

MAIDSTONE BOROUGH COUNCIL

STANDARDS SUB COMMITTEE

MINUTES OF THE MEETING HELD ON 20 NOVEMBER 2009

PRESENT: Mr D Wright (Chairman)

Borough Councillors J Batt, J Verrall and B Vizzard

Parish Councillor I Younger

Paul Cummins, Monitoring Officer, Tunbridge Wells Borough Council; Tony Drew, Investigating Officer; and Debbie Snook, Democratic Services Officer

1. APOLOGIES FOR ABSENCE

There were no apologies for absence.

2. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

3. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

4. HEARING INTO AN ALLEGATION THAT PARISH COUNCILLOR VANESSA JONES BREACHED THE BREDHURST PARISH COUNCIL'S CODE OF CONDUCT

Report of the Monitoring Officer (Tunbridge Wells Borough Council)

The Monitoring Officer submitted a report setting out the background to the hearing. It was noted that the Sub-Committee, at its meeting held on 24 February 2009, considered an allegation received from Mr Suresh Khanna that Councillor Vanessa Jones may have failed to comply with Bredhurst Parish Council's Code of Conduct. The Sub-Committee agreed to refer the allegation to the Monitoring Officer for investigation. The Monitoring Officer appointed an Investigating Officer to look into the matter and his report was considered by the Sub-Committee at its meeting held on 31 July 2009. It was agreed that the report should be referred to a hearing by the Sub-Committee.

The Investigating Officer had considered whether Councillor Jones failed to comply with paragraphs 3(1), 3(2)(a), 3(2)(c), 3(2)(d), 4(a), 4(b), 5, 6(a), 6(b)(i) and 6(b)(ii) of the Code of Conduct of Bredhurst Parish Council. He had concluded that Councillor Jones failed to comply with paragraph 4(a) which relates to the disclosure of confidential information,

but did not fail to comply with the other aforementioned paragraphs of the Code of Conduct.

The Hearing

The Chairman first of all formally asked Councillor Jones if she admitted to having breached the Code of Conduct. Councillor Jones admitted that she had breached paragraph 4(a) of the Code of Conduct but with mitigating circumstances. Councillor Jones denied all other breaches of the Code of Conduct that were alleged.

The Investigating Officer then set out the findings of fact contained in his Investigation Report. It was submitted by the Investigating Officer that most of the findings of fact in the Investigation Report were agreed by Councillor Jones. The Investigating Officer highlighted the findings of fact from the Report and Councillor Jones made representations in respect of those findings where she indicated there was disagreement. Members of the Sub-Committee commented and asked questions at intervals.

The Investigating Officer made reference to Councillor Jones having passed details of an email from the Complainant to the Editor of the Downs Mail. In his report, the Investigating Officer had originally said that Councillor Jones had passed an email. He informed the Sub-Committee that he now accepted it was not an email but a letter which had contained details of the email from Mr Khanna.

It was noted by the Sub-Committee that the only findings of fact in which there were areas of concern in terms of the Code of Conduct were those findings in relation to the disclosure of the details of Mr Khanna's email to the Editor of the Downs Mail and therefore Councillor Jones concentrated her submission on this point.

Councillor Jones submitted that the information quoting the email in the letter that was disclosed to the Editor was not confidential. Mr Khanna had circulated the email to Parish Councillors and members of the public.

Councillor Jones called Mr Chalmers as a witness. Mr Chalmers confirmed he and another resident had received the email from Mr Khanna.

Councillor Jones then called Mr Adley as a witness. Mr Adley, the owner of Pickwick Garage in the village, said he had been approached by Mr Khanna to sign a petition against having the crossing. He said he had read the Downs Mail article and he recognised it as being Mr Khanna's voiced opinion. He noted that the article seemed to favour Mr Khanna's viewpoint.

The Sub-Committee then agreed to exclude the public pursuant to paragraph 7C of Part I of Schedule 12A to the Local Government Act 1972, having applied the Public Interest Test, in order that it could deliberate and reach its conclusions in private as to the findings of fact.

