.

Ms Dutton stated to me that on Thursday 23<sup>rd</sup> June 2022 during a meeting in a small room in the Council building at Jaycroft Road Councillor Michael Murphy had made inappropriate comments to her.

I asked Ms Dutton to make a written record of the conversation as she remembered it.

This statement of complaint is attached as Exhibit RS 1.

The statement is also signed by Ms Hurley who can supply evidence of early complaint regarding the incident as Ms Dutton informed her of the details of the conversation immediately after it occurred.

The matter had been reported by Ms Dutton to the Chairman of the Council, Cllr Lesley Millard and the Chair of the Human Resources Committee, Cllr Sharon Perry.

Once I received the complaint in writing from Ms Dutton I spoke to her regarding the effect the incident was having on her. I believe she has explained this in her complaint to Sedgemoor DC.

I wrote to Cllr Murphy via email on 27<sup>th</sup> June 2022, a copy of this email is attached as Exhibit RS 2.

Together with the Chairman of the Council I arranged for Cllr Murphy to receive some support from a colleague.

~~\_\_\_\_\_~~

11<sup>th</sup> August 2022

copy

For the past couple of weeks Cllr Mike Murphy has been turning up at the office without an appointment and making comments of how I'm his crush and he's falling in love with me whenever I help him, my colleague Helen Hurley was witness to this, he also tends to come around our desks and stand very close to us, making us both feel very uncomfortable in his presence.

On Thursday 23<sup>rd</sup> June 2022 Cllr Mike Murphy came into the offices at Jaycroft Road, where Helen Hurley greeted him, he asked to see myself so Helen showed him into the waiting room, to wait until I was free.

When I was free I entered the room and instantly took a chair with space from Mr Murphy and indicated for him to take a seat. This was so I could keep a distance between us, so I could immediately establish a personal space.

Mr Murphy wanted to discuss a grant for Party in the Park that he had been told he couldn't have as he hadn't applied for it before the closing date of 5<sup>th</sup> May 2022.

Mr Murphy proceed to ask me if there was a way I could use council money for the party in the park or if I could give him an advance of £1500.00.

I told him I could not do this and he would need to speak with Ron.

I said Ron was in on Monday and I would tell him Mr Murphy had been in and ask him if there was another way round the situation but couldn't promise a happy outcome.

Mr Murphy then made a very inappropriate comment asking me if I can wear a low-cut top and push my boobs up so they sit like a balcony, walk into the room and try and persuade the locum Town Clerk Ron Spur's mind.

He said I made him feel calm and he wanted to give me a cuddle.

He then went on to disclose about a time when he was in Santa Fe and a tall lady stood beside him when he was at a stall making a purchase. He said she was in a bra type top and this meant her boobs were at his eye level.

After he left I immediately left the room and spoke with Helen Hurley about my concerns and she said I should now report this as he was saying more each time I seen him.

Whenever I see his car arrive in the car park I now feel anxious and want to pretend I'm not here to avoid seeing him.

I, Elaine Dutton can confirm this to be a true statement

Name: Elaine Dutton

Signed: [Redacted Signature]

Date: 27<sup>th</sup> June 2022

I, Helen Hurley, can confirm that Elaine told me the above immediately after his departure.

Name: Helen Hurley

Signed: [Redacted Signature]

Date: 27<sup>th</sup> June 2022



SUPPORTED BY  
Burnham-on-Sea  
& Highbridge  
TOWN COUNCIL

The Old Courthouse  
Jaycroft Road, Burnham-on-Sea, Somerset TA8 1LE  
01278 788088  
[locumclerk@burnham-highbridge-tc.gov.uk](mailto:locumclerk@burnham-highbridge-tc.gov.uk)  
[www.burnham-highbridge-tc.gov.uk](http://www.burnham-highbridge-tc.gov.uk)

Cllr M Murphy,  
(via email).

27<sup>th</sup> June 2022

Dear Cllr Murphy,

**Complaint of Inappropriate Conduct**

Today I received a written complaint from two members of staff regarding an alleged incident of inappropriate conduct which occurred on Thursday 23<sup>rd</sup> June 2022 at the offices of the Town Council in Jaycroft Road, Burnham on Sea.

The matter will be referred to the Monitoring Officer at Sedgemoor District Council for investigation.

This morning I met with the Chairman of the Council, Cllr Millard and the Chair of the HR Committee, Cllr Perry. During this meeting the following course of action was agreed:

1. With immediate effect you are not to enter any Council premises except to attend a Committee meeting or Council meeting.
2. You are not to contact any female member of staff via email, in person or by telephone.

If you require any administrative support please contact me via email or speak to the Chairman of the Council.

By introducing these restrictions; the Council is not implying that the allegations are true. The Council is simply carrying its duty to safeguard members of staff.

Yours sincerely,

Locum Town Clerk

**Subject:** [OFFICIAL] - Complaint response

**Date:** Tuesday, 23 August 2022 at 19:38:29 British Summer Time

**From:** mike murphy

**To:** Melanie Wellman, ~~Emily Webber~~

**Caution:** This email has been sent from outside of SDC/HIS. Do not open any attachments, click on any links, reply or forward it on unless you recognise the sender and know that the content is safe.

Dear Melanie

Please find below my response

**Response to allegations of breach of the Burnham on Sea & Highbridge Town Council Code of Conduct, brought against Michael Murphy**

I write to set out my response to the allegation made by Elaine Dutton (the complainant/ED) that I have breached the Burnham on Sea & Highbridge Town Council Code of Conduct, as set out in writing to me dated 4 August 2022.

The allegation is that I have breached the following Member Obligation:

*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.*

1. *They shall behave in such a way that a reasonable person would regard as respectful.*
2. *They shall not act in a way which a reasonable person would regard as bullying or intimidatory.*

I have reviewed the Members Code of Conduct enclosed with the letter to me dated 4 August 2022. I cannot identify the specific Members Obligation as set out in the form above. Please direct me to that specific wording. My responses below are without prejudice to your response to this request.

**The allegations**

From the correspondence to date I understand that:

1. it is alleged on 23 July 2022:
  - a. That I, as a serious request, asked the complainant to wear a low-cut top and to push her breasts up so that they 'sit like a balcony' as a way to try and persuade the locum Town Clerk to agree to a request;
  - b. That I commented that the complainant made me feel calm and that I said that I wanted to give the complainant a cuddle, to which the complainant declined;
  - c. That I told a story about a woman in Santa Fe who was wearing a 'bra type top' and that her breasts were at my eye-level. The complainant says this story made her feel very uncomfortable and that she brought the conversation to an end as quickly as she could;
2. it is alleged that on unspecified dates;
  - a. I have been turning up at the office without an appointment and have been making comments to the complainant saying that she is my crush and that I am falling in love with her.
  - b. I walk behind the complainant's desk and stand within her personal space, which makes her feel very uncomfortable in your presence.
  - c. That I have been asked not to just turn up to the offices without an appointment, but this request has been ignored.
  - d. That these instances have caused the complainant stress and anxiety and that they have been affecting her performance at work and that these alleged instances have caused her to make an active effort to avoid seeing you.

## **Jurisdiction**

I do not consider The Members Code of Conduct applies in all the allegations in this matter. The allegations 1a) and c) raised by the complainant (ED) in relation to 23 July 2022 relate to a conversation that I had with her in my capacity as Chairman of the Cultural Arts Development Society (CADS). I was not acting in my capacity as a Councillor. The complainant was aware of this.

## **Denial of the allegations**

Without prejudice to my jurisdictional point above, I refute the allegations in their entirety.

The allegations should be dealt with individually and severally.

