



Our ref: KN/GB
Enquiries to: Graham Britten
Ext no:
Direct line: 01296 744441 or 07803 759549
Date: 12 December 2023
Email: gbritten@bucksfire.gov.uk

Decision Notice: Member of the Authority

On 20 November and on 7 December 2023, the Monitoring Officer, Graham Britten, and an Independent Person ('IP') appointed by Buckinghamshire & Milton Keynes Fire Authority ('the Authority'), considered a complaint from a Member of the Authority ('the Complainant') concerning the alleged conduct of another Member of the Authority ('the subject member').

The complaint was received by the Monitoring Officer on 10 November 2023. The subject member was sent a copy of the complaint on 14 November 2023 and responded to the Monitoring Officer's invitation to comment on it on 20 November 2023.

Preamble

The following assessment criteria were applied:

- 1 The complaint was made against a current Member of the Authority
- 2 The subject member was a Member of the Authority when the Code of Conduct was in force.
- 3 If proven, the alleged conduct would be in breach of the Code of Conduct to which the Member was subject at the time of the alleged conduct.

A summary of the complaint is set out below:

At the Extraordinary Fire Authority held on Tuesday 24 October 2023 the subject member breached the Code of Conduct by identifying an individual, namely a member of staff, in a verbal contribution that the subject member was making.

I believe this breached the Code of Conduct - 2 (a) as the meeting was being held in public. The meeting was being recorded and the recording was to be published on the Fire Authority's YouTube channel after the meeting.



I understand that the recording was edited to redact the part of the meeting where the subject member spoke on this matter and the message later sent by Graham Britten, Director of Legal and Governance:

“The Authority’s Director of Legal & Governance has determined that the published recording should be redacted to avoid the publication of the inappropriate naming of employees of the Authority. The Authority’s Standing Orders provide that if any question arises at a Meeting of the Authority as to the conduct of a particular person employed by the Authority, the Chairman shall move a motion that shall immediately be put without debate to exclude the public. The Director of Legal & Governance believes that the fairest way of balancing the interests of openness and transparency and the right of Authority’s employees to be protected from potentially damaging comment is for the uploaded recording to be redacted accordingly. No other changes have been made to the recording.”

This clearly identifies that the subject member broke the Standing Orders.

The Fire Authority Standing Order D16 provides that Members shall not refer to: “Information which is likely to reveal the identity of an individual.”

The matter being discussed was sensitive and there were differing views in the room, but for the subject member to make a statement that clearly identified the member of staff was, in my opinion, a breach of the Code of Conduct and Standing Orders.

Potential breaches of the Code of Conduct identified

The following potential breaches of the Code of Conduct were discussed by the Monitoring Officer and the IP:

2. *You must not:*

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;



(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is:

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the Authority

In respect of paragraph 2 of the Authority's Code of Conduct, consideration was given to the 'Guidance on Local Government Association Model Councillor Code of Conduct' published by the LGA, 8 July 2021, in respect of its model code: 'Confidentiality and access to information.' (extracts below with emphasis added by the Monitoring Officer)

*'Local authorities must work openly and transparently. Their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, **but there will be times when it is required by law that discussions, documents, and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals** or information relating to ongoing negotiations.*

Confidential information

*'While local authority business is by law generally open and local authorities should always operate as transparently as possible, there will be times – for example, **when discussing a named individual, confidential HR matters** or commercially sensitive information – **when it is appropriate for local authority business to be kept confidential or treated as exempt information.**' [...]*

3. *You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or Authority into disrepute.*

In respect of paragraph 3 of the Authority's Code of Conduct, consideration was given to the 'Guidance on Local Government Association Model Councillor Code of Conduct' published by the LGA, 8 July 2021, in respect of its model code: 'As a councillor [...] I do not bring my role or local authority into disrepute.' (extracts below with emphasis added by the Monitoring Officer)

'What distinguishes disrepute to "your role or local authority" from disrepute to you as a person?



The misconduct will need to be sufficient to damage the reputation of the councillor's role or local authority, as opposed simply to damaging the reputation of the individual concerned.

Certain kinds of conduct may damage the reputation of an individual but will rarely be capable of damaging the reputation of the role of councillor or the reputation of the authority.

Here are some of the situations that might tip the balance in favour of disrepute to the role of councillor or to the authority in particular cases:

Situations where councillors have put their private interests above the public interest, which they are expected to promote as councillors, and therefore reduced the standing of their role. For example, councillors using their position to secure a secret personal profit.

Similarly, situations where a councillor defies important and well-established rules of the authority for private gain.

*Where a councillor engages in conduct which directly and significantly **undermines the authority's reputation as a good employer or responsible service provider.***

Decision

The Monitoring Officer in consultation with the IP determined that:

- a) the above provisions of the Authority's Code of Conduct were engaged; and
- b) while making no findings of fact, the actions as alleged could contravene these provisions if proven.

In accordance with the Localism Act 2011 and the procedure adopted by the Authority, following the Initial Assessment, the Monitoring Officer in consultation with the IP is able to decide on one of the following three outcomes:

1. The complaint will be investigated fully by an independent investigator;
2. No further action will be taken in respect of the complaint; or
3. Some form of informal resolution will be sought.

The Monitoring Officer was persuaded after consultation with the IP:

- The complaint will be investigated fully by an independent investigator .

In considering the complaint, Monitoring Officer and the IP had regard to the Authority's Code of Conduct, the information submitted by the Complainant, and the response submitted by the subject member.



The Monitoring Officer and the IP noted that in the subject member's response submitted on 20 November 2023, the subject member explained the rationale and justification for referring to the member of staff in that the subject member's objective was to seek clarity about the member of staff; and about recent events that and the reasons for them.

The subject member stated that the Standing Orders of the Authority do not state that members 'cannot raise [issues relating to an individual], just that it should be done in exempt session'; and that the subject member had 'had several officers and members thank me for raising the issue'; that the subject member should have been given the opportunity to raise the issue in other ways; the complaint was a complaint about Standing Orders which is not the same as the Code of Conduct; that the complaint amounts to bullying.

The Monitoring Officer discussed with the IP that there had been nothing in the content of the agenda papers which would have led him to believe in advance that 'exempt information' including information about named employees would be put into the public domain at the Extraordinary Meeting.

The Monitoring Officer believes that he would be compromised in evaluating the strength of the justifications put forward for the 'verbal contribution' complained of, and whether the tests for the exceptions allowed for under paragraph 2 of the Code of Conduct are met, as he had already taken the view that the 'verbal contribution' amounted to an inappropriate naming of employees of the Authority by the subject member causing him to delete 'verbal contribution' before the recording of the meeting was published.

What happens now?

This Decision Notice is sent to the Complainant and the subject member. It will then be published on the Authority's website. As no findings were made against the Member the Decision Notice has been worded without mention of the subject member's name.

A copy of this Decision Notice will be sent to the Monitoring Officer the subject member's appointing council with the Complainant's and subject member's details included.

What if I am unhappy with the outcome?

The Localism Act 2011 does not provide any appeals mechanism to review this decision. However the decision may be reviewed by means of an application to the High Court for Judicial Review of the decision.



Buckinghamshire
FIRE & RESCUE SERVICE
ne save lives

Signed *Graham Britten* Date: 12 December 2023

Monitoring Officer Graham Britten