The Sub-Committee retired briefly and returned having made its findings of fact.

The Chairman announced that the Sub-Committee agreed with the Investigating Officer's findings of fact as amended during the hearing.

The Investigating Officer then explained the reasons for his conclusion that Councillor Jones, through her actions, had failed to comply with paragraph 4(a) of the Code of Conduct. He said that:-

- The letter passed to the Editor of the Downs Mail gave Mr Khanna's name 12 times. It also gave the names and addresses of other members of the public. If Councillor Jones had not realised that the letter contained a direct quote from the email, she must at least have been aware that it disclosed information about Mr Khanna and others. The disclosure of the information resulted in the disclosure through the media of three pieces of information: 1) it identified Mr Khanna which meant that the information was personal data subject to the Data Protection Act 1998; 2) it confirmed the precise wording of his email; and 3) it communicated the content of his personal concerns about the impact of a crossing outside his home. The precise wording of what Mr Khanna chose to communicate to KCCH was between him and the recipients of his email. It was not in the public domain. All organisations were subject to the requirements of the Data Protection Act, including the 7th Principle concerning the duty to keep personal data secure. Neither KCCH nor Bredhurst Parish Council was at liberty to disclose what Mr Khanna had disclosed to them unless with his agreement or there was a statutory basis for doing so. The information was not public information so its disclosure was a breach of confidentiality.
- Councillor Jones had submitted that paragraph 4(a) was designed to preserve the privacy of ordinary members of the public who give information to their Councillor, not a Parish Chairman. This appeared to imply that Councillor Jones failed to recognise that Mr Khanna was, at the time of her disclosure, a member of the public. Councillor Jones had said that Mr Khanna could still be quoted on what he said when holding office and that there was a public interest in the current Chairman being permitted to quote her predecessor. This caused him some concern that there could be a risk of further breaches to the detriment of all concerned. Mr Khanna's communication which was disclosed to the press related to representations he made as a private individual not as a Councillor. Councillor Jones' reference to the public interest in this context was also of concern and he respectfully suggested that this illustrated that her judgement in making this assessment of what was in the public interest had been affected by her personal feelings towards Mr Khanna.
- Councillor Jones had said that she did not and would not deliberately pass emails to third parties. In response, he would comment that she had passed on one of his own emails without

permission resulting in him being copied in to an email by a member of the public unknown to him making unsolicited comments about Mr Khanna and supporting Councillor Jones.

- Finally, in Councillor Jones' fifth submission, she had stated that no harm was suffered by Mr Khanna. He had no doubt that Mr Khanna was annoyed and upset not just at what the article said but at the disclosure of his email without his permission.

Councillor Jones was then given the opportunity to address the Sub-Committee. She said that she had never disputed that she had given the information to the Editor of the Downs Mail and that it had not been a premeditated act. She had not apologised to Mr Khanna and she would need to consider whether she would.

The Sub-Committee then agreed to exclude the public pursuant to paragraph 7C of Part I of Schedule 12A to the Local Government Act 1972, having applied the Public Interest Test, in order that it could deliberate and reach its conclusions in private as to whether Councillor Jones had failed to follow the Code of Conduct.

The Sub-Committee retired briefly and returned having considered the question as to whether there had been a breach of the Code of Conduct.

The Chairman announced that the Sub-Committee had listened to all the evidence and found that in relation to paragraph 4(a) Councillor Jones had breached the Code of Conduct. The Sub-Committee noted Councillor Jones had admitted that she had breached paragraph 4(a) but with mitigating circumstances. The Sub-Committee agreed with the conclusion of the Investigation Report and found that there had been no breach of the Code of Conduct in relation to the other 9 allegations.

The Sub-Committee then heard briefly from the Investigating Officer who submitted that the breach was at the lower end of the scale of seriousness.

The Sub-Committee was handed a character reference from Councillor Paul Carter. It then heard a short submission from Councillor Jones.