## **My response to the allegations**

Below is an account of what happened to the best of my knowledge on 23 July 2022:

### **Allegations 1a) and 1c)**

- I was granted entry to the Council office to ask questions in my capacity as Chair of CADS (a volunteer group that has mounted three/four free music concert events in the Manor Garden, Burnham on Sea, for the last 28 years).
- Specifically, I needed to know the following:
  - that I could collect chairs for the party from the Princess Theatre;
  - why CADS was not being added to the list of grant applicants, in particular why ED had written to my secretary advising she had made the application too late (she hadn't) and when ED had actually already acknowledged in a reply that the application had been received and was being processed;
- As I stood in the office, the complainant was sitting at her desk. Whilst speaking to her and looking at her face her chest was also in my direct line of sight. I felt uncomfortable with this and so I felt it was appropriate to let her know and reassure her that I was looking at her face as we spoke. I said to her *"you bosom is in my direct line of sight, I don't want you to think that I'm looking at your bosom, I'm looking at your face."* The complainant's response to this was *"I'm not bothered. It doesn't bother me";*
- I said I did not at any time ask her to wear a low cut top;
- I did not ask her to push her breasts up so that they sit like a balcony;
- I did not request to use Council money for the Jubilee Party. I had been asked (in my capacity as Chair of CADS) to put on a Jubilee Party in the Park which I had agreed CADS would arrange subject to receipt of a Council grant and my enquiry at the office on 23 July 2022 was in respect of confusion over the status of that grant;

### **Allegation 1b)**

- Entirely separately, I then asked the complainant where I should go for help with the IBABS system – a system of listing agendas, minutes etc for meetings and meetings and emails. I could not access this and did not know who to ask since the departure of the previous Responsible Finance Officer;
- The complainant asked me to get my tablet and give it to her, which I did. She then invited me to come forward and stand behind her. I said I was uncomfortable doing this but she said *"I'm not bothered about that just come and look at the screen"* and indicated where I should stand behind her, which I did. She very quickly answered my query and I had access to the system. My inability to access the IBABS system had been causing me considerable difficulty for some time and had led to me missing an important meeting. As a result, I was, frankly, overjoyed and relieved that the complainant had been able to resolve this issue for me so quickly. In response I said to her *"you are fantastic, I'd like to give you a big cuddle but sorry I can't. Let me just say you are my crush for today and I think I could fall in love with you. Thanks for your help."*
- I did not say the complainant made me feel calm;
- I did not make any reference to a woman in Santa Fe. I have no idea what the complainant is referring to.

### **Allegation 2**

In response to the allegations on unspecified dates;

- I deny that I have been turning up at the office without an appointment and making comments as alleged. Please provide full details of any further alleged comments including in particular the dates on which they allegedly occurred;
- On a small number of occasions I have attended the offices, for good reason. On each occasion I did try to telephone in advance to book an appointment but I was unable to get through and my reasons for attending could not wait – the particular matters had become urgent. Alternatively, I did call and was told by the Locum Clerk to come in to the office, but I did not register an appointment because, again, it had been difficult to get through and then time was short;
- On the small number of occasions I have attended the offices as detailed in the point above, my contact with the complainant has been minimal. I have predominantly dealt with Helen Hurley or the Locum Clerk;
- I deny that I have walked behind the complainant's desk at any point and stood within her personal space, making her feel very uncomfortable in my presence. I have walked behind her desk on one occasion, as set out above and only on invitation by the complainant, therefore, respectfully, it is hard to see how this could have made her feel uncomfortable;

With all due respect to Ms Dutton, I was very shocked and aggrieved by the false allegations. I have been in public office for many years and have never experienced anything of this nature. As regards the comments I did make as set out above (which Ms Dutton has not accurately described in her complaint), these were made genuinely and without any intention to cause and discomfort as alleged or in any way at all. The first comment I made because I felt uncomfortable. The second comment in respect of the IBABS matter was a phrase I commonly use without any sexual connotation. I am a [redacted] year old man and I often refer to my [redacted] as my "crush for the day".

Please do not hesitate to contact me if you have any questions regarding this response or if I can assist further with your investigations.

Yours sincerely

Mike Murphy



# DECISION NOTICE: REFERRAL FOR INVESTIGATION

Reference Standards/2022/1

**PLEASE NOTE** that information contained on this notice may be confidential and subject to the Data Protection Act 1998 and you should take appropriate advice before passing on any information contained in this notice or about this notice

## Complaint

On 1<sup>st</sup> August 2022, the Monitoring Officer considered a complaint from Elaine Dutton ("the Complainant") concerning the alleged conduct of Councillor Michael Murphy ("the Member"), a member of Burnham on Sea & Highbridge Town Council. A general summary of the complaint is set out below.

## Complaint Summary

It is alleged that the Member has been verbally sexually harassing the Complainant and this has led to the Complainant feeling that her dignity has been violated and that the Member has created an intimidating and degrading environment to work in.

The Complainant states that this is because on Thursday 23rd June 2022 the Member entered the offices at Jaycroft Road to have a discussion with her about funding for Party in the Park. During this discussion, it is alleged that the Member made a request to use Council money for the Party in the Park and the Complainant told him this would be something to discuss with the locum Town Clerk. The Complainant then said that she would mention to the locum Town Clerk that the Member had made this request but that she could not promise a happy outcome. It is then alleged, that as a serious request, the Member then asked the Complainant to wear a low-cut top and to push her breasts up so that they 'sit like a balcony' as a way to try and persuade the locum Town Clerk. It is also alleged that the Member made a further comment, during the discussion about the Party in the Park, that the Complainant made him feel calm and that he said that he wanted to give the Complainant a cuddle to which the Complainant declined.

It is also alleged that the Member then went on to tell a story about a woman in Santa Fe who was wearing a 'bra type top' and that her breasts were at his eye-level. The Complainant says this story



made her feel very uncomfortable and that she brought the conversation to an end as quickly as she could,

The Complainant also alleges that the Member has been turning up at the office without an appointment and has been making comments to the Complainant saying that she is his crush and that he is falling in love with her. It is also alleged that the Member walks behind the Complainant's desk and stands within her personal space which makes her feel very uncomfortable in his presence. The Complainant says that the Member has been asked not to just turn up at the offices without an appointment but this request has been ignored.

The Complainant states that these instances have caused her stress and anxiety and that they have been affecting her performance at work. These instances have also caused her to make an active effort to avoid seeing the Member.

The Complainant believes that the Member has breached the following Obligations of the Code of Conduct:

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.

1. They shall behave in such a way that a reasonable person would regard as respectful.
2. They shall not act in a way which a reasonable person would regard as bullying or intimidatory.

### **Decision**

Having considered the allegations and the Members response to them and having consulted and taken into account the views of the Independent Person, the Monitoring Officer has decided to refer the complaint for investigation.

### **Potential breaches of the Code of Conduct identified**

At this stage, the Monitoring Officer is not required to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation. No finding of fact is being made when making this decision.

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following paragraphs of the Burnham and Highbridge Town Council Code of Conduct. The Monitoring Officer will therefore now take steps to appoint an external Investigating Officer to conduct the investigation.

Please note that it will be for the Investigating Officer to determine which paragraphs are relevant, during the course of the investigation.

1. A Member shall behave in such a way that a reasonable person would regard as respectful.
2. A Member shall not act in a way which a reasonable person would regard as bullying or intimidatory.

### **Notification of decision**

This decision notice is sent to the:

- Complainant
- Member against whom the complaint was made
- Town Clerk

### **What happens now?**

The complaint will now be investigated under the Council's arrangements for investigating Code of Conduct Complaints under the Localism Act 2011. Further details regarding the next steps will follow once an external investigator has been appointed.

### **Appeal**

There is no right of appeal against the Monitoring Officer's decision.

### **Additional Help**

If you need additional support in relation to this or future contact with us, please let us know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010.

We can also help if English is not your first language. We can provide this document in Braille, large print, tape and disc. We can also provide other translations on request.

Please contact:

Monitoring Officer,  
Sedgemoor District Council,  
Bridgwater House,  
King Square,  
Bridgwater,  
Somerset  
TA6 3AR

Telephone: 0845 4082540

Signed:

A blacked-out signature, likely of the Monitoring Officer, Melanie Wellman.

Date: 30 August 2022

Melanie Wellman  
Monitoring Officer

I have been duly consulted and concur with the view of the Monitoring Officer

Signed:

A signature that has been completely redacted with black ink. The redaction covers the entire name and any handwritten text that might have been present.

