

# Standards Committee Hearing Panel

10 October 2023

## Member Code of Conduct Complaint

COM 418



### Report of James Etherington, Deputy Monitoring Officer

#### Electoral division(s) affected:

Chester-le-Street South

#### Purpose of the Report

- 1 This report summarises the issues relating to a Member Code of Conduct Complaint referred for determination by a Hearing Panel of the Standards Committee (the Panel) to take place on 10 October 2023.

#### Executive summary

- 2 The Monitoring Officer received a complaint against Councillor Paul Sexton (the Subject Member) which was assessed in line with the Procedure for Member Code of Conduct Complaints, the outcome being a referral to a Panel of the Standards Committee for consideration and determination.
- 3 The complaint relates to allegations of misconduct of the Subject Member in his capacity as a Waldrige Parish Councillor and as a Durham County Councillor towards members of the public.

#### Recommendation(s)

- 4 The Panel is recommended to:
  - a) Determine as a preliminary matter whether the Panel Hearing should be open to the Press and Public in full or in part; and
  - b) Consider the decision notice for COM 418 and reach decisions in respect of the complaint on:
    - I. Factual Findings;
    - II. Whether and, if so, how the Code has been breached by the Councillor; and
    - III. If there has been a breach of the Code, what action, if any, is required.

## **Background**

- 5 Councillor Paul Sexton is a member of Waldrige Parish Council and is also a Durham County Councillor. As a member of the Parish Council and as a Durham County Councillor, Councillor Paul Sexton is expected to conduct himself in accordance with both the Parish Council's Member Code of Conduct (Appendix 2) and Durham County Council's Code of Conduct (Appendix 3).
- 6 On 24 April 2023 the Monitoring Officer acknowledged receipt of a Code of Conduct complaint (COM 418) from a member of the public. The allegations related to the Member's conduct and alleged that he had bullied, intimidated and threatened the Complainant's daughter.
- 7 A summary of the complaint to be considered by the Hearing Panel of the Standards Committee (the Panel) is set out below.

## **Preliminary Consideration**

- 8 As a preliminary consideration, the Hearing Panel are to determine whether the Hearing should be open to the public and press. There is a presumption that meetings of the Hearing Panel will be open to the public and press unless confidential information or exempt information (within the meaning of Schedule 12A to the Local Government Act 1972) is likely to be disclosed.
- 9 The Procedure for Member Code of Conduct Complaints shown at Appendix 4 to this report sets out the circumstances in which hearings (or parts of hearings) can or should be held in private. These are:
  - (a) A hearing must be held in private where this is necessary to prevent confidential information being revealed. Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.
  - (b) The law also gives the Hearing Panel the power to hold a private meeting to prevent 'exempt information' being revealed to the public. The categories of exempt information are those set out in Schedule 12A to the Local Government Act 1972. The Local Government Act 1972 also states that information which falls within the following categories are exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The categories are as follows:
    - i. Information relating to any individual;

- ii. Information which is likely to reveal the identity of an individual;
- iii. Information relating to the financial or business affairs of any particular person (including the authority holding that information);
- iv. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority;
- v. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;
- vi. Information which reveals that the authority proposes:
  - a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - b) to make an order or direction under any enactment;
- vii. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

(c) Regulations also provide for two additional categories of 'exempt information' in relation to the Hearing Panel, namely information which is subject to any obligation of confidentiality or information which relates in any way to matters concerning national security.

- 10 The Panel will need to have regard to Article 6 of the European Convention on Human Rights and to Section 6(1) of the Human Rights Act 1998, which place a duty to act fairly and in line with the rules of natural justice. Article 6 favours public hearings, except in specific circumstances.
- 11 If the Hearing Panel decides to exclude the public to prevent exempt information being revealed, it may decide to exclude the public for only part of the proceedings. For example, if a witness' evidence is likely to reveal exempt information, the public will only have to be excluded while that witness is giving evidence. If evidence is heard in private, the Chair of the Hearing Panel will warn those present not to mention that evidence during the public parts of the hearing, or outside the hearing. The Hearing Panel may also need to use appropriate initials to protect the identity of witnesses during the hearing and in any public documentation.
- 12 The Panel, in accordance with the procedure, in considering whether the press and public should be excluded from the meeting, will take into account any representations from the Investigating Officer and/ or the Governance Lawyer, the Member concerned or his representative, and

the Independent Person with reasons why the Panel should make such an exclusion.

## **COM 418**

- 13 The Monitoring Officer received complaint COM 418 on 24 April 2023. The complaint was submitted by a member of the public and related to allegations that the Subject Member had bullied, intimidated and threatened the Complainant's daughter.
- 14 The complaint was considered in accordance with the Procedure for Member Code of Conduct Complaints and, after consultation with the Independent Person, was referred directly for consideration by a Hearing Panel of the Standards Committee. The Governance Lawyer considered that there was sufficient information within the complaint and response of the Subject Member for the Panel to consider the matter without the need for an investigation. A copy of the decision notice was sent to the Subject Member on 28 July 2023, and is attached at Appendix 5.
- 15 The allegations regarding the Subject Member's behaviour towards the Complainant's daughter are alleged to have begun following two encounters between the Complainant's son-in-law and the Subject Member.
- 16 During the first encounter the Subject Member is alleged to have been overbearing and disrespectful towards the Complainant's son-in-law in relation to supervision of his dog on the Millennium Green. The Complainant provided a mobile phone video recording made by his son-in-law showing much of the encounter. A transcript of that recording can be found within the decision notice at Appendix 5.
- 17 The second encounter is said to have taken place on the evening of 22 April 2023 when the Complainant's son-in-law was walking from his home address to a local shop. It is alleged that the Subject Member was driving his car when he saw the Complainant's son in law, followed him in his car, and appeared to wait outside the shop before eventually driving away.
- 18 Shortly after that second encounter, the Subject Member video called the Complainant's daughter. The Complainant has provided a recording made by his daughter of the conversation that took place. A transcript of that recording can be found within the decision notice at Appendix 5.
- 19 During that phone call it is alleged that the Subject Member identified himself as both a County Councillor and a Parish Councillor, maintained that the Complainant's son-in-law had goaded him, and threatened to use his position as a councillor to block the Complainant's daughter's request