Councillor Jones submitted that 9 out of 10 of the allegations against her had not been upheld. She said that the investigation had been hanging over her for 11 months causing her a great deal of distress. She said she was prepared to offer an apology if it would bring matters to a close.

The Sub-Committee then agreed to exclude the public pursuant to paragraph 7C of Part I of Schedule 12A to the Local Government Act 1972, having applied the Public Interest Test, in order that it could deliberate and reach its conclusions in private as to what sanction, if any, should be imposed.

The Sub-Committee retired briefly and returned having considered the sanction.

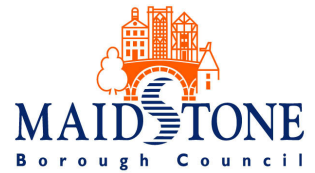
The Chairman announced that the Sub-Committee had determined that the sanction imposed for breach of paragraph 4(a) of the Code of Conduct shall be that Councillor Jones write an apology to the Complainant in a format agreed by the Sub-Committee. The Sub-Committee considered that the breach was at the lower end of the scale of seriousness and an apology was the appropriate sanction. The Chairman also suggested that Councillor Jones attend the next Maidstone Borough Council Code of Conduct Forum although this was a recommendation and not a sanction.

The Chairman said that he was dismayed that the complaint had had to go all the way to a hearing at an estimated cost of £10,000 and expressed the hope that all parties would now put the matters behind them.

A copy of the Decision Notice is attached as an Appendix to these Minutes.

5. DURATION OF MEETING

10.00 a.m. to 2.10 p.m.



Decision Notice of the Maidstone Borough Council Standards Sub-Committee

Name of Authority: Bredhurst Parish Council

Subject Member: Councillor Vanessa Jones

Complainant: Mr Suresh Khanna

Case Reference Number: MBC/09/02

Chairman: Mr Don Wright

Standards Committee Members: Councillor Julia Batt, Councillor John Verrall,
Councillor Bryan Vizzard, Parish Councillor Ian Younger

Monitoring Officer: Mr Paul Cummins (Monitoring Officer Tunbridge Wells
Borough Council)

Investigating Officer: Mr Tony Drew

Date of Investigation Report: 19 June 2009

Committee Administrator: Mrs Debbie Snook

Time, Date, Place of Hearing: 10.00am on Friday 20th November 2009 at the
Town Hall, Maidstone

Summary of Complaint

The complainant alleged 10 breaches of the Code of Conduct of Bredhurst Parish Council. A summary of the allegations is set out below together with the numbered paragraph of the Code of Conduct:-

1. Made statements about the complainant questioning the complainant's integrity at Parish Council and Joint Transportation Board - Para 3(1)
2. Dismissed representations to Kent Highways Services about access to a new zebra crossing by the complainant and his disabled daughter – Para 3(2)(a)
3. Announced at a Parish Council meeting that she had sought the advice of the Head of Legal Service at Kent County Council as Mr Khanna was likely to be a complainant – Para 3(2)(c)
4. Cultivated a very close relationship with the Parish Clerk, undertaking unauthorised visits with her on Parish Council business and drafting letters with her giving the views of the Parish Council without consulting the Chairman – Para 3(2)(d)
5. Disclosed to the press an email from the complainant without the consent of the complainant – Para 4(a)
6. Failed to release accident statistics and a survey on traffic calming – Para 4(b)
7. Abused her position and used the Parish Council as a platform to launch a vendetta against the complainant (through conduct described below in relation to allegations of a breach of paragraph 6) – Para 5
8. Used her position improperly to secure a disadvantage for the complainant – Para 6(a)
9. Ignored procedures for getting travel expenses approved and purchasing office equipment – Para 6(b)(i)
10. Used the Parish Council as a platform to urge people to get friends and acquaintances to vote for her at the Kent County Council elections in May 2007 – Para 6(a) and 6(b)(ii)

Relevant Sections of the Code of Conduct

Paragraph 3

3(1) – You must treat others with respect.