Independent Person

Date: 30 August 2022

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Burnham-on-Sea  
& Highbridge  
TOWN COUNCIL

# Code of Conduct

Date Adopted: 2015: Min No: 78/15/TC based on the NALC  
Model 2018

Review Date: May 2021 min ref: 53/21/TC

## **Introduction**

Pursuant to section 27 of the Localism Act 2011, Burnham-on-Sea & Higbridge Town Council ('the Council') has adopted this Code of Conduct to promote and maintain high standards of behaviour by its members and co-opted members whenever they conduct the business of the Council, including the business of the office to which they were elected or appointed, or when they claim to act or give the impression of acting as a representative of the Council.

This Code of Conduct is based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

## **Definitions**

For the purposes of this Code, a 'co-opted member' is a person who is not a member of the Council but who is either a member of any committee or sub-committee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council, and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

For the purposes of this Code, a 'meeting' is a meeting of the Council, any of its committees, sub-committees, joint committees or joint sub-committees.

For the purposes of this Code, and unless otherwise expressed, a reference to a member of the Council includes a co-opted member of the Council.

## **Member obligations**

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.

1. They shall behave in such a way that a reasonable person would regard as respectful.
2. They shall not act in a way which a reasonable person would regard as bullying or intimidatory.
3. They shall not seek to improperly confer an advantage or disadvantage on any person.
4. They shall use the resources of the Council in accordance with its requirements.
5. They shall not disclose information which is confidential or where disclosure is prohibited by law.

## **Registration of interests**

6. **Within 28 days of this Code being adopted by the Council, or the member's election or the co-opted member's appointment (where that is later), they shall register with the Monitoring Officer the interests which fall within the categories set out in Appendices A and B.**
7. **Upon the re-election of a member or the re-appointment of a co-opted member, they shall within 28 days re-register with the Monitoring Officer any interests in Appendices A and B.**
8. A member shall register with the Monitoring Officer any change to interests or new interests in Appendices A and B within 28 days of becoming aware of it.
9. A member need only declare the existence but not the details of any interest which the Monitoring Officer agrees is a 'sensitive interest'. A sensitive interest is one which, if disclosed on a public

**Statement of Elaine Dutton  
Taken via Teams Meeting with Gill Sinclair  
on 8<sup>th</sup> November 2022 (2pm)**

1. I have been employed by Burnham on Sea and Highbridge Town Council since September 2021. I was originally employed as a Customer Services Officer.
2. In May 2022, the Clerk, Deputy Clerk and Responsible Finance Officer (RFO) left the Council. At that time, I was asked if I would take on the role as acting RFO. I agreed and I am now employed as the Deputy Clerk.
3. As a result of the departure of the 3 officers, the Town Council office was under-staffed. An email was sent to all councillors telling them that if they needed to come into the Town Council offices, they should make an appointment beforehand, this was sent because councillors would turn up unannounced and we didn't have the capacity to deal with them. The offices were open Monday – Thursday 9am – 3pm, so there was sufficient time available for appointments to be made. Most Cllrs accepted this request, Cllr Murphy did not.
4. Cllr Murphy was a Cllr who tended to turn up unannounced. When he did, he tended to stand close to me, at times he was so close his arm would touch my arm.
5. On Thursday 23<sup>rd</sup> June, Cllr Murphy turned up at the Town Council officer unannounced. He wanted to discuss a grant application. He was met by my

colleague Helen Hurley. Helen is a customer services officer, she asked him to wait in the waiting room until I was available.

6. I finished a phone call and then went into the waiting room to meet Cllr Murphy; I took a seat to keep some distance between us.
7. Cllr Murphy wished to discuss a grant application that had been made, but which had not been approved as it had missed the deadline for submission. He wasn't happy that the grant would not be made and asked me if the money could be taken from elsewhere, he said if the grant wasn't made, the event he was organising would not go ahead. His actual words to me were *"take money from elsewhere"* I said *"no I can't"*
8. Cllr Murphy had not made the grant application, this had been made by ██████████ understand that she is a director of the group on whose behalf the application had been made and she normally makes the applications on behalf of the group.
9. Cllr Murphy was not happy with my response, and he kept repeating his request for me to take money from elsewhere. In the end I said he should speak to the Town Clerk who was next in the office on the Monday (27<sup>th</sup> June).
10. Cllr Murphy then said I should try and persuade the Town Clerk and he described how he thought I should do so. He suggested that on Monday I should wear a low-cut top and a balcony bra to try and change the Town Clerks' mind. This conversation made me feel very uncomfortable, I tried to

change the subject, but this was not possible as Cllr Murphy then went on to describe a lady he had seen in St Tropez (referred to as Santa Fe in my complaint). He described her wearing a bra type top, which meant her boobs were at eye level. This conversation was completely unprovoked, it came from nowhere, I was not interested in it and did not want to discuss it with him.

11. No one else heard this conversation as I was in a separate room with Cllr Murphy throughout the meeting. I quickly tried to bring the meeting to an end and to leave the room.
12. Throughout the conversation I assumed he was talking to me because he was a town councillor. I had no reason to believe that he wasn't attending in his role as a Cllr. At no time during the meeting did Cllr Murphy give me the impression that he was speaking to me in any other capacity other than as a Cllr,
13. I had only been undertaking the acting RFO role for a short time, as such I had only had contact with Cllr Murphy since around April 2022. I had not seen him around other members of staff, but I felt uncomfortable with the conversations and the fact that when he came into the office, he tended to stand very close. In June 2022 there were only 2 members of staff routinely in the building.
14. I had not reported my concerns to the Town Clerk prior to my meeting with Cllr Murphy on 23<sup>rd</sup> June. I did speak to the Clerk when he was next in the office as I felt that his behaviour was getting much worse and I was feeling very uncomfortable.



15. One of the other incidents that had caused me concern which had made me feel uncomfortable and which I told the Clerk about related to Cllr Murphy standing behind me when I was working at my desk. He shouldn't have been there.
16. On one occasion when I was having a conversation with Cllr Murphy relating to another grant application, and whether that would be approved, he walked through the large office, between my desk and the desk of the other customer services officer, which is how we access our desks, he stood behind me looking at my computer screen. I didn't know what to say, but I was shocked, I didn't expect this from a Cllr.
17. On another occasion I was helping him with his computer, after I was able to resolve the issue for him, he said he was in love with me, and I was his crush. He then started to ask questions about my home life, he asked about things such as ironing and cooking. He made me feel very uncomfortable. I didn't know what to say. This incident was witnessed by my colleague Helen Hurley and he also stood behind her desk and was shoulder to shoulder with her.
18. The way Cllr Murphy has behaved has had an impact on me and on how I do my job. If I see his car pull up in the car park, I hide in another area in the building, on occasion I have locked myself in another room.
19. Other Cllrs have accepted the need to make appointments, the offices are open Monday to Thursday 9am -3pm, we can be contacted by email or by phone, so we are still accessible to Cllrs.

20. I have had to send general email to all Cllrs for information, Cllr Murphy has sent a response to me on two occasions. The Clerk did write to Cllr Murphy to advise him that he wasn't to contact me.

Signed

A black rectangular redaction box covers the signature. Below the redaction is a dotted line.

Elaine Dutton

Dated...12/12/2022

**Statement of Councillor Michael Murphy (accompanied by Juliette Staunton)**

**Taken By Gill Sinclair at Offices of Sedgemoor District Council  
On 16<sup>th</sup> November 2022 (2pm – 3.25pm)**

- 1 I am a Councillor on Burnham-on-Sea and Highbridge Town Council (BoS&HTC) I am also a councillor on Sedgemoor District Council and Somerset County Council. I consented to the interview being recorded for the purposes of the preparation of this statement.
  
- 2 In relation to the complaint, I was aware that in May 2022 the officers at BoS&HTC had asked all Cllrs to make appointments prior to coming into the Town Council offices. This was because the officers were under pressure as the Town Clerk, the Responsible Finance Officer (RFO) and the Deputy Town Clerk had all left the employment of the Town Council during the previous month. As such there were no officers in positions of management.
  
