

STANDARDS COMMITTEE

ASSESSMENT PANEL

COMPLAINT REFERENCE SC/20/01

Date of Complaint: 25 February 2020

Name of Complainant: Mr and Mrs Ward, Mr Buckman, Mr Snellgrove (Please note - three identical complaints were received but were bundled together into one to prevent unnecessary triplication of effort.)

Name of Subject Member/s: Cllr J Smith

Subject Member/s Council: Garthorpe & Fockerby Parish Council

Paragraphs of the Code of Conduct alleged to have been breached:-

- 3.4 You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a Member of the Council, into disrepute.
- 3.6 You must act solely in the public interest and not use or attempt to use your position as a Member improperly to confer or secure for yourself or any other person an advantage or disadvantage.
- 3.8 You must only use, or authorise the use of the Council's resources for proper purposes (regard being had to any applicable Local Authority Code of Publicity) and in accordance with the Council's procedural and policy requirements.
4. Interests. "...the member did not declare an interest, or declared the wrong type of interest."

Please note – Complaints were also submitted against former parish council clerk Mrs M Smith and current clerk Mrs N Ingleton. Neither Mrs Smith nor Mrs Ingleton are elected members and are therefore not bound by the Code of Conduct. As such, allegations against them are not considered as part of this assessment.

Summary of Complaint:

The complainants submitted a detailed dossier making a number of allegations of potential breaches of the Code of Conduct. The complainants requested an investigation into the awarding of a number of contracts for works in the area by the council to a company that Cllr Smith had a disclosable pecuniary interest in. These

allegations also suggested that Cllr Smith had not declared, or had declared the wrong interests, in meetings of the council.

The complainants also allege that Cllr Smith actively prevented them from being co-opted onto Garthorpe & Fockerby Parish Council in accordance with the procedures outlined in the local Casual Vacancy Guide, including by sending an email to the clerk with a derogatory description of the complainants.

The complainants submitted evidence that they believed would support these allegations.

Summary of subject member/s response:

Cllr Smith stated that, given the amount of information submitted, he would not be responding to the financial issues individually. However, the majority were routine payments to existing suppliers or non-controversial payments via the council's credit card.

Regarding the grass cutting work, Cllr Smith confirmed that they had declared all required interests and taken no part in the awarding of the contract. Cllr Smith had also used his company's plant equipment to deal with emergency issues in the parish, at a rate much lower than the commercial norm.

Cllr Smith asserts that he has acted wholly in a voluntary capacity for the good of the village, sitting in many unpaid meetings over the years, and had acted in good faith and with honesty throughout. Cllr Smith highlights that the externally audited accounts found no issues.

Views of the Independent Person:

The complaint relates to conduct of three individuals, Mr. John Smith (Chair of Garthorpe and Fockerby Parish Council, GFPC), Mrs. Mandy Smith (previously the clerk to GFPC), and Mrs. Nichola Ingleton (currently clerk to GFPC). It regards numerous activities over a protracted period of time concerning both financial management issues as well as democratic matters.

Whilst three individuals are cited as respondents to this complaint, two have to be immediately discounted as being beyond the remit of North Lincolnshire Council's (NLC) oversight, namely Mrs. Mandy Smith who no longer holds any position associated with GFPC, and Mrs. Nichola Ingleton being an employee of (GFPC) and is not bound by the Member Code of Conduct. As such my comments will relate solely to Mr. John Smith (JS).

Secondly the financial management of (GFPC) in respect of numerous transactions/contracts are matters which rightly have been referred to Humberside

Police with their final decision (27th. May 2020) noting “no further action will be taken against Mr. Smith and the investigation will be closed”. My comments therefore will be related to the actions of (GFPC) in it seeking new members to fill the two co-opted vacancies.

Summary: - 1) The appointment of two co-options

The heart of the complaint I see as being about the democratic process adopted by (GFPC) in filling the two vacancies it had in 2019, in which the complainants has an interest and note “we each as individuals sought to stand as co-opted members of the parish Council in the hope we could improve the transparency and compliance with Standing Orders, Code of Conduct and Legislation”. The vacancies were advertised on 17th. June 2019 and under the (NLC) Casual Vacancy Good Practice Guide (iii, Co-option) it advises the appointments be made “as soon as **practicable** after the expiry of 14 days”. The minutes of (GFPC) meeting of Tuesday 18th June 2019 record that they had been advertised and I trust, though I have no evidence of it, nor is it displayed on (GFPC) web site, when the actual closing date would be. However taking the 14 day ‘guide’, and to be generous in excluding the date of posting and the weekends, I would see the closing date as possibly 5th. July 2019.

