

Doncaster Metropolitan Borough Council

Case Reference: PC5 2018/19

Final Report of an Investigation

Councillors M. Glynn, J, Credland, W Morrison

Hatfield Town Council.

Investigation under s29 of the Localism Act 2011,

Helen Potts, Principal Legal Officer at Doncaster Metropolitan Borough Council
appointed by Scott Fawcus, Monitoring Officer for Doncaster Metropolitan Borough
Council.

Date: 30th November 2018

Contents

1. Executive summary and list of key individuals.
2. Councillors official details
3. The relevant legislation and code.
4. The evidence gathered and its consideration
5. Summary of material facts
6. Reasoning as to whether there has been failures to comply with the Code of Conduct
7. Additional Submissions
8. Finding

Appendix A – List of Background Papers/Documentary Evidence

1. Executive Summary and List of Key Individuals

- 1.1. A Code of Conduct complaint was received by the Monitoring Officer on 20th June 2018 against Councillors Michael Glynn, Jessie Credland and William Morrison of Hatfield Town Council. The complaint was made by Mrs Clare McRoy the Clerk of Hatfield Town Council. The complainant detailed that the three councillors had handed her a letter dated 11th June 2018 dismissing her from her post as Clerk. The complaint alleged that the three Councillors had no authority to issue the letter and did so, without the knowledge of the rest of the Councillors, or any proper processes being undertaken. It is also alleged that Cllr Morrison had passed on an email without authority or permission to another councillor that Mrs Clare McRoy had sent him marked "confidential". The complainant considered these actions to breach obligations 1, 2 and 5 of the Hatfield Code of Conduct. The complainant has asked for an apology from the members involved.
- 1.2. I conclude as a result of the investigation that Councillors Glynn, Credland and Morrison did breach the code in that:
- 1.3 They have not behaved in such a way that a reasonable person would regard as respectful (Member Obligation 1)
- 1.4 They have acted in a way which a reasonable person would regard as bullying or intimidatory (Member Obligation 2)
- 1.5 I conclude that Cllr Morrison also breached the code by sending on the email in that:
- 1.6 He has disclosed information which is confidential (Member Obligation 5)
- 1.7 The key individuals in this case are;
 - Parish Councillor Michael Glynn
 - Parish Councillor Jessie Credland
 - Parish Councillor William Morrison
 - Mrs Clare McRoy, Clerk to the Council
- 1.8 The draft report was sent on 8th November 2018 to the Complainant and to the Councillors for their comments and their responses and any alterations are noted at section 7.

2. Councillor Official Details

- 2.1. Councillor Credland is a long term Town Councillor serving between 1999 and 2011 and then from 2013 to date. Councillor Glynn has been a Town Councillor since May 2007. Councillor Morrison was elected from December 2013 to date.
- 2.2 All councillors received a formal short induction from a previous Town Clerk. They have since been offered other training and Councillor Morrison attended a 'local councils are employers too' training session in 2017 and will be undertaking 2 further sessions this Autumn - Developing Your Skills as a Councillor, and Chairmanship training.
- 2.3 All three councillors have given their written undertaking to observe the code of conduct each time they sign a declaration of acceptance of office, most recently in May 2015. All Councillors are provided with a copy of the Code of Conduct at that point; and Councillors were re-issued with them earlier this year as a result of a discussion with the previous Town Mayor and Deputy Mayor and the Code was discussed as an agenda item at full Council.
- 2.4 Councillor Glynn sits on the Policy and Resources, Burial and Recreation, Health and Safety and Personnel Committees, and on the Newsletter Working Group, Audit Working Group and Allotment Liaison Meeting. He also represents the Town Council on the following external bodies: Hatfield Woodhouse Bull Trust, Robert Forster's Charity.
- 2.5 Councillor Credland sits on the Policy and Resources Committee, and is a member of the Personnel Committee.
- 2.6 As current Town Mayor, Councillor Morrison sits on the Policy and Resources, Burial and Recreation, Health and Safety, Personnel and Planning Committees (i.e. all the Town Council Committees). He also sits on the Remembrance Working Group, Audit Working Group and Newsletter Working Group. He also sits on the external Town Twinning Committee, and represents the Town Council at events, and visits local organisations to present grant cheques throughout the Mayoral year.
- 2.7 The current term of office for all 3 councillors runs until May 2021. Councillor Morrison's term as Mayor ceases in May 2019.