- 3 I was aware of this request, but on the morning of the 23<sup>rd</sup> June I wanted to speak to officers about a grant application I was panicking about. I am Chair of Cultural Arts Development Society (CADS). CADS made two grant applications last spring, one for the Jubilee weekend in early June. This application was made after CADS had been asked to host a party over the Jubilee weekend by the previous Town Clerk and Ian Jefferies, the manager of the Tourist information Centre, I had said CADS would organise the event, but we would need a grant.

- 4 An application for this event was made by Eileen Shaw, Eileen was the former Town Clerk at BoS&HTC and she was the Secretary of CADS. She had received confirmation that the grant application had been received by BoS&HTC, but she had not had any confirmation of its assessment. The deadline for the submission of applications for the Jubilee weekend event was 16<sup>th</sup> or 17<sup>th</sup> of May, the CADS application was submitted on 5<sup>th</sup> May. The Grant Panel was due to meet on 26/27 May. As a result of the Town Clerk, RFO and deputy Town Clerk leaving, the meeting of the Grant Panel was cancelled, as such CADS did not receive a grant for this event.
  
- 5 I had initially gone to the Town Council offices in May to see the Locum Town Clerk. This was after he had telephoned me, I believe I went into the offices around 14/15<sup>th</sup> May to discuss the grant for the Jubilee weekend event. He had said to me we could have whatever we wanted for the Party in the Park. The normal process was for grant applications to be assessed and approved by the Finance and Resources Committee, but there was an issue with calling the meetings, the Locum Clerk suggested I call a meeting of the Town Improvement Committee, I said there was no business on the agenda and the meeting would be cancelled.
  
- 6 There were various telephone calls and meetings with the Locum Town Clerk in the run up to the event trying to find a way to call a meeting so that the grant application could be considered. I had made several commitments on behalf of CADS, including the hire of a van, I had ordered souvenirs for the Jubilee event, without the grant CADS was starting to creak at the seams.

- 7 During one visit to the Town Council at the end of May I asked the Locum Town Clerk if he could help with printing a meeting agenda for me. He took me into a meeting room and the then Deputy Town Clerk, Lorna Williams joined Ron and I in the meeting, she said to me there was no reason we couldn't call a meeting, I felt I could not call a meeting to authorise a CADS grant. I would have a conflict of interest. I explained I would have to leave the room as I was Chair of CADS.
- 8 The Locum Town Clerk, then phoned me and suggested I or we could call a grant meeting. Everyone was ducking and diving, no one was organising a meeting. As mentioned, I had already made commitments in relation to the event. In the end no grant was made by the Town Council to CADS for this event, it went ahead using CADS reserves
- 9 A second grant application was made in relation to an event on 3<sup>rd</sup> July. This application was made on 20<sup>th</sup> June, the next meeting at which grants would be assessed was due on 7<sup>th</sup> July.
- 10 As I have said in June, I was panicking about the grant application for this event. I had tried to telephone the offices on the morning of the 23<sup>rd</sup> June, I don't recall what time I called. I didn't get an answer, so I went to the offices, I think I went to the offices around 10 am. I had to get into the office when the staff were in. I felt under pressure as I only had 10 days in which to organise the event. In addition to the grant application, I needed to sign a form for the hire of chairs for the event. I also needed to get some information about the IBABS IT system from the officers.

- 11 When I attended the offices, I didn't inform officers that I was there in my capacity as Chair of CADS, nor did I say I was there in my capacity as a Town Councillor, the officers were aware of who I am and what I do. They were involved in the minutes of meetings; they knew I was a Town Councillor and Chair of CADS.
- 12 When I attended on the 23<sup>rd</sup>, I was met at the door by Helen, all the interaction took place in the reception area of the office. Both ladies, Helen Hurley (HH) ED were in the office.
- 13 The first time I engaged with them on this occasion was when I said to HH that I really liked the colour of her hair. HH said didn't you like it before? I said I'm just saying it's nice.
- 14 ED then said that she coloured her hair black, and I said Well that's nice, but could make it any colour you wanted, you could put a bit of pink in it. HH then said you could have it striped. That was just banter between us all.
- 15 I then spent some time with HH looking at the form for the hire of the chairs. She was aware of the event I was organising; we discussed the arrangements for the pick-up and return of the chairs. Both ladies were in and stayed in reception and anything I said was said in front of both.
- 16 It maybe that part of the problem was that they were new to the Town Council, they had come in to save the Council, and they had recently been awarded a £500 honorarium to recognise the work they had done.

- 17 Turning to the meeting of 23<sup>rd</sup> June, the grant application for the event in early July was still not resolved. After my discussion with HH about the chairs, I walked across the office and stood in front of ED's desk, I am about 6ft tall and she quite small and was sitting at her desk, I was conscious that she was pushing out her breasts, forming a circle with her face. I felt I needed to say something, I said to her, *"I am really sorry to mention this to you, but I am a bit uncomfortable, I don't want you to think I am staring at your breasts, I am actually looking at your face, I am really sorry to say this to you, it's just what you are wearing, it's pushing up your breasts"*. My mission was for her not to feel badly of me.
- 18 I moved away from her desk, ED said she wasn't bothered.
- 19 I then asked her about the IBABS system, I had missed 2 council meetings as I couldn't use the system. I asked for the telephone number of the technical team, as I can only contact them by email. ED asked if I had my tablet with me, I got it from my car and gave it to ED. ED got it working in seconds. I couldn't believe what she had done, so I asked her to do it again, she repeated the process and opened the system up again. I was beside myself. I then stood back from the desk and said Look thank you very much, I then uttered this nonsense, *"I'd love to give you a cuddle, but I can't, it's not allowed, but what I can say is that you can be my crush for the week, I think I'm falling love with you – fantastic"*
- 20 I should say that when I gave ED the tablet, she invited me to stand behind her. I said, *"I'm really nervous about that, I don't want to look down on you and be in the same position staring down at you instead of ..."* ED said Come and Stand here". I thought Oh right,

OK, I walked around, stood on the corner looking at the screen and saw what she did, I then walked away.

- 21 I haven't used the language before or since and in terms of whether I would use it again, it depends, this was a youngish person, much younger than me, I didn't think badly of it, it was meant to be a compliment to her, it was a throwaway line, she had achieved something that no one else had achieved,
- 22 I obviously couldn't imagine that she would take it literally, maybe it seemed strange coming from an older man. I am used to those cool conversations with my grandchildren.
- 23 I have had Equalities training, it focussed on racial equality. But I always treat people with respect, the comments were meant to be a joke, it's a modern expression, a throwaway line, it's not a serious thing. I would never use it in my council business, it just seemed appropriate at the time. I was meant to be a compliment; I couldn't say anything else other than thanks and walk away.
- 24 I then immediately went on to the conversation with ED about the grant. I went over the conversations that I had had about the grant, and I asked why ED had written to my secretary to say the application was late. She responded that she had written to Eileen Shaw because she was the applicant.
- 25 I then asked ED is there was anything she could do as RFO, she said no, so I asked if it would make any difference if she spoke to the Town Clerk, ED said no comment, and said that I would need to speak to him myself.



- 26 As part of the complaint made by ED, she refers to me asking her during our conversation about this grant to dress in such a way as to persuade the Town Clerk to change his mind. I absolutely did not ask her this. It's ridiculous, it's implausible for me to say that she should dress like a tart, it's reprehensible. I simply asked if she could ask the Town Clerk about it, she said she couldn't, it was entirely up to me to do.
- 27 At that point the phone went HH took the call, it was for ED, HH said to me that ED would be a few minutes, so I should take a seat in the waiting room. When ED had finished the call, she came in and stood against the door frame, we finished the conversation about the grant for the Jubilee weekend, it was clear to me we would not get one, it was not possible to cancel the event, so I would need to stand as guarantor.
- 28 In addition, ED refers to me talking about a lady in Santa Fe during the conversation about the grant. There was no such conversation about Santa Fe. But I do recall having a conversation with her about St Tropez.
- 29 The conversation with ED about St Tropez took place during an IBABS training event. I spoke to her about the way she dressed. I had been called to attend an IBABS training session, ED came in and sat down she was wearing a black dress, she wore it every day. I think she wore the same dress when working in her other part time job in a hair salon where she can wear what she wants.

