



Our ref: KN/GB  
Enquiries to: Graham Britten  
Ext no:  
Direct line: 01296 744441 or 07803 759549  
Date: 14 November 2023  
Email: [gbritten@bucksfire.gov.uk](mailto:gbritten@bucksfire.gov.uk)

### **Decision Notice: Member of the Authority**

On 8 November 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 12 October 2023. The subject member was sent a copy of the complaint on 19 October 2023 and responded to the Monitoring Officer's invitation to comment on it on 30 October 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:

*On 13 September 2023, the Executive Committee of the Authority considered a staffing matter in confidential and exempt session, in line with the appropriate provisions of the Local Government Act 1972. The Executive Committee agreed, after a vote, a resolution.*

*On 29 September, the subject member wrote an email to the Complainant, cc'ing individuals who are not part of the Authority, nor of its Executive Committee, nor were privy to the contents of the exempt report or discussion: namely the Leaders of the constituent appointing councils; and the Monitoring Officer of the subject member's appointing council.*



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*The Complainant alleges that this was in breach of the subject member's obligations under the Code of Conduct:*

*It disclosed matters discussed under exempt session of the Executive Committee to individuals outside the Authority that the subject member knew to be confidential; and related to the highly sensitive employment relationship of the Authority with an employee, which the subject member knew to be confidential and sensitive.*

*The disclosure contained materially inaccurate statements about the employment relationship that could not be corrected to those cc'd without a further breach of confidentiality occurring. In so doing, the subject member damaged the reputations of the Authority, an employee of the Authority and individual Members; brought legal and financial risk to the Authority in respect of its employment relationship with the individual; breached obligations as part of an employing body to handle employee data with care or lawfully processing that data; and in failing to properly maintain confidentiality and appropriate care in handling personal data, it required disclosure to a representative of the employee therefore undermining the Authority's ability to approach the employment relationship in the way agreed by the Executive Committee.*

### **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*



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*(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.**' [...]*

*Where an officer recommends that a report to a decision-making committee should be treated as exempt information under the above categories the committee must still agree that the matter should be heard in a closed session. The committee may disagree with any recommendation and decide that those legal tests have not been met; or they may agree that those tests have been met but nevertheless it is in the public interest that the matter be considered in an open session. Again, you should keep a record of the rationale for the decision.*

***Once the local authority has agreed that the matter be treated as exempt, public access to relevant reports, background papers and minutes will also be excluded and an individual councillor must abide by that collective decision or risk breaching the code if they disclose that information (papers and content of discussion) without lawful excuse.'***

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



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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



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3. Some form of informal resolution will be sought.

The Monitoring Officer was persuaded after consultation with the IP that:

- Informal resolution will be sought.

The IP's view was that rather than instigate a full investigation which would require an external investigator to be commissioned at cost and delay to the Authority and would leave the matter open for a period of, at least, weeks before closure, the better course of action would be to see at this stage informal resolution could be explored in order to end the matter and with a view to maintaining a working relationship between the Complainant and the subject member.

If the subject member does not wish to comply with the actions suggested in this Decision Notice to secure an informal resolution, the Monitoring Officer reserves the right to re-consult the Independent Person.

In considering the complaint, the Monitoring Officer and IP had regard to the Authority's Code of Conduct, the email of concern sent to the subject member by the Monitoring Officer dated 2 October 2023 (about the subject member's 29 September 2023 email), the information submitted by the Complainant, and the response submitted by the subject member when invited to do so by the Monitoring Officer.

The IP believed that the third party recipients of the 29 September email would be accustomed to receiving such emails and would have been mindful of the need to treat the content as confidential and not to divulge their contents further.

The IP noted that the subject member stated that the subject member claims the actions were taken after receipt of advice from the subject member's appointing council's Monitoring Officer to put the subject member's concerns in writing to the Complainant. The Authority's Monitoring Officer's view is that this explanation would not wholly explain why such concerns and allegations, when put in writing, were cc'd to the Leaders of other councils without a prior right of reply for the Complainant.

The IP noted that the subject member apologised to the Monitoring Officer in response to his email of concern about the possible breaches of the duties of confidentiality owed to the Authority and owed by the Authority (as employer) to an Authority employee; and that the subject member has stated that an apology was made by the subject member to the Authority employee, which was accepted by the employee who stated that it was not the employee's intention to take any action against the subject member (nor the Authority).



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The Monitoring Officer's view is that at the time of the email being sent there was a real possibility that the actions brought legal and financial risk to the Authority in respect of its employment relationship with the individual.

**Informal Resolution Proposed\*:**

1. Subject to the agreement of the Complainant, a meeting between the Complainant and the subject member to be facilitated with an external independent mediator for conciliation/mediation.

\*If the subject member does not wish to comply with the actions suggested in this Decision Notice to secure an informal resolution, the Monitoring Officer reserves the right to re-consult the Independent Person.

**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 of 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; or by way of complaint to the Local Government and Social Care Ombudsman

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Signed *Graham Britten*

**Date: 14 November 2023**

**Monitoring Officer Graham Britten**