3 The Relevant Legislation and Code.

- 3.1 S27 of the Localism Act 2011 requires that an Authority adopt a Code of Conduct to promote and maintain high standards of conduct by its members. Under s28 the Principal Authority, Doncaster Borough Council must have arrangements for handling complaints regarding allegations of member misconduct.
- 3.2 Hatfield Town Council has adopted a Code of Conduct (see Appendix B of agenda pack) in which the following paragraphs are included:

Member obligations

- 3.3 When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations:
1. He/she shall behave in such a way that a reasonable person would regard as respectful.
 2. He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.
 3. He/she shall not seek to improperly confer an advantage or disadvantage on any person.
 4. He/she shall use the resources of the Council in accordance with its requirements.
 5. He/she shall not disclose information which is confidential or where disclosure is prohibited by law.

4. The Evidence Gathered and its consideration

- 4.1 I was asked to investigate the complaints made against the three Councillors in July 2018. I have taken account of oral and documentary evidence from Clare McRoy, and Councillors Glyn, Credland and Morrison. I wish to record my thanks for the co-operation and courtesy shown to me by those whom I interviewed.

Background

- 4.2 The investigation focus is the authority by which the three councillors delivered a dismissal letter to the clerk on 11th June 2018 and whether this breached the Code of Conduct.
- 4.3 The history of tensions between the three councillors and clerk at Hatfield Town Council was detailed by both the complainant and the three Councillors. Although all parties spoke in some depth and provided documentation explaining this situation, the conduct of the clerk is not a matter that this report can consider as it does not relate to the duties under the Localism Act. It is not the role of the Monitoring Officer, the Independent Person or the Hearings

Sub-Committee to consider the conduct of the Clerk or to involve themselves in what is an employment relationship. Hatfield Town Council has processes dealing with Employee issues and these should be adhered to. Failure to follow those processes correctly could lead to unfair dismissal proceedings. This was made clear to all parties. For the purpose of this report it is noted that there are a number of concerns and tensions raised by the three Councillors regarding the Clerk's abilities and conduct going back a number of years. The allegations set out in the 11th June 2018 letter were considered at an extraordinary meeting of Hatfield Town Council on 10th July 2018 and dismissed. It was also noted that the Clerk has raised a number of concerns about her dealings with the three Councillors (together with a fourth Councillor who is not the subject of this investigation).

The Complainant's Evidence

- 4.4 Mrs McRoy stated that the three councillors presented themselves at her office on the morning of the 11th June, the day of the town council meeting, and provided a letter to her. This stated:-

"It is with regret that I must inform you that (we) have become aware of serious issues i.e. financial irregularities and other issues as detailed on the attached and your reluctance to respond positively to my request for Committee meetings to be convened. I refer you to item 4a of the Disciplinary Policy where you find confirmation of the nature and content of allegation made. I further refer you to my email of the 7th June to which you have not responded. In view of all of the above it is regretted but we must now give you notice of (one month) termination of your employment with Hatfield Town Council.

This notice is with immediate effect from today Monday 11th June 2018 and will be supported by you taking "gardening leave" on full pay, your termination date will be Friday 13th July 2018.

In conclusion I request that you return keys and all other property of Hatfield Town Council immediately and remove ONLY you(r) personal item."

- 4.5 Mrs McRoy passed this letter to her union representative and emailed it on 11th June 2018 to the councillors of Hatfield Town Council stating 'I have received the attached today from the Mayor, Deputy Mayor and Leader. I have spoken with my union representative and I would be grateful if you could confirm whether this is a full Town Council decision taken by my employer'.
- 4.6 The union official received a response from Cllr Morrison dated 12th June 2018 saying 'It is fair to say that this letter is now considered, without prejudice, withdrawn' and 'I am hopeful that discussion will now take place and a line drawn under this internal conflict'

- 4.7 Cllr Morrison also sent the letter as an email attachment on 12th June 2018 to all councillors stating '*I trust we can now get back to the business of serving our electorate*'.
- 4.8 An extraordinary meeting of the council was held on 10th July 2018 to consider the letter of 11th June 2018. Cllrs Credland, Glynn and Morrison did not attend and Mrs McRoy considered it was not appropriate for her to attend and the Deputy Clerk serviced the meeting instead.
- 4.9 Mrs McRoy also complained of the passing on of a confidential email that she had sent to Cllr Sanderson (her Council appointed line manager), Cllr Gibbs and Cllr Morrison highlighting her concerns over recent actions against her. The chain of emails shows that Cllr Morrison emailed Cllr Glynn on 21.9.17 at 12.20pm with the heading '*Copy as promised but you didn't get it from me*'.