- 30 The dress had a scooped neckline, and her breast were almost out on the table, very exposed. I spoke to her and said that I thought her dress was not appropriate for her work at the Town Council. I thought she might be in breach of the Town Council dress code, clause 2.1 says I agree to wear something appropriate to work in a public office. No one had said anything to her, but I felt it had to be said. I felt embarrassed, I spoke to her very kindly and quietly.
- 31 I may have overstepped the mark, but something had to be said, it was staring at us all. Subsequently I have felt that I could have spoken to Sharon, but when I spoke to ED, she didn't seem bothered. I thought she was used to it, that it was part of her daily thing. But as she was new to the Town Council, I thought something had to be said, I used the conversation about St Tropez to illustrate the point about appropriate dress.
- 32 I said to her that I had just come back from St Tropez, in St Tropez, dress may not matter, I told her about an experience I had had whilst standing at a market stall, I explained that a tall willowy 6ft model type woman stood next to me, she was wearing yellow bikini bottom and a white cotton blouse that was open, she had a white bra with a fringe, it was like a shelf, perfectly like a shelf on to which her bosom was placed – completely out. I was shocked, but in a town like St Tropez, you can wear what you want, in a Town Council you need to be more discreet.
- 33 The conversations I have had were intended to ensure she didn't think badly of me. I was not trying to coerce someone. I certainly wouldn't have spoken as is alleged in front of two women. I simply repeated my experience of St Tropez.

34 I would add that I am really surprised that ED is jumbling issues up and making them into something they are not. I accept that some of the comments I have made are modern phrases, I don't know ED personally, I only know what she puts on Facebook. Maybe I was overzealous, but I am not malicious. I recognise ED is very talented on the computer and I am very grateful for her help.

Signed

A black rectangular redaction box covering the signature of Michael Murphy.

Cllr Michael Murphy

Date.....12.12.22

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## **Investigation and Hearing Procedures**

### **Background**

This guide sets out the procedure that will be followed where the Monitoring Officer or Standards Committee decides that a complaint, that a Member of Sedgemoor District Council or a Town/Parish in Sedgemoor has breached their Code of conduct, merits investigation. This guide sets out how the investigation will be conducted and what will happen once the officer responsible for the investigation has reached their conclusions.

It also explains the process for holding a "Hearing" where the investigation concludes that there has been a breach of the relevant authority's Code of Conduct.

### **Investigations**

Where a matter is referred for investigation, the following parties will be informed:-

- The Subject Member
- The Complainant
- The Clerk of the relevant town or parish council where the Subject Member is a town or parish councillor

### **The Investigating Officer**

The Monitoring Officer will appoint an external Investigator to conduct the investigation and reach a conclusion as to whether there has been a breach of the relevant Code of Conduct.

The Monitoring Officer will advise the Subject Member and the Complainant of the appointment of the Investigating Officer. The appointment will set out the responsibilities delegated by the Monitoring Officer to the Investigating Officer. The Monitoring Officer will maintain the function of overseeing the investigation.

When conducting an investigation the Investigating Officer will have the power to make enquiries of any person they think necessary. However, there is no obligation on any individual to respond. Although it should be noted that Members who are subject to the LGA Model Code of Conduct have committed in the Code to co-operating with any Code of Conduct investigation and/or determination. Interviews will be conducted either in person or by telephone. Where the Subject Member requests an interview in person, this will be accommodated wherever possible.

Statements will be prepared and agreed with each person interviewed during an investigation, including the Subject Member. The Subject Member will be advised that he/she may be accompanied by a professional representative or advisor, a Group colleague or friend during the interview. Any other person interviewed may be accompanied by a friend or representative if they so wish.

## **Referring cases back to the Monitoring Officer**

During the investigation the Investigating Officer may uncover evidence of conduct by the Subject Member that breaches the relevant Code of Conduct, but extends beyond the scope of the investigation referred to them. In these circumstances, the Investigating Officer may refer the matter back to the Monitoring Officer/Standards Committee so that they can decide, in consultation with the Independent Person, whether this new evidence should also be investigated and combined into the Investigation.

The Investigating Officer may also refer the matter back to the Monitoring Officer if at any time during the Investigation circumstances arise that they consider may make it appropriate not to continue with the investigation. These circumstances may include the following situations, although this list is not exhaustive and there may be other reasons why it is not appropriate to continue with the investigation:-

- Evidence is uncovered suggesting a case is more or less serious than seemed apparent originally
- The subject member has died, is seriously ill or has resigned from the authority

In those circumstances the Monitoring Officer or Standards Committee, in consultation with the Independent Person, will decide whether it is appropriate to continue with the investigation and that decision shall be final.

## **Deferring an investigation**

An investigation should be deferred when any of the following conditions are met:-

- There are on-going criminal proceedings or a police investigation into the member's conduct.
- The investigation may prejudice another investigation or court proceeding.
- Because of the serious illness of a key party
- Due to the genuine unavailability of a key party.

Any deferral must be with the agreement of the Monitoring Officer or the Standards Committee

## **Confidentiality**

The Investigating Officer must treat the information they gather during the investigation as confidential. The Investigating Officer will also ask the people they interview to maintain confidentiality.

Any draft report that is issued will be marked as confidential. This is to preserve the integrity of any further investigation that the Investigating Officer needs to undertake.

## **Timescales for an Investigation**

The Investigating Officer will complete the investigation within a reasonable period of time according to the nature of the complaint and the extent of the investigation

required. There are many factors that can affect the time it takes to complete an investigation. However, most investigations should be carried out and a report on the investigation completed, within 4 months of the Monitoring Officers/Standards Committee's decision to investigate.

### **The Investigation Report**

When the Investigating Officer has concluded their investigation, they will prepare a draft report to the Subject Member and the Complainant for review and comment. The report should cover the issues set out in the report template at Appendix A. Any draft report will indicate that it does not necessarily represent the Investigating Officer's final finding.

The draft report will be issued to the Subject Member and Complainant for review and comment. The draft will not be sent to other witnesses or parties involved but the Investigating Officer will seek confirmation of their evidence from them before issuing the report.

At this stage the Subject Member or Complainant may comment on the draft report. The Investigating Officer may then decide to redraft the report based on the comments received. Once the Investigating Officer has considered whether the responses add anything of substance to the investigation, they will make their final conclusions and recommendations and issue a Final Report.

This report must be sent to:-

- The Subject Member
- The Complainant
- The Independent Person

The report must make one of the following findings:-

- That there has been a failure to comply with the relevant Code of Conduct
- That there has not been a failure to comply with the relevant Code of Conduct

If the Investigating Officer concludes that there has been no breach of the Code, the Monitoring Officer will write to the Subject Member and Complainant and advise that that is the conclusion and that that is the end of the matter.

If the Investigating Officer concludes that there has been a breach of the Code, the Monitoring Officer will, in consultation with the Independent Person decide whether no further action is needed, the matter should be resolved in a way other than by a hearing or that the matter should be referred to a hearing.

If the Subject Member is also a town/parish councillor, the Clerk to the Town/Parish Council will also be notified of the outcome of the investigation.

## **Consideration of the Final Report where it concludes there has been a breach of the Code of Conduct and the Monitoring Officer decides that it should proceed to a hearing**

Where the Report concludes that there has been a breach of the Code of Conduct, and the Monitoring Officer decides that the matter should proceed to a hearing, it will be to the Hearing Committee (a Sub-Committee of the Standards Committee) that the complaint will be referred to for determination.

The role of the Committee is to decide, based on the facts in the report, whether it agrees that the Code of Conduct has been breached and if so, whether a sanction should be imposed.