It is reasonable therefore to expect that such applications would be considered after this date, and in anticipation of this at 18th. June 2019 meeting it was minuted that “The clerk was asked to arrange a meeting for the 9th, July 2019”, a meeting that “...should be held as an information gathering meeting. Each applicant will be asked the same questions with the interview lasting no more than 5 minutes for each resident. No members of the public should be present”. Effectively I see this as an interview situation, though with only 5 minutes allowed it could hardly be seen as a two way discourse. The complainants assert that a decision on appointment should have been made at this ‘informal’ meeting of (GFPC) on 9th. July 2019, with which I disagree, it is immaterial, (GFPC) only have to appoint as soon as **practicable**. As such I discount the complaint about timescales.

The claimants imply (dossier 3,(v)) that in some way they have been disadvantaged and suggest Mr. Smith and the clerk following the submissions by the claimants “after which it is *believed* two other individuals were invited to become Councillors” [my parenthesis]. These two individuals were successful in being co-opted but a complaint submitted in a ‘belief’ is hardly incriminating, and I have discounted this.

This arrangement had apparently been approved by (NLC) given the minutes record “The electoral office at NLC is aware of this unusual situation and the co-option decision will be recorded at the 20th. August 2019 meeting”. At that subsequent meeting of (GFPC) it was recorded (59/19/20) “The clerk issued secret ballot papers to the 5 councillors. Cllr Smith left the room as he did not wish to vote”, and the result being that a Mr. Brian Woolhouse and Mr. Robert Martinson “be co-opted onto the parish council”. Clearly none of the complainants were.

The question therefore raised is whether this process was in accord with accepted procedures. The (NLC) Casual Vacancy Good Practice Guide, is VERY clear in stating

about the appointment (iii, Co-option) it be made “as soon as practicable” and I see no reason that the *timescale* highlighted above could be considered unacceptable as is claimed by the complainants. In addition in this guidance is the stipulations that “the decision must be made by a majority of members who are present and voting”, given that those present with Mr. Smith having left the meeting, voted for the two successful applicants again cannot be questionable. Thus the timescale I see as ‘practicable’, and the majority voting by secret ballot accords numerically with (iii, Co-option).

However, of more concern contained in the same guidance it states “Members **must** vote by show of hands **unless** the council has standing orders that provide otherwise”. Without knowledge of, or the time to go through copious (GFPC) Orders and Regulations, I am assuming that such authorisation is NOT so recorded in any papers of government. This assumption, and it is an assumption, is because the minutes of the (GFPC) record these arrangements as “unusual”. Additionally a “show of hands” cannot be construed as equivalent to a secret ballot.

Secondly the guidance again at (iii Co-option) states that “The Parish Council’s debate and vote on the co-option **must be conducted in the public section of the meeting**”. This was certainly not the case as the minutes of 20th. August 2019 record (59/19/20) “Members of the public were requested to leave the meeting” This is a clear departure from the guidance.

Thirdly it stipulates that “It follows that the **candidates**, as members of the public, **will be entitled to be present during the proceedings**”. This is also a clear departure from the guidance. Certainly the wording above which stipulates “**must**” rather than “**should**”, would suggest compulsion. [my parenthesis throughout].

Accordingly, these arrangements and the decisions reached may, like the claimants are suggesting, be judged as ultra vires, in which case they are void.

The caveat to this is whether (NLC) in giving advice to (GFPC) about these “unusual” arrangements did so on the understanding that the (NLC) “Casual Vacancy Good Practice Guide” is just that, a ‘guide’ which cannot be considered mandatory.

Summary 2:- The conduct of Mr. Smith

Having had advice from (NLC) that the procedures outlined above were ‘acceptable’, Mr. Smith cannot be held to account having taken higher authority guidance, and thus cannot be seen in this respect to having breached any of the Member Code of Conduct; and in absenting himself from the actual decision making, even though the claimants allege he had to be prompted to do so, is not of concern. The claimants also allege (dossier pp.12-13) that Mr. Smith’s actions regarding his recusal was “disingenuous and defamatory”, and I cannot see any evidence to support this claim that he failed to act with “objectivity, openness and honesty” in respect of the process itself on the night in question.

However, the claimants include in their dossier an email allegedly sent by Mr. Smith to the Clerk on 18th. June 2019 @ 11:36 about the appointments which reads “Something is going on here! These people are trouble causes”. Though this information is in the

dossier (Appendix 8), it has the originator of the email blanked out, nor is it specific as to whether Mr. Smith, if it was he who sent it, had in mind the four persons comprising the complainants. Whilst the wording in the email is less than complementary, to whom it refers I know not, who sent it is redacted, and therefore I am unable to draw firm conclusions. If proven however as having been from Mr. Smith I would see not only the (NLC) Member Code of Conduct being breached, but in addition the Nolan principles.

The claimants take issue with the way (GFPC) record their minutes in suggesting that unless agenda items are recorded with both a proposer and seconder, any decisions are ultra vires. This is a matter I am minded to support, not by way of it being ultra vires, but merely that it is good practice to adopt. I see it as advisable that in future this method is incorporated, which at present the minutes show it is not.