Councillor Evidence

- 4.10 All three councillors agree that they had signed the letter of the 11.6.18 and that it had been drafted by Cllr Morrison and he had read it to Cllrs Credland and Glyn before it was signed. The three councillors agreed that the letter did not follow the correct procedure to dismiss a Town Council employee and they did not have the Council's backing. They claimed it was done out of frustration, partly due to the Clerk not setting up meetings when asked to do so and other concerns regarding her conduct and behaviour set out on the back of the letter.
- 4.11 All three Councillors expressed doubt as to whether it was a termination letter and was more of suspension to allow further investigation and put it through the correct council procedures and this was expressed in the letter as 'gardening leave'.
- 4.12 All three councillors were willing to accept the letter should not have been sent, but there was an unwillingness to apologise as they considered the reasons behind the letter remained.
- 4.13 The three councillors accepted that an extraordinary meeting was held on 10th July to hear the complaints against the clerk. The three councillors chose to not attend the meeting as they were aware that a complaint had been made against them to the Monitoring Officer, although they stated if they had known representatives from Yorkshire Local Councils Association (YLCA) were attending they would have considered attending.
- 4.14 In regard to the confidential email, Councillor Morrison accepted that he had forwarded this and he knew at the time he should not have been doing so as the title states: '*Copy as promised but you didn't get it from me*'. Cllr Morrison accepts that the confidential letter should not have been shared.

Consideration of disputed facts

- 4.15 Though all three councillors accept the letter should not have been sent and was not the correct procedure, there is a disagreement with regards to what the letter actually intended. The Councillors state it was to allow the proper processes to be followed and was not a termination.
- 4.16 I consider that the letter is clearly a dismissal letter. There is no basis for claiming that it was intended to suspend the clerk (using the term “gardening leave”) to allow time to consider the allegations and follow the Council processes. The letter states that ‘*we must now give you notice of (one month) termination of your employment*’ and ‘*your termination date will be Friday 13th July 2018*’. It states that the Clerk should not be present in the office during this time – ‘*this notice.... will be supported by you taking “gardening leave” on full pay*’.
- 4.17 The common understanding of “gardening leave” is an employee's suspension from work on full pay for the duration of a notice period when terminating employment, usually to stop them having any further influence or accessing confidential information. It is not a common term used when an employee is suspended pending further investigation. Suspension is the usual term used where an employee is being investigated for a disciplinary matter but no formal action had yet been taken. The letter clearly refers to termination twice and gives a termination date. There is no reference to ongoing considerations by the Town Council.
- 4.18 It is also clear that the three Councillors were acting *ultra vires*; they did not have authority from the Town Council to issue the termination letter and did not follow Hatfield Town Council processes or comply with the Hatfield Town Council policy in such matters. The Councillors also did not have authority to issue a suspension letter, so even if the Councillors believed that they were suspending the Clerk they were still acting Ultra Vires.
- 4.19 As previously explained, the Clerk’s alleged behaviours and performance issues are beyond the scope of this report. The three councillors continue to feel aggrieved by the Clerk’s behaviour, however Hatfield Town Council have rejected the allegations. At the extraordinary meeting of 10th July 2018, held to consider their complaints the Minutes state ‘*the council rejects the allegations made against the Town Clerk in the letter of 11th June, that it believes the allegations have no basis and that it expresses support for the Clerk*’.

Conclusion

- 4.20 I find that: the three councillors all agreed to send the letter to the Clerk and that it was a dismissal letter.
- 4.21 I also find that Cllr Morrison passed on a confidential email from the Clerk written as an employee expressing her concerns when he knew he should not have done so.