### **Timing of the hearing**

The Committee will usually hear a complaint within three months of the date on which the Investigating Officer's report was completed. However there may be some occasions where due to the particular circumstances, it may not be possible to hear the complaint within this timescale.

The hearing will take place at least 14 days after the Subject Member receives a copy of the report from the Monitoring Officer.

The Committee may consider the report in the Subject Member's absence if the Subject Member does not go to the hearing. If the Committee is satisfied with the Subject Member's reasons for not being able to come to the hearing, it should arrange for the hearing to be held on another date.

### **Scheduling a hearing**

Except in the most complicated cases, the Committee should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total. Late night and very lengthy hearings are not ideal for effective decision-making. Equally, having long gaps between sittings can lead to important matters being forgotten.

### **The pre-hearing process**

The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself. Other than in very straightforward cases, the council will use a pre-hearing process to:

- identify whether the Subject Member disagrees with any of the findings of fact in the investigation report
- identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
- identify whether evidence about those disagreements will need to be heard during the hearing



- decide whether there are any parts of the hearing that are likely to be held in private
- decide whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material

The pre-hearing process should usually be carried out in writing. However, occasionally a meeting between the Chairman of the Committee, the relevant parties and their representatives may be necessary or just between the Monitoring Officer and the Committee Chair for expediency.

Some matters in the pre-hearing process may be decided only by the Committee. Therefore, if it is necessary for the Committee to meet, they will have to do so formally as with any other council committee meeting. However, it is usually more appropriate for the majority of the pre-hearing process to be dealt with by the Monitoring Officer or other suitable officer.

### **Key points for the pre-hearing process**

The officer providing administrative support to the Committee should write to the Subject Member proposing a date for the hearing, and they should do this in consultation with the Chairman of the Committee. They should also outline the hearing procedure, the member's rights and they should additionally ask for a written response from the Subject Member within a set time. This is to find out whether the Subject Member:

- wants to be represented at the hearing by a solicitor, barrister or any other person
- disagrees with any of the findings of fact in the investigation report, including reasons for any of these disagreements
- wants to give evidence to the Committee, either verbally or in writing
- wants to call relevant witnesses to give evidence to the Committee
- wants any part of the hearing to be held in private
- wants any part of the investigation report or other relevant documents to be withheld from the public
- can attend the hearing

A critical part of the pre-hearing process is to attempt to focus the relevant parties' attention on isolating all relevant disputes of facts between them. This is because attention to the factual issues will save valuable time later on at the hearing.

**The Standards Committee has approved Pre-hearing process forms that will be used to try and narrow the issues. These forms help the Subject Member respond to the Committee.**

**Form A** helps the Subject Member identify any disagreements about the findings of fact in the investigation report.

**Form B** helps the Subject Member set out any other evidence that is relevant to the complaint made about them.

**Form C** helps the Subject Member set out any representations the committee should take account of if the Subject Member is found to have broken the Code of Conduct.

**Forms D and E** cover details of the hearing and the witnesses who will give evidence.

**Form F** is a checklist of details for the pre-hearing process summary which is outlined below.

Copies of these Forms are attached at Appendix B.

### **Pre-hearing process summary**

The Committee's clerk should consult with the Committee's legal adviser and send a pre-hearing process summary to everyone involved in the complaint at least two weeks before the hearing or as soon as the Committee has received responses from the Subject Member and from the Investigating Officer. The pre-hearing process summary should:

- set the date, time and place for the hearing
- summarise the allegation
- outline the main facts of the case that are agreed
- outline the main facts which are not agreed
- note whether the Subject Member or investigating officer will go to the hearing or be represented at the hearing
- list those witnesses, if any, who will be asked to give evidence, subject to the power of the Committee to make a ruling on this at the hearing
- outline the proposed procedure for the hearing

### **The Hearing**

A hearing is a formal meeting of the authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities. The Committee should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that members of the public, and members of the authority, have confidence in its procedures and findings.

The Committee should bear in mind the need to maintain public confidence in the Council's ethical standards. This requires that the Committee's decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the Subject Member, the council and the public.

### **Representatives**

The Subject Member may choose to be represented by counsel, a solicitor, or by any other person they wish. Even if represented, the Member must still personally answer any questions posed through the Chairman. If the Subject Member concerned wants to have a non-legal representative, the Subject Member must obtain the consent of the Committee. The Committee may choose to withdraw its permission to allow a

representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

### **Evidence**

The Committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned. In many cases, The Committee may not need to consider any evidence other than the investigation report and any other supporting documents. However, the Committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report. The Committee can allow questions from the Subject Member, the Investigating Officer, the Monitoring Officer or any representative. However, the Committee will ask that these questions be directed through the Chairman. The Committee can also question witnesses directly.

### **Witnesses**

Generally, the Subject Member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. The Subject Member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the hearing. The Committee has the right to govern its own procedures as long as it acts fairly. For this reason, the Committee may limit the number of witnesses if the number is unreasonable. The Committee will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issue.

Witnesses of facts that are disputed would normally attend the hearing and should be prepared to be asked questions. Witnesses as to the character of the Subject Member, if required, regularly present their evidence in writing and may or may not actually attend the hearing. Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect. Witnesses should be kept promptly informed of the relevant dates, times and location of the hearing.

### **The Independent Person**

It is not a legal requirement that the Independent Person attend the hearing, but it is best practice and the Committee must have regard to their views when reaching a decision. If the Independent Person does not attend, a mechanism will be agreed for receiving their views.

### **Sanctions**

If the committee finds that a Subject Member has failed to follow the Code of Conduct and that they should be sanctioned, it may impose any one or a combination of the following:

- Report its findings to Council or Town/Parish Council for information;

- Issue (or recommend to the parish council) a formal censure;
- Recommend to the Subject Member's Group Leader (or in the case of ungrouped councillors, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council (or recommend such action to the parish council);
- Recommending to the Leader of the Council that the member be removed from the Executive, or removed from particular Portfolio responsibilities;
- Instructing (or recommending to the Parish Council) that the Monitoring Officer arrange training for the member;
- Removing (or recommending removal to the Town/Parish Council) from all outside appointments to which he/she has been appointed or nominated by the authority;
- Withdrawing facilities (or recommending withdrawal to a Town/Parish Council) provided to the member by the Council, such as a computer, website and/or email and Internet access;
- Restricting contact (or recommending to the Town/Parish Council restriction on contact ) to named officers or requiring contact be through named officers; or
- Excluding (or recommending exclusion to Town/Parish Council's ) the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- if relevant recommend to Council that the Subject Member be removed from their role as leader of the authority
- if relevant recommend to the secretary or appropriate official of a political group that the Subject Member be removed as group leader or other position of responsibility.

### **Considering the sanction**

When deciding on a sanction, the Committee should ensure that it is reasonable and proportionate to the Subject Member's behaviour. Before deciding what sanction to issue, the Committee should consider the following questions, along with any other relevant circumstances:

- What was the Subject Member's intention?
- Did the Subject Member know that they were failing to follow the Code of Conduct?

- Did the Subject Member get advice from officers before the incident?
- Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result of failing to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the Subject Member accept they were at fault?
- Did the Subject Member apologise to the relevant people?
- Has the Subject Member previously been warned or reprimanded for similar misconduct?
- Has the Subject Member failed to follow the Code of Conduct before?
- Is the Subject Member likely to do the same thing again?
- How will the sanction be carried out? For example, who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a Subject Member has repeatedly or blatantly misused the authority's information technology resources, the Committee may consider withdrawing those resources from the Subject Member.

Sanctions involving restricting access to an authority's premises or equipment should not unnecessarily restrict the Subject Member's ability to carry out their responsibilities as an elected representative or co-opted member.

The following are examples of aggravating and mitigating factors that Members may take into account when assessing an appropriate sanction:

Examples, but not an exhaustive list, of mitigating factors are:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.