3(2)(a) - You must not do anything which may cause your authority to breach any of the equality enactments.

3(2)(c) - You must not intimidate or attempt to intimidate any person who is, or is likely to be, a complainant in relation to an allegation that a member has failed to comply with the Code of Conduct.

3(2)(d) - You must not do anything that compromises or is likely to compromise the impartiality of those who work for your authority.

Paragraph 4

4(a) – You must not 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;

4(b) – You must not prevent another person from gaining access to information to which that person is entitled by law.

Paragraph 5

5 – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

Paragraph 6

6(a) – You must not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

6(b) – You must, when using or authorising the use by others of the resources of your authority-

- (i) act in accordance with your authority's reasonable requirements;
- (ii) ensure that such resources are not used improperly for political purposes;

Summary of the evidence considered and representations made

The Chairman first of all formally asked Councillor Jones if she admitted to having breached the Code of Conduct. Councillor Jones admitted that she had breached paragraph 4(a) of the Code of Conduct but with mitigating circumstances. Councillor Jones denied all other breaches of the Code of Conduct that were alleged.

The Sub-Committee then heard from Mr Tony Drew who set out the findings of fact contained in his Investigation Report. It was submitted by Mr Drew that most of the findings of fact in the Investigation Report were agreed by the Subject Member. Mr Drew highlighted the findings of fact from the Report and Councillor Jones made representations in respect of those findings where she indicated there was disagreement. Members of the Sub-Committee commented and asked questions at intervals.

Mr Drew found that the Complainant originally supported a traffic calming scheme, one element of which was for a pedestrian crossing. That it was not unreasonable for Councillor Jones and other members of the Council to have concluded from the Complainant's communications that his views about the crossing changed when he knew it was to be sited directly outside his house.

It was submitted by Mr Drew that the Standard Board for England's findings show that Councillor Jones was justified in her concerns about the propriety of the Complainant's conduct at the Council meeting in February 2007.

Mr Drew found that Councillor Jones coordinated the process of submitting a complaint about the Complainant to the Standards Board.

He said it would be understandable if the Complainant felt aggrieved that a complaint was proceeded with despite him making a written apology, which he had been encouraged to do in the belief that this would prevent the complaint.

Councillor Jones informed the Sub-Committee that she had proceeded with the complaint about Mr Khanna on the advice of the Monitoring Officer at Maidstone Borough Council and the Standards Board for England.

Mr Drew concluded this section of evidence that the allegations against Mr Khanna were partly upheld and it is reasonable to conclude from the Standards Board's summary that the Complainant's resignation was a factor in its decision that no action needed to be taken.

He said there is no evidence that Councillor Jones' references to the matter were other than factual.

Mr Drew made reference to Councillor Jones having passed details of an email from the Complainant to the Editor of the Downs Mail. Mr Drew in his Report had originally said that Councillor Jones had passed an email. He informed the Sub-Committee that he now accepted it was not an email but a letter which had contained details of the email from Mr Khanna.

He said that Councillor Jones had disputed part of his report and suggested she had inadvertently given the letter to the Editor of the Downs Mail. Mr Drew said he did not accept that suggestion. Whilst he accepted Councillor Jones may have inadvertently initially given page 2 of the letter to the Editor she had

then made the conscious decision to give page 1 of the letter and the giving of that page could not be described as inadvertent.

Councillor Jones submitted that the background to her handing the letter to the Editor was that she had just made her first speech to the Joint Transportation Board and so she was very nervous. She had inadvertently handed over one page of the letter and when the Editor started reading it she had thought she may as well hand over the first page to make sense of what the Editor was reading. She said she had not handed over the letter with any malicious intent.

Mr Drew then moved on to set out further findings of fact from his Report. He said he considered that the Complainant, for very understandable reasons, was opposed to a zebra crossing being sited directly outside his house and he made numerous and vigorous representations to KCCH in an attempt to prevent it.