Summary 3:- Publication of Declarations of Interest

The complainants raise the issue of the publication of (GFPC) Member declarations of interest, and cite the localism Act 2011 Section 29 (7) which states, "A parish council must, if it has a website, secure that its register is published on its website". I cannot see this to be the case, nor can I see that their website contains a link to (NLC's) website, or to the clerk as an alternative for access to the document. From examining a few other Town and Parish websites this same omission is apparent. This aspect needs addressing.

Conclusion

The complainants are to be credited by submitting such a detailed account of their grievances, though there is a suggestion from Mr. Smith that this fastidiousness may be because of a long-standing animosity from some of the complainants towards Mr. Smith it having been so "... for over 20 years with visits from the police and council officials".

Complaints pertaining to Mr. Smith and the appointment of co-options I also find unproven, in that they (GFPC) acted on higher authority (NLC) in implementing the "unusual" arrangements. However, this is on the proviso that the (NLC) Casual Vacancy Good Practice Guide is purely that, a 'guide', and is optional and not mandatory. If it is the former I see there is no case to answer, if it is the latter the appointments would in my view be ultra vires, and should be re-run.

Mr. Smith is said to be a "member of the SSE funding group he approves grant payments from SSE Keadby Windfarm to Garthorpe and Fockerby Parish Council" (Dossier, p. 10), and if true must be recorded on the (NLC) Member declarations, which it is not. Any and all appointments to outside bodies should be recorded.

Whilst the dossier contains extensive detail suggesting that (NLC) Member Code of Conduct provisions have been breached by Mr. Smith, I am less than convinced. Clearly having an interest in Marshfield Enterprises Ltd. and being called upon by (GFPC) to undertake work, it appears whenever needed declarations of interest are made, and I can see no evidence that the democratic procedures have been accidentally or intentionally breached.

Action Points

The outstanding issues in my mind are therefore threefold regarding a) the email sent to the Clerk of (GFPC) on 18th. June 2019 @ 11:36 and its contents, and b) the standing of the (NLC) Casual Vacancy Good practice Guide and c) the publication of the Member declaration of interest.

a) As to the email, this may indeed be a reference to the four unsuccessful applicants, and for a Chair of (GFPC) to refer to *any* constituents in this manner is less than creditable. Thus, irrespective as to whosoever the originator had in mind, if it was Mr. Smith who described these people as "These people are trouble causes" I would see this as possibly a breach of para. 3.4 of (NLC) Member Code of Conduct, and the Nolan principles. This aspect I would see as warranting investigation.

b) The "unusual" democratic procedure adopted by (GFPC), in making these last two appointments needs clarifying, and the status of (NLC) Casual Vacancy Good Practice Guide, whether discretionary or mandatory must be established, and made known to all Town and Parish Councils. The result of which may, or may not, require the appointment process to be re-run.

c) (GFPC) website and others should be updated to comply fully with the Localism Act 2011 regarding declarations of interest.

As to the alleged breach of para. 3.6, and 3.8, I cannot see clear evidence that this has been the case, and the recent appointment of a new clerk, who is unrelated to the Chair, helps distance professional advice away from any familial self-interest considerations.

Assessment Panel decision:

The Assessment Panel has considered very carefully the papers submitted under this complaint, including the views of the Independent Person, of which the panel is particularly mindful.

The Panel is also mindful that the allegations concerning a failure to declare and or register the appropriate financial interests as well as other multiple allegations of financial impropriety were, in accordance with the Protocol governing such matters, referred to Humberside Police for consideration and after such consideration are to be subject to no further action by Humberside Police. Accordingly, these issue are now removed from our jurisdiction.

That said, the Panel, mindful of the views of the Independent Person, considers it appropriate that a tightly focussed investigation be undertaken into the comments attributed to Cllr Smith concerning potential co-optees to the parish council who Cllr Smith it is alleged referred to in an email as: "These people are trouble causers". The investigation should focus on whether this amounts to a breach of paragraph 3.4 of the

Code of Conduct. For the sake of completeness, the purpose of such investigation is not to investigate the procedure the parish council adopted in maintaining its website or filling the casual vacancies as this is a matter for the parish council as a decision making body and as such falls outside the remit of the Code of Conduct.

Terms of Reference

The Localism Act 2011 introduced a requirement for councils to adopt a Code of Conduct and Arrangements* for dealing with complaints and alleged breaches of the Code. This complaint has been considered in accordance with the Arrangements adopted by North Lincolnshire Council and assessed against the criteria contained in those Arrangements.

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Monitoring Officer

Dated 11 August 2020

*These can be found on the council's website at
northlincs.gov.uk/yourcouncil/haveyousay/councillorsandmps/conductofmembers