- 4.22 When sending the letter to the Clerk, the three Councillors acted without authorisation from the full Council. Although the three Councillors were all members of the Council's Personnel Committee, they were not acting as the Personnel Committee. This was a flagrant breach of process; the 3 Councillors acted ultra-vires and set out a potential constructive dismissal/unfair dismissal case for the Clerk thus risking public monies.
- 4.23 Despite being repeatedly requested to do so, the three Councillors have declined to apologise to the Clerk.

5. Summary of material facts

- 5.1 The dismissal letter of 11th June 2018 was not approved by the Council. Cllrs Morrison, Credland and Glynn agree that it was not done under the correct Council procedure or with any Council authority. The letter that Cllr Morrison sent to Mrs McRoy's union representative of 12th June withdrawing the dismissal letter confirms this. The minutes of the extraordinary meeting of the Council on 10th July confirm that this was not a decision of full council. The eight allegations attached to the letter of the 11th June were read out and discussed and the minute's state' *'The general consensus was that the allegations should be rejected as the accusations are unfounded. There is a procedure and policy in place within the Town Council to deal specifically with staff issues or conduct that has not been followed or implemented, and fundamentally the Full Council has not given the authority to send the letter.'*
- 5.2 The Town Clerk is employed by the Town Council and her line manager remains Councillor Sanderson, who took on the role before she became Mayor and has retained the role to assist continuity. All parties agreed that the Council have introduced a number of policies, some following YLCA involvement and this included a Protocol of Member/ Officer relations, and a Disciplinary Policy (dated 2015). This provides that if there are concerns with employees they are raised informally through the line manager. If appropriate, the Personnel Committee will appoint an Investigator reporting to the Personnel Committee who will decide whether further action will be taken. If required, a Sub Committee will then be formed and a disciplinary meeting take place. If the decision is made to dismiss this is taken by the Council
- 5.3 The clerk's email of 15.9.17 is clearly marked confidential and deals with an employee's concerns regarding her job. If this was to be considered a formal grievance, the Grievance Policy provides that this should be sent to the nominated Town Clerk support member (as it was) and the Personnel Committee will set up a Panel/Sub-Committee.

6. Reasoning as to whether there has been failure to comply with the Code of Conduct

Member Obligation 1: He/she shall behave in such a way that a reasonable person would regard as respectful.

- 6.1 I consider that Cllrs Glynn, Credland and Morrison have all failed to behave in a way that a reasonable person would regard as respectful. To send a letter dismissing an employee of the Town Council without following the correct processes is very disrespectful to that employee and also to the other councillors and the general public. It is likely to lower the respect and high regard that Councillors should be held in. There is a clear process in place at the Town Council which they failed to have any regard to. The Town Councillors, as employers have important statutory obligations to their employees including an implied duty of trust and confidence. By failing to follow the set procedure and taking unilateral action dismissing an employee without any regard to these procedures or referring it to the Town Council is disrespectful (in the extreme). The outcome of the Council's extraordinary meeting of 10th July 2018 dismissing the allegations show that their allegations are either unfounded or there is insufficient evidence provided to prove them. The Council's perceived failure to act on the three councillors' concerns prior to the letter of 11th June and following is no justification to seek to undermine or circumvent agreed processes and attempt to dismiss the employee. In employment law terms, failure to follow procedures correctly can lead to a finding of unfair dismissal. Having received the termination letter, the Clerk may also have cause to begin constructive dismissal proceedings against the Town Council. This would bring the Town Council into disrepute and put at risk public monies.

Member Obligation 2: He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.

- 6.2 To send a letter to an employee as the 'employer' giving notice of dismissal without following the correct procedures can be regarded as bullying and intimidatory. There is no justification for this behaviour. They are senior Councillors using their influence and standing as the Council's Mayor, Deputy and Leader to intimidate the employee. This is not acceptable.
- 6.3 None of the three councillors involved had apologised for their behaviour, despite the acknowledgement that they accept they have not followed the correct procedures. Cllr Morrison's email to Mrs McRoy's union representative was not an apology, only a statement that the letter would not be taken further '*without prejudice*'. *On receipt of the draft report, Cllr Morrison has now apologised with regard to the 11th June letter, though not directly to the Clerk (see Section 7: Additional Submissions)*

Member Obligation 5: He/she shall not disclose information which is confidential or where disclosure is prohibited by law.