Mr Drew considered Councillor Jones' representation of the Complainant's position as being that he wanted the crossing outside his neighbour's house, while not entirely inaccurate, was not the most sympathetic and tactful way to describe it. The key issue was that he did not want the crossing outside his house.

He stated it was not clear how the Thatched Cottage site was first proposed, or by whom; it had emerged from discussion between Mr Burton and Mr Khanna. It is implied by some KCCH communications, rightly or wrongly, that Mr Khanna was the originator of the suggestion.

Mr Drew said the minutes of Council meetings reflect the views of councillors, not specifically the Chairman. Where minutes do not ascribe a view to a particular councillor, it is reasonable to assume, unless there is evidence to the contrary, that the views expressed are accepted by the Chairman who approves and may amend the draft produced by the clerk.

Mr Drew said he found that Councillor Jones did not have sufficient evidence to justify making a public statement that Mr Khanna had not previously raised the matter of the electricity pole, or to imply that Mr Khanna was the only resident to have raised objections about a zebra crossing.

Councillor Jones submitted to the Sub-Committee her justification was that she had not found any documentary evidence that Mr Khanna had raised the matter previously. She said she had also checked with a previous Chairman who had held that position for 12 years. Since Mr Khanna was a vocal objector on matters with which he disagreed and a meticulous record keeper she would have expected there to be some evidence if Mr Khanna had indeed raised the matter of the electricity pole previously.

Mr Drew said that Councillor Jones had not disputed the remaining findings of fact in the Report. He then proceeded to go through the rest of the Report findings.

Mr Drew said that the Council had similarly overstated the case when referring to KCCH's view that Mr Khanna's objections were unfounded.

Mr Drew found it was for KCCH to take a view on the matter of potential discrimination relating to disability in making its decision about the siting of the zebra crossing. He added that KCCH did not rule in Mr Khanna's favour and so any complaint he may have about disability discrimination should be directed to KCCH as the decision-maker.

Mr Drew said that Mr Khanna's communications of November 2007 and October and November 2008 might reasonably be considered to give grounds for the Council to seek legal advice and that the October 2008 email could reasonably be construed as containing a threat of potential legal action.

He considered that while Mr Khanna might have experienced the reference to the matter in the Council meeting minutes to be provocative and intimidatory, it was not unreasonable under all the circumstances for his intervention to be met with such a response.

He found it was not in the Parish Council's remit to release information about the original KCCH survey or accident statistics.

Mr Drew said there was a lack of available detail about the content and circumstances of the alleged statement by Councillor Jones. He said if the alleged remark was made, it is not clear that this was during the Council meeting, and in any event it appears to have been a light hearted expression of hope rather than a concerted attempt to persuade.

He found that it was not disputed that Councillor Jones and the clerk are friends. Also that for the Vice Chairman to assist the clerk with correspondence, or for the clerk to accompany the Vice Chairman on visits, did not of itself imply any lack of impartiality.

He considered that there was no evidence to support the Complainant's suggestion that Councillor Jones 'cultivated' a friendship with the clerk, implying that this was done deliberately for the purpose of compromising the clerk's impartiality.

Mr Drew found there were no formal procedures for processing travel claims at the time Mr Khanna was Chairman. He also found there was no evidence to support any suggestion that the travel expenses paid to Councillor Jones did not reflect the expenses she had incurred on Council business.

He said Mr Khanna's belief about Councillor Jones' motivation in arranging for the clerk to become treasurer of BWAG is not supported by any evidence. He said that it appears that the Council's financial procedures have been tightened up since the time of the purchases in question. He concluded that from the records there was no evidence to suggest any improper use of the Council's resources. He found that given the ring-fenced funding allocation for BWAG and discussions which took place with the KCC Funding Manager, there was no evidence to suggest any risk to the Council's finances.

It was noted by the Sub-Committee that the only findings of fact in which there were areas of concern related to those findings in relation to the disclosure of the details of Mr Khanna's email to the Editor and therefore Councillor Jones concentrated her submission on this point.