- A member's previous record of good service.
- Substantiated evidence that the member's actions have been affected by ill-health.
- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the member.
- Compliance with the Code since the events giving rise to the determination.
- Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

Examples, but again not an exhaustive list, of aggravating factors are:

- Dishonesty or breaches of trust.
- Trying to gain an advantage or disadvantage for themselves or others;
- Bullying;
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

In deciding what action to take, the Committee should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Committee should be designed both to discourage or prevent the Subject Member from any future non-compliance and also to discourage similar action by others.

The Committee should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.

### **Notice of the Committee's findings**

The Committee will announce its decision at the end of the hearing. A short written decision will be made available on the day of the hearing and a full written decision

will be prepared before people's memories fade. The officer providing administrative support to the Committee will also draft minutes of the meeting. The Committee must give its full written decision to the relevant parties as soon as possible after the hearing. Wherever possible this will be within two weeks of the hearing.

The relevant parties are:

- the Subject Member
- the Complainant
- the standards committees of any other authorities concerned
- any parish or town councils concerned
- the Investigating Officer
- the Independent Person

### **Making the findings public**

The Committee will arrange for a summary of the decision and reasons for it to be published on the Council's website and a press release issued. A summary of the decision may also be published in any other publication if the Committee considers it appropriate.

If the Committee finds that the Subject Member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding. In such cases, the Subject Member is also entitled to decide that no summary of the decision should be published.

If the Committee finds that the Subject Member failed to follow the Code but no action needs to be taken the summary must:

- say that the member failed to follow the Code, but that no action needs to be taken
- outline what happened
- give reasons for the Committee's decision not to take any action

If the Committee finds that the member failed to follow the Code and it imposes a sanction, the public summary must:

- say that the member failed to follow the Code
- outline what happened
- explain what sanction has been imposed
- give reasons for the decision made by Committee

The committee's reports and minutes should be available for public inspection for six years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

### **Written decision format**

For consistency and thoroughness, the Committee will use the following format for their full written decisions. The front cover of the Committee's full written decision should include the name of the:

- The Authority
- Subject Member
- Complainant
- Committee member who chaired the hearing
- Committee members who took part in the hearing
- Monitoring Officer
- Investigating Officer who investigated the matter (if applicable)
- Clerk of the hearing or other administrative officer
- Case reference number
- Date of the hearing
- Date of the report

The Committee's full written decision will include:

- A summary of the complaint
- The relevant section or sections of the Code of Conduct
- A summary of the evidence considered and representations made
- The findings of fact, including the reasons for them
- The finding as to whether the member failed to follow the Code, including the reason's for that finding
- the sanctions imposed, if any, including the reasons for any sanctions

Subject Members are responsible for meeting the cost of any representation at a Committee hearing.

### **The Role of the Monitoring Officer**

It is important that the Committee receives high quality, independent advice. For this reason the Monitoring Officer will be the main adviser to the Committee, unless he/she has an interest in the matter that would prevent them from performing this role independently. If this situation arises, the Monitoring Officer should arrange for another appropriately qualified officer to advise the Committee.

The Monitoring Officer or other legal adviser's role in advising the standards committee is to:

- make sure that members of the Committee understand their powers and procedures
- make sure that the determination procedure is fair and will allow the complaint to be dealt with as efficiently and effectively as possible
- make sure that the Subject Member understands the procedures the Committee will follow
- provide advice to the Committee during the hearing and their deliberations
- help the Committee produce a written decision and a summary of



that decision

### **Model hearing procedures for the Committee**

The Committee has adopted Model procedures for the conduct of the hearing. These are attached at Appendix C. These may be varied at the discretion of the Committee.

### **Public or Private Hearings**

In most cases hearings should take place in public. The views of the subject Member and the Investigating Officer will be sought as early as possible to allow for legal advice to be obtained if required. In most cases, the public interest in transparent decision-making by the Committee will outweigh the Subject Member's interest in limiting publication of an unproved allegation that has not yet been determined.

### **Right of Appeal**

There is no right of appeal against the decision of the Committee. However, if the Subject Member or the Complainant is unhappy with the outcome, they are still entitled to complain to the Local Government Ombudsman or challenge a decision through the Courts by way of Judicial Review.

**Appendix A** Investigation Report Template

**Appendix B** Forms A to F

**Appendix C** Hearing Procedures

**TEMPLATE INVESTIGATION REPORT**

**Case Reference:**

Report of an investigation by [insert Investigating Officer name] appointed by the Monitoring Officer for [insert authority name] into an allegation concerning [insert subject member name].

**DATE:** [insert date]

## **Contents**

- 1 Executive summary**
- 2 [Insert member's name]'s official details**
- 3 The relevant legislation and protocols**
- 4 The evidence gathered**
- 5 Summary of the material facts**
- 6 [Insert member's name]'s additional submissions**
- 7 Reasoning as to whether there have been failures to comply with the Code of Conduct**
- 8 Finding**

**Appendix A Schedule of evidence taken into account and list of unused material**

**Appendix B Chronology of events**

## **1 Executive summary**

1.1 [Insert summary of allegation]

1.2 [Insert summary of Investigation outcome]

## **2 [Insert member's name]'s official details**

2.1 [Insert member's name] was elected to office on [insert date] for a term of [insert number] years. [insert member's name] is also a member of the following other relevant authorities: insert authority names].

2.2 [Insert member's name] currently serves on the following committees: [insert committee names] and has also served on [insert committee names] committees in recent years.

2.3 [If no longer a member, state how the period of office ceased]

2.4 [Insert member's name] gave a written undertaking to observe the Code of Conduct on [insert date].

2.5 [Insert member's name] has received the following training on the Code of Conduct [insert training details].

## **3 The relevant legislation and protocols**

3.1 The council has adopted a Code of Conduct in which the following paragraph[s] is/are included:

- [insert included paragraph]
- [insert included paragraph]
- [insert included paragraph]
- [insert included paragraph]

## **4 The evidence gathered**

4.1 I have taken account of oral evidence from [insert evidence details]

4.2 I have also taken account of documentary evidence obtained from [insert evidence details]

## **5 Summary of the material facts**

5.1 [Insert summary]

## **6 [Insert member's name]'s additional submissions**

6.1 [Insert submissions]

## **7 Reasoning as to whether there have been failures to comply with the Code of Conduct**

7.1 [Insert reasoning]

## **8 Finding**

8.1 [Insert finding]

Appendix A

## Schedule of evidence taken into account

### Core documents

Doc No	Description	Pages
XX123	Complaint	1-

### Notes of telephone conversations, letters, and interviews with witnesses

Doc No	Description	Pages

### Minutes of meetings and other documentary evidence

Doc No	Description	Pages

**Comments on draft report**

Doc No	Description	Pages

## List of unused materials



## Appendix B

### Chronology of events

- [insert event]
- [insert event]
- [insert event]
- [insert event]
- [insert event]

# FORM A

## Subject Member's response to the evidence set out in the investigation report

Please enter the number of any paragraph in the investigation report where you disagree with the findings of fact, and give your reasons and your suggested alternative.

Paragraph number from the investigation report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should read

# FORM B

## Other evidence relevant to the complaint

Please set out below, using the numbered paragraphs, any evidence you feel is relevant to the complaint made about you.

Paragraph number	Details of the evidence
1	
2	
3	

# FORM C

## Representations to be taken into account if a Subject Member is found to have failed to follow the Code of Conduct and referred for hearing by the Monitoring Officer

Please set out below, using the numbered paragraphs, any factors that the Committee should take into account if it finds that you have failed to follow the Code of Conduct. Please note that no such finding has yet been made.

Paragraph number	Factors for the Committee to take into account when deciding whether to impose a sanction
1	
2	
3	

# FORM D

## Arrangements for the Committee hearing

Please tick the relevant boxes.

