

Investigation report following referral by Surrey Heath Borough Council's Deputy Monitoring Officer into Conduct of Councillors Clark and Vaughan Bisley Parish Council.

Introduction and Background

A formal complaint was made on 10 June 2021 against Cllr Vaughan and Cllr Clark in respect of bullying the former clerk to Bisley Parish Council, Jill Biden, and failing to support her in her role as clerk. The complaint asserts that the behaviour of Cllr Vaughan and Cllr Clark was contrary to the code of conduct for Councillors at Bisley Parish Council.

Under the Council's complaints process, the Deputy Monitoring Officer has determined that the complaint merits further investigation to determine relevant facts and circumstances before any final decisions or recommendations can be made.

Whilst Standing Orders appear to have been followed, the issue of the lack of effective policy and procedure in place for Bisley Parish Council is an omission that has enabled undesirable behaviour to persist within the Council. The investigation panel will be making a series of recommendations in this report which it hopes will assist in resolving differences and prevent difficulties for the Council going forwards.

The Investigation Process

This Investigation into allegations of Councillor misconduct has followed the requirements of S28 Localism Act 2011 as well as the guidance and supporting documentation at Part D, p.351 of Surrey Heath Borough Council's Constitution.

An Investigations Panel was convened to review the allegations, comprising the Council's Principal Lawyer Rebecca Batten, the Senior HR officer Bobbie Ludlow, and the Senior Internal Auditor Alex Middleton.

The Panel has considered the member complaint against the witness evidence of other Councillors as well as the subject members and will outline the process below by listing the interviews that were conducted and the form of evidence that has been considered by the panel.

Due to the seriousness of the allegations of bullying, it was necessary to consider whether there was evidence of a failure to comply with several provisions of the Bisley Parish Council Members Code of Conduct, particularly where the Panel did not find evidence of the principal allegation of bullying.

The Panel sent an initial letter out to selected members of Bisley Parish Council on 24 January 2022 inviting them to attend an Interview in person. The two members who were subject of the complaints, Cllr Clark and Cllr Vaughan, were unable to attend due to ill health and personal reasons. However, following a list of questions being sent out to Cllr Clark and Cllr Vaughan by email on 22 February, responses were received in written form, by email. Accordingly, the panel were furnished with sufficient information to consider the member conduct complaints fully.

Personal Interviews were conducted in confidence at Surrey Heath Borough Council offices, as follows:

1. Cllr Steve Moore: The panel had the benefit of the original complaint dated 10 June 2021 as well as oral evidence at personal interview on 7th February 2022 at which time some additional documents were provided to the Panel in confidence.

2. Jill Biden – The panel had the benefit of a witness statement dated 20 October 2021 as well as oral evidence at personal interview on 9th February 2022 and furthermore, Jill Biden requested a second meeting on 16 February 2022 to provide additional evidence orally.
3. Cllr Erica Agombar – The panel had the benefit of a witness statement dated 3 December 2021 as well as oral evidence at personal interview on 9th February 2022.
4. Cllr Tina James- The panel had the benefit of the oral evidence provided during a personal interview on 17th February 2022.

In accordance with the arrangements for dealing with allegations of misconduct under s28 Localism Act both Councillor Vaughan and Councillor Clark were provided a copy of the draft investigation report and were afforded 10 days to make any comments about any factual errors that were found. A number of emails were received from Councillor Clark and these have been considered. A couple of emails were received from Councillor Vaughan although some of his additional information was provided out of time. In view of this, some clarifications and amendments have been made to the report as a result of the observations that were made to the panel.

The Investigation Panel's findings

1. General Obligations Code of Conduct 2.2(b) *Bully any person.*

It is the Panel's decision that the evidence has not demonstrated that either Councillor Clark nor Councillor Vaughan has subjected Jill Biden to bullying and in the absence of a bullying policy, instances of questioning the methods or practices of Jill Biden are not construed as meeting the threshold for either bullying or harassing behaviour.

2. General Obligations Code of Conduct 2.2 (d) *Not do anything that compromises or is likely to compromise the impartiality of those who work for, or on behalf of the Council.*

The Panel found that following the receipt of CCTV footage from the Trustees of the Village Hall showing Councillor Clark attaching information to noticeboards, the forwarding of this data to all Councillors in a group email had become the subject of a complaint by Councillor Clark who stated that there had been a breach of GDPR. As Councillor Clark was the only Councillor who saw fit to complain in this way, it is the Panel's finding that on the balance of probabilities she was acting out of self interest in raising this complaint. The Panel consider it was wholly appropriate for the clerk to forward the data to Bisley Parish Council and that this complaint lacked foundation.

Having erroneously been accused of causing a breach of GDPR, the Panel found that Jill Biden's ability to determine whether it was indeed a breach and how it should be managed, were compromised. As a result of this complaint, the appropriate next steps were not followed, and Jill Biden resigned from her position.