Councillor Jones submitted that the information quoting the email in the letter that was disclosed to the Editor was not confidential. Mr Khanna had circulated the email to Parish Councillors and members of the public.

Councillor Jones called Mr Chalmers as a witness. Mr Chalmers confirmed he and another resident had received the email from Mr Khanna.

Councillor Jones then called Mr Adley as a witness. Mr Adley is the owner of Pickwick Garage in the village. He said he had been approached by Mr Khanna to sign a petition against having the crossing. He said he had read the Downs

Mail article and he recognised it as being Mr Khanna's voiced opinion. He noted that the article seemed to favour Mr Khanna's viewpoint.

The findings of fact including the reasons for them

The Sub-Committee retired briefly and returned having made its findings of fact.

The Chairman noted there were no great disagreements between the parties as to the findings of fact. The Sub-Committee agreed with the Investigating Officer's conclusions on the facts as amended during the hearing.

The finding as to whether the Member failed to follow the Code

The Sub-Committee retired briefly and returned having considered the question as to whether there had been a breach of the Code of Conduct.

The Sub-Committee noted Councillor Jones had admitted that she had breached paragraph 4(a) of the Code of Conduct but with mitigating circumstances. The Chairman said the Sub-Committee had listened to all the evidence and found that in relation to paragraph 4(a) Councillor Jones had breached the Code of Conduct.

The Sub-Committee found that the content of the letter which Councillor Jones had disclosed to the Downs Mail was confidential. The Sub-Committee noted the letter contained personal information about Mr Khanna as well as other persons and therefore rejected Councillor Jones' assertion that the information was not confidential. Further the Sub-Committee found that Mr Khanna had not given his consent for the release of the information.

In relation to all other allegations the Sub-Committee noted that the Investigation Report had found that there had been no breach of the Code of Conduct. The Sub-Committee agreed with the conclusion of the Investigation Report and found that there had been no breach of the Code of Conduct in relation to the other 9 allegations.

Sanctions imposed and reasons for any sanctions

The Sub-Committee heard briefly from Mr Drew who submitted that the breach was at the lower end of the scale of seriousness.

The Sub-Committee was handed a character reference from Councillor Paul Carter. It then heard a short submission from Councillor Jones.

Councillor Jones submitted that 9 out of 10 of the allegations against her had not been upheld. She said that the investigation had been hanging over her for 11 months causing her a great deal of distress. She said she hoped to now draw a line under the matter and said she was prepared to offer an apology if it would bring matters to a close.

The Sub-Committee retired briefly and returned having considered the sanction. The Sub-Committee determined that the sanction imposed for breach of paragraph 4(a) of the Code of Conduct is that the Subject Member must write an apology to the Complainant. The apology letter must be sent to the Standards Sub-Committee for approval and onward transmission to the Complainant.

The Sub-Committee considered that the breach was at the lower end of the scale of seriousness and an apology was the appropriate sanction. The Chairman also suggested that Councillor Jones attend the next Maidstone Borough Council Code of Conduct Forum although this was a recommendation and not a sanction. The Chairman was dismayed that the complaint had had to go all the way to a hearing at an estimated cost of £10,000. The Chairman expressed the hope that all parties would now put the matters behind them, and that the village be allowed to return to its normal way of life.

Right of Appeal

The Subject Member can give Notice of Appeal to the President of the Adjudication Panel that the Subject Member seeks permission to appeal and if appropriate apply for suspension of the sanction imposed until such time as any appeal is determined.

The Notice of Appeal must be received by the President of the Adjudication Panel within 21 days of the Subject Member's receipt of this Decision Notice.

The Notice of Appeal must specify:-

1. The finding against which the Subject Member seeks permission to appeal;

2. Whether the appeal is against the finding that the Subject Member has failed to comply with the Code of Conduct, or if it is against the sanction imposed, or both;
3. The grounds of the appeal;
4. Whether any application for suspension of any sanction is made; and
5. Whether or not the Subject Member consents to the appeal being conducted by way of written representations.