to hold a charity dog show on the Millennium Green unless she spoke to her husband and persuaded him to apologise.

20 The allegations potentially engage the following provisions of the Codes of Conduct for Members of Durham County Council and Waldrige Parish Council:

- Deal with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially (Durham County Council);
- Always treat people with respect (Durham County Council)
- Behave in such a way that a reasonable person would regard as respectful (Waldrige Parish Council);
- Not to bully or harass any person (Durham County Council);
- Not act in a way which a reasonable person would regard as bullying or intimidatory (Waldrige Parish Council);
- Not to bring the role of Member or the local authority into disrepute and be aware that the actions and behaviour of a Member are subject to greater scrutiny than that of ordinary members of the public (Durham County Council);
- Not behave in a manner which a reasonable person would regard as likely to bring the Council, or his office as a member of the Council, into disrepute (Waldrige Parish Council);
- Not seek to improperly confer an advantage or disadvantage on any person (Waldrige Parish Council).

21 As part of the assessment of the complaint the Subject Member's views were sought. The Subject Member denied the allegations made against him and the Subject Member's full response can be found at Appendix 5 within the decision notice. The Subject Member also provided videos to refute part of the allegations made against him.

22 The Governance Lawyer considered the complaint and the Subject Members response. The reasons for the decision can be found at paragraphs 44 – 59 of the decision notice which can be found at Appendix 5.

### **Role of the Panel**

23 The pre-hearing process has been followed with a view to limiting the issues for decision by the Panel. The pre-hearing process can be found

within section 6 of the Procedure for Member Code of Conduct Complaints. A copy of the Procedure can be found at Appendix 4.

- 24 Where the assessment or investigation of a complaint finds evidence of a failure to comply with the Code of Conduct and informal resolution is not appropriate or possible, the findings will be reported to a Hearing Panel of the Standards Committee for local determination.
- 25 The role of the Panel is to consider each of the complaints and allegations separately. The Panel will need to consider the evidence presented by the Governance Lawyer and the Member.
- 26 Having heard from the Governance Lawyer and the Member, it is the role of the Panel to make findings of fact in relation to the conduct complained of and determine whether or not they consider that the Member has breached the Code of Conduct. The Panel is entitled to reach a different conclusion to the Governance Lawyer.
- 27 Before reaching a decision on the allegations, the Panel must consider representations from the Independent Person as to whether or not there has been a breach of the Code.
- 28 If the Panel conclude that there has been a breach of the Code of Conduct it must decide what action, if any, should be taken. The Panel will consider representations from the Governance Lawyer, Member and Independent Person on the issue of sanctions.
- 29 The Localism Act provides the following sanctions for current Councillors, which are set out in the Procedure for Member Code of Conduct Complaints and are as follows:
  - (a) Censure of the Member;
  - (b) Recommending to Full Council, or to the Town or Parish Council that the Member be removed from any or all Committees or Sub-Committees;
  - (c) Recommending to Full Council, or to the Town or Parish Council, that the Member be removed from all outside appointments to which s/he has been appointed or nominated by the authority;
  - (d) Recommending to Full Council, or to the Town or Parish Council, that the Member's access and use of resources of the Authority be restricted for a maximum period of six months, provided that any such restrictions imposed upon the Member:
    - (i) are reasonable and proportionate to the nature of the breach; and

- (ii) do not unduly restrict the Member's ability to perform his functions and duties as a Member;
  - (e) A requirement that the Member submit a written apology;
  - (f) A requirement that that Member undertake training as specified by the Hearing Panel;
  - (g) A requirement that that Member undertake conciliation as specified by the Hearing Panel.
- 30 The Hearing Panel will announce its decision at the end of the Hearing and, as soon as practicable after the hearing, the Hearing Panel provide a written decision notice which will be sent to the Complainant, the Member and the Clerk to the Parish Council, and published on the Council's website.

### **Background papers**

- None

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### **Author(s)**

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## **Appendix 1: Implications**

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### **Legal Implications**

The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles.

### **Finance**

None.

### **Consultation**

None.

### **Equality and Diversity / Public Sector Equality Duty**

None.

### **Climate Change**

None

### **Human Rights**

In deciding whether the Hearing should be held publicly, or in private, the Panel will need to have regard to Article 6 of the European Convention on Human Rights, and Section 6(1) of the Human Rights Act 1998 which places a duty to act fairly and in line with the rules of natural justice. Article 6 favours public hearings, except in specific circumstances.

### **Staffing**

None

### **Accommodation**

None

### **Risk**

None

### **Procurement**

None