- 6.4 Cllr Morrison passed on a confidential email which he had been sent by an employee of the Town Council. He clearly knew this was wrong and not the

correct process by putting '*You did not get this from me*' in the heading of the email. Particularly in his role as Mayor and having responsibility for employees he should not have shared the confidence without following the correct process.

7. Additional Submissions

7.1 The draft report was sent to all parties for their comments and a summary of their responses and any report amendments is set out below.

Cllr Morrison

- Cllr Morrison states '*I feel that there are one or more inaccuracies within said report, however I accept that there is little to gain by any further continuance of this issue. I further accept that the process was flawed and incorrect in its application and I apologise to the Council its officers and to anyone else who may have been offended or upset as a result of my actions.*'

Cllr Glynn

- Cllr Glynn states that he was told by "Councillor Morrison that Garden Leave was a term used to put an employee on leave with full pay, this would then give Councillor Morrison as Mayor time to call a Personnel Committee meeting, after which any findings from that committee would be presented to full Council for due consideration, we have only agreed that the process Councillor Morrison set out was not the correct one "with hind sight only"
- Cllr Glynn also states that he did not see the list of allegations attached to the letter

Response: I have not amended my report as the letter of 11th June is still clear that the Clerk is being dismissed with one month's notice and does not read as suspension to investigate further.

- Cllr Glynn states that the confidential email of 15.9.17 has two different fonts colours and may not have been originally marked confidential.

Response: This is a matter against Cllr Morrison and I do consider the original email was supplied and it is not disputed by Cllr Morrison.

- Cllr Glynn raised issues concerning the Clerk.

Response: This report details that the remit of the Monitoring Officer does not extend to employment issues of the Town Council.

Cllr Credland

- Cllr Credland details the issues of concern regarding the Clerk.

Response: This report details that the remit of the Monitoring Officer does not extend to employment issues of the Town Council. .

- Cllr Credland states that the confidential email of 15.9.17 was not originally marked confidential.

Response: This is a matter against Cllr Morrison and I do consider the original email was supplied and it is not disputed by Cllr Morrison.

- Cllr Credland accepts that the correct procedures were not followed.

Clare McRoy

- Amendments suggested regarding accuracy with regard to the confidential email of 15.9.17 being sent to Cllr Gibbs too. It was also confirmed that the role of line manager to the clerk does not pass each year to the new Town mayor but was with Cllr Sanderson before she became Mayor and has remained with her for consistency.

8. Finding

- 8.1 My finding is that there has been a failure by Councillors Glynn, Credland and Morrison to comply with the Code of Conduct of the authority concerned in relation to the following obligations of the Code:

Member Obligation 1: He/she shall behave in such a way that a reasonable person would regard as respectful.

Member Obligation 2: He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.

- 8.2 I also find that Councillor Morrison has failed to comply with the Code of Conduct of the authority concerned in relation to the following obligations of the Code:

Member Obligation 5: He/she shall not disclose information which is confidential or where disclosure is prohibited by law.

Appendix A: List of Background Papers/Documentary Evidence

1. Code of Conduct Complaint Form
2. Hatfield Town Council Code of Conduct
3. Email Chain – 15/9/17-2/10/17
4. Dismissal Letter – 11/6/18
5. Email from Bill Morrison – 21/9/17
6. Response to Dismissal Letter – 11/6/18
7. Bill Morrison Email with Mr Foulke Response – 12/6/18
8. Minutes of Extraordinary Personnel Committee re Confidentiality and Notes – 5/2/18
9. Notes from Personnel Committee – 16/1/18
10. Minutes of Extraordinary Meeting 10/7/18
11. Protocol on Member/Officer Relations
12. Disciplinary Policy
13. Dignity at Work/Bullying and Harassment Policy
14. Grievance Policy
15. Equality Policy

Notes of Meetings

16. Ms McRoy Summary of Key Points in Interview
17. Cllr Glynn Summary of Key Points in Interview
18. Cllr Credland Summary of Key Points in Interview
19. Cllr Morrison Summary of Key Points in Interview