3. Code of Conduct 2.5 (a) *must not use or attempt to use your position as a Councillor or co-opted member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.*

The Panel found that the witness evidence showed that Councillor Clark was insistent on being part of the Human Resources ("HR") subcommittee despite not having been nominated and accepted to this position. This showed disrespect for the democratically elected members of that subcommittee and on the balance of probabilities showed that she wished to secure an advantage for herself in respect of improperly accessing to confidential HR information which

would not necessarily have been communicated to the Parish Council outside of the HR committee.

4. Code of Conduct clause 1.2 High Standards of Conduct

It is your responsibility to comply with the provisions of this Code which will assist the Council in meeting its statutory obligation to promote and maintain high standards of conduct by:

c) Objectivity. In carrying out public business.

It is the Panel's finding that Councillor Clark has failed to meet the standards of conduct required under clause 1.2(c) when she failed to stay at 'arm's length' from a matter in which she had a personal conflict of interests; this being the content of a discussion at the Extraordinary General Meeting about 'noticeboards' on 24 May 2021. Despite correctly absenting herself from the meeting due to this conflict, Councillor Clerk retrospectively questioned Jill Biden about information and advice that was put before the Councillors at that meeting. The Panel finds that this questioning by Councillor Clark showed a lack of objectivity.

d) Accountability. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

It is the Panel's finding that Councillor Clark has failed to meet the standards of conduct required under clause 1.2(d), As the witness evidence shows Cllr Clark withdrew her participation from the 'checkpoint scheme' that fellow Councillors discussed and agreed at the Extraordinary General Meeting on 24 May 2021 would be suitable and proportionate redress for Cllr Clark to follow after the 'noticeboards' incident. Cllr Clark should have expected this level of scrutiny after the event had taken place.

5. Clause 1.2(g) General Provision – Leadership

It is the Panel's finding that Councillor Vaughan failed to meet the high standard of conduct required by the Chairman of the Parish Council (at that time) in failing to consider or properly direct Jill Biden's concerns of bullying on or around 23 March 2020 and more specifically, in failing to respond to Jill Biden's letter dated 25 February 2021. This amounts to a failure to promote and support the principles enshrined in the Code of Conduct.

Councillor Vaughan, the Chair at the time, demonstrated on occasions a lack of personnel support towards the clerk, for example in not responding to a letter from the clerk in which she requested a meeting with him. This would reasonably be expected for such a position, including not having regular 1 to 1s, annual appraisals, as well as periodically reviewing the clerk's job description and general duties.

Panel Recommendations

In the absence of any material findings of bullying and/ or harassment by Councillors Vaughan and Clark, the Panel came to the conclusion that there are, none the less, minor breaches of the code of conduct for which both Councillors must apologise in writing to the clerk, Jill Biden.

Furthermore, the Panel has made a series of recommendations, below, for Bisley Parish Council to implement in order to minimise the risk of councillor complaints relating to misconduct going forward. These are all in furtherance of best practice guidance.

1. There is no grievance policy in place which covers bullying and harassment. The Council needs to implement a proper policy and mechanisms put in place so it can be monitored and complied with. All Cllrs and co-opted Members should be required to sign up to this to demonstrate solidarity and openness.
2. A full set of Policies and Procedures are available from the National Association of Local Councils (“NALC”) which it is suggested would be beneficial to implement and put in place even if they are later required to be made more specific to Bisley Parish Council. It is suggested that Members sign up to these to demonstrate a willingness to work within a suitable framework for best practice.
3. Due to Information Technology issues, no common policy has been established for communicating between Cllrs. BPC needs to introduce a communications policy/procedure, and ensure business is only conducted using a secure business email. We also advise the setting up of a group email group to avoid exclusion of individuals from discussion.
4. BPC needs to implement a Data Protection Policy that covers individual rights under Data Protection as well as Freedom of Information requests and to specifically detail what procedure should be in place in the absence of the Data Protection Officer.
5. The HR Committee needs to be formalised, with dedicated Terms of Reference, and voted Member constitution. The powers of the HR committee also need to be agreed. In addition, the HR Committee is to continually review whether there are learning or development needs and to resource suitable training providers.
6. BPC employees would benefit from appraisals, Job Descriptions reviewed and updated, training and development needs recorded, and 1 to 1 meeting set up at regular intervals.
7. We would advise a full set of guidelines or working practices for use by Councillors in respect of social media and when it is inappropriate and/ or appropriate.
8. Cllr should try and stick to conducting Bisley Parish Council business within the remit of Council agendas and meetings. There appears to be too much use of off the record discussions, and not all Cllrs are invited to take part.
9. Any Cllr or staffing issues should be raised at the HR committee – including staff or Cllr performance, or issues such as lack of, or non-compliance with Code of Conduct or Standing Orders.
10. A remuneration report should be prepared regularly, as a minimum every 2 years or whenever there is a change to BPC’s constitution or roles. All proposed changes to Cllr allowances should be an agenda item and Standing Orders followed.

Investigating officers

Rebecca Batten (Principal Solicitor for Litigation)

Bobbie Ludlow (Senior HR Officer)

Alex Middleton (Senior Auditor)

Date: 18th July 2022