<b>1</b>	Are you planning to attend the Committee hearing on the proposed date in the accompanying letter?  If 'No', please explain why.	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Reason:
<b>2</b>	Are you going to present your own case?	Yes <input type="checkbox"/>  No <input type="checkbox"/>	
<b>3</b>	If you are not presenting your own case, will a representative present it for you?  If 'Yes', please state the name of your representative.	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Name:

<p><b>4</b></p>	<p>Is your representative a practising solicitor or barrister?</p> <p>If 'Yes', please give their legal qualifications. Then go to <b>Question 6</b>.</p> <p>If 'No' please go to <b>Question 5</b>.</p>	<p>Yes</p> <input type="checkbox"/>  <p>No</p> <input type="checkbox"/>	<p>Qualifications:</p>
<p><b>5</b></p>	<p>Does your representative have any connection with your case?</p> <p>If 'Yes', please give details.</p>	<p>Yes</p> <input type="checkbox"/>  <p>No</p> <input type="checkbox"/>	<p>Details:</p>
<p><b>6</b></p>	<p>Are you going to call any witnesses?</p> <p>If 'Yes', please fill in Form E.</p>	<p>Yes</p> <input type="checkbox"/>  <p>No</p> <input type="checkbox"/>	

<p><b>7</b></p>	<p>Do you, your representative or your witnesses have any access difficulties? For example, is wheelchair access needed?</p> <p>If 'Yes', please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p>
<p><b>8</b></p>	<p>Do you, your representative or witnesses have any special needs?</p> <p>For example, is an interpreter needed?</p> <p>If 'Yes' please give details</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p>
<p><b>9</b></p>	<p>Do you want any part of the hearing to be held in private?</p> <p>If 'Yes', please give reasons.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Reasons:</p>

<b>10</b>	<b>Do you want any part of the relevant documents to be withheld from public inspection?</b>	<b>Yes</b>	<b>Reasons:</b>
	<b>If so, please explain which documents/parts of documents and give reasons for withholding from public inspection.</b>	<input type="checkbox"/>	
		<b>No</b>	
		<input type="checkbox"/>	
	<b>If 'Yes', please give reasons.</b>		



# FORM E

## Details of proposed witnesses to be called

Name of witness or witnesses	1		
	2		
	3		
<b>Witness 1</b>			
<b>a</b>	Will the witness give evidence about the allegation?  If 'Yes', please provide an outline of the evidence the witness will give.	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Outline of evidence:

<b>b</b>	<p>Will the witness give evidence about what action the Committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <input data-bbox="639 275 683 320" type="checkbox"/>  <p>No</p> <input data-bbox="639 495 683 539" type="checkbox"/>	<p>Outline of evidence:</p>
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## Witness 2

<b>a</b>	Will the witness give evidence about the allegation?  If 'Yes', please provide an outline of the evidence the witness will give.	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Outline of evidence:
<b>b</b>	Will the witness give evidence about what action the Committee should take if it finds that the Code of Conduct has not been followed?  If 'Yes', please provide an outline of the evidence the witness will give.	Yes <input type="checkbox"/>  No <input type="checkbox"/>	Outline of evidence:

### Witness 3

<b>a</b>	<p>Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <input type="checkbox"/>  <p>No</p> <input type="checkbox"/>	<p>Outline of evidence:</p>
<b>b</b>	<p>Will the witness give evidence about what action the Committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <input type="checkbox"/>  <p>No</p> <input type="checkbox"/>	<p>Outline of evidence:</p>

# FORM F

## Checklist for the pre-hearing process summary

After the Committee has received responses from the Subject Member and the Monitoring Officer, it should prepare a summary of the main aspects of the case that will be heard.

The pre-hearing process summary should include:

<input type="checkbox"/>	the name of the authority
<input type="checkbox"/>	the name of the subject member
<input type="checkbox"/>	the name of the complainant (unless there are good reasons to keep their identity confidential)
<input type="checkbox"/>	case reference number
<input type="checkbox"/>	the name of the Committee Member who will chair the hearing
<input type="checkbox"/>	the name of the Monitoring Officer
<input type="checkbox"/>	the name of the clerk of the hearing or other administrative officer
<input type="checkbox"/>	The name of the Independent Person
<input type="checkbox"/>	the date the pre-hearing process summary was produced
<input type="checkbox"/>	the date, time and place of the hearing
<input type="checkbox"/>	a summary of the complaint

<input type="checkbox"/>	the relevant section or sections of the Code of Conduct
<input type="checkbox"/>	the findings of fact in the investigation report that are agreed
<input type="checkbox"/>	the findings of fact in the investigation report that are not agreed
<input type="checkbox"/>	whether the Subject Member or the Investigating Officer will attend or be represented
<input type="checkbox"/>	the names of any witnesses who will be asked to give evidence
<input type="checkbox"/>	an outline of the proposed procedure for the hearing

## MODEL HEARING PROCEDURE FOR THE COMMITTEE

### Interpretation

1. 'Subject Member' means the member of the authority who is the subject of the allegation being considered by the Committee, unless stated otherwise. It also includes the Subject Member's nominated representative.
2. 'Investigating Officer' means the Monitoring Officer or other Investigating Officer and his or her nominated representative.
3. 'Committee' refers to the Hearing Committee, a Sub-Committee of the Standards Committee.
4. 'Legal advisor' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
5. "Independent Person" means the individual appointed by the Council under the Localism Act 2011 whose view will be sought and taken into account by the Committee before it makes a decision on the allegation.

### Representation

6. The Subject Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person.

### Legal Advice

7. The Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the Subject Member and the Investigating Officer if they are present.

### Setting the scene

8. After all the members and everyone involved have been formally introduced, the Chairman should explain how the Committee is going to run the hearing.

### Preliminary procedural issues

9. The Committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

### Making findings of fact

10. After dealing with any preliminary issues, the Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.

11. If there is no disagreement about the facts, the Committee can move on to the

next stage of the hearing.

12. If there is a disagreement, the Investigating Officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee may give the Subject Member an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer.

13. The Subject Member should then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.

14. At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigating Officer to challenge any evidence put forward by witnesses called by the Subject Member.

15. If the Subject Member disagrees with most of the facts, it may make sense for the Investigating Officer to start by making representations on all the relevant facts, instead of discussing each fact individually.

16. If the Subject Member disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present the Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Subject Member's explanation for not raising the issue at an earlier stage, the Committee may then:-

- (a) continue with the hearing, relying on the information in the Investigating Officer's report;
- (b) allow the Subject Member to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
- (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already.

**17. Cross-examination will not be permitted at the hearing and any questions will be at the discretion of and through the Chairman of the Committee.**

18. The Committee will usually move to another room to consider the representations and evidence in private.

19. On their return, the Chairman will announce the Committee's findings of fact.

**Did the Subject Member fail to follow the Code?**

20. The Committee then needs to consider whether or not, based on the facts it has found, the Subject Member has failed to follow the Code of Conduct.

21. The Subject Member should be invited to give relevant reasons why the Committee should not decide, based on the findings of fact, that he or she has failed to follow the Code.



22. The Committee should then consider any verbal or written representations from the Investigating Officer.

23. The Committee should then consider any verbal or written representations from the Independent Person.

24. The Committee may, at any time, question anyone involved on any point they raised in their representations.

25. The Subject Member should be invited to make any final relevant points.

26. The Committee will then move to another room to consider the representations.

27. On their return, the Chairman will announce the Committee's decision as to whether or not the Subject Member has failed to follow the Code of Conduct.

#### **If the Subject Member has not failed to follow the Code of Conduct**

28. If the Committee decides that the Subject Member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the authority.

#### **If the Subject Member has failed to follow the Code**

29. If the Committee decides that the Subject Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer, the Independent Person and the Subject Member as to:

- (a) Whether or not the Committee should set a penalty; and
- (b) What form any penalty should take

30. The Committee may question the Investigating Officer, Independent Person and Subject Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

31. The Committee will then move to another room to consider whether or not to impose a penalty on the Subject Member and, if so, what the penalty should be.

32. On their return, the Chairman will announce the Committee's decision.

#### **Recommendations to the authority**

33. After considering any verbal or written representations from the Investigating Officer, the Committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

#### **The written decision**

34. The Committee will announce its decision on the day and provide a short written decision on that day. **It will also issue a full written decision within two weeks of the hearing.** It is good practice to prepare the full written decision in draft on the day of the hearing before people's memories fade.

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