



Hart District Council Decision Report

Panel	Standards Committee – Code of Conduct Hearing Panel
Date	18 th April 2023
Title	Complaint: Alleged Breach of Fleet Town Council Code of Conduct
Report from	Monitoring Officer
Purpose	Confirmation of findings from Hearing Panel
Key Contact	Stephanie Baker, Monitoring Officer monitoringofficer@hart.gov.uk 01252 774136

Background

1. In line with the Hart District Council Arrangements for Dealing with Allegations (herein referred to as ‘the handling arrangements’) in relation to the complaint received from Mr Steve Forster on 17th January 2023, the Monitoring Officer did not dismiss the complaint for one of the reasons specified within Section 2 (initial action by the Monitoring Officer) and the complaint was acknowledged and the complainant informed of the procedure to be followed.
2. The complaint was submitted by Mr Steve Forster in relation to the conduct of two Councillors of Fleet Town Council (FTC) during the FTC meeting on 4th January 2023. The complaint alleged inappropriate conduct, breaching the FTC Code of Conduct by; Councillor Bob Schofield (Chairman) and Councillor Alan Oliver.
3. The panel were clear that the complaint against Councillor Alan Oliver is not in relation to other capacities held by him (i.e. Elected Member of Hart District Council or other) and is solely regarding his conduct as a Town Councillor at the FTC meeting of 4th January 2023.
4. In respect of the complaint regarding Councillor Bob Schofield, the initial assessment of the Monitoring Officer concluded that a written or verbal

apology (for allowing an individual Councillor who was not the Chairman to challenge an attendee for filming the meeting) would be a proportionate and appropriate outcome. This suggested outcome was agreed by the Independent Person in line with the handling arrangements.

5. In respect of the complaint regarding Councillor Alan Oliver, this related to verbal statements made during and after the meeting and included language which Councillor Schofield, in his response to the complaint, confirmed as inappropriate.
6. Given the nature of the comments, the initial assessment of the Monitoring Officer was to arrange a hearing panel before 3 members of Standards Committee. This was agreed by Standards Committee members (in lieu of any Chairman) and the Independent Person. The panel was made up of Councillor Stuart Bailey (elected Chairman), Councillor Chris Dorn and Mr David Argent (a parish councillor).
7. It was considered that a hearing panel would be appropriate as the complaint was supported by recorded audio evidence indicating a possible breach of the Code of Conduct, and it appeared from the complaint that it had caused personal injustice to the complainant, Mr Forster.
8. The hearing panel took place on 6th April in line with the procedure set out in Appendix C of the handling arrangements. The Independent Person was unavailable to attend the hearing panel however their attendance was not required by the handling arrangements. Both the Monitoring Officer and Deputy Monitoring Officer were in attendance to advise the panel.
9. The complainant brought along a representative, County Councillor Stephen Parker and Councillor Alan Oliver brought along HDC Elected Member Councillor James Radley as his representative.
10. Both the complainant and Councillor Oliver were provided the opportunity to make their statements and raise any questions. The Panel members then asked a series of questions to Mr Forster and Councillor Oliver. Both representatives also had the opportunity to ask questions and make comment at the Chairman's discretion. Following the roundtable discussion, the Chairman concluded that the parties could be excused to allow the Panel to deliberate in private and reach a decision.

11. The Panel considered two verbal exchanges between Councillor Oliver and Mr Forster.

First exchange

12. The first exchange concerns comments made during the FTC meeting on 4th January 2023 when Councillor Oliver challenged the appropriateness of Mr Forster using his mobile phone to take images of the Councillors during the proposition of several motions and the votes on those motions.

13. The Panel heard divergent views on the incident with Councillor Oliver stating that he had found it disruptive and felt that Mr Forster had been “jumping around”. Mr Forster stated that he had remained almost entirely seated and had outstretched his arm to take the images on his mobile phone, with no persons in the public gallery immediately in front of or behind of him so as to have been obstructed from view or disturbed by the recording.

14. The Panel were told by Mr Forster that he had taken the images with the intention of using these on his personal social media account rather than in his capacity as a County Councillor.

15. The Panel heard from Mr Forster that the reasons he had attended the meeting were two-fold; to provide a County Council update on roadworks on agenda item 5, in his capacity as County Councillor, and also to hear the discussions and debate on the other agenda items including budget matters in his interest and capacity as a resident.

16. The Panel considered whether Mr Forster could have attended the meeting in one capacity, as a County Councillor, but stayed to hear other items in a personal capacity. Whilst the Panel concluded that there may be a theoretical possibility for an individual to feel they have consciously interchanged from one of their different roles and remits to another during or at the end of a meeting, it was likely that other attendees at the meeting would have the reasonable impression and perception that Mr Forster attended the duration of the meeting in his capacity as County Councillor. The Panel felt that other attendees were likely to address Mr Forster in that manner for the duration of the meeting.

17. This principle was also considered to be the case for Councillor Oliver’s attendance at the FTC meeting on 4th January 2023, whether at any point before, during or after the meeting he felt that he had consciously interchanged from his Town Councillor role to another remit, the other attendees at the meeting would have the reasonable impression and perception that Councillor Oliver was present and addressed that evening in

his capacity as Town Councillor.

18. This reasonable impression and perception is cited within the FTC Code of Conduct general principles, as set out on page 5. It states:

“The rules of good conduct apply in all situations where you act, claim to act, or give the impression or reasonable perception that you are acting as a member or representative of Fleet Town Council

The Code applies to all forms of communication, including:

At face-to-face meetings

At on-line or telephone meetings

In written communication

In verbal communication

In non-verbal communication

In electronic and social media communication, posts, statements, and comments.”

19. The Panel concluded that there would have been a reasonable perception and impression from Councillor Oliver that Mr Forster was in attendance and remained at the venue in his capacity as a County Councillor. By the same token the Panel concluded that there would have been a reciprocal perception and impression from Mr Forster that Councillor Oliver was in attendance and remained at the venue in his capacity as Town Councillor.
20. When the speakers had been excused and the panel deliberated in private with the Monitoring Officer and Deputy Monitoring Officer, the Panel were advised on case law regarding political freedom of speech and in particular a 2021 judgment (*R(Robinson) v Bucks Council & Anor [2021] EWHC 2014 (Admin) No: CO/1734/2020*).
21. The Panel however felt that the capacity of any attendee recording under a public, private or other remit was immaterial to the overarching right to record a public meeting as set out within legislation (The Public Bodies (Admission to Meetings) Act 1960 (as amended by The Openness of Local Government Bodies Regulations 2014) as well as the FTC media policy (July 2021). The Panel agreed that there was no requirement to provide any form of prior notice before commencing recording as had been stated by Mr Forster and that the recording was aligned with the guidance on: direction (away from the public), content (Councillors and display screen only) and manner (minimal effect on the meeting).
22. The Panel concluded that regardless of whether the intent for the recorded material were private or otherwise, legislation and the Fleet Town Council media policy are both clear that recording of a public meeting is permitted. As

a result, the Panel considered that the Chairman ought not to have allowed an individual Councillor to challenge an individual on recording and that there may be some wider learning points for Parish and Town Councils in general on effective Chairing of meetings.

23. Irrespective of the Town Council's policies and the legislation, the Panel concluded that as a matter of courtesy Mr Forster could have let the Chairman know that he was intending to start filming.
24. In addition, the Panel considered that notwithstanding the legal right to film or record images during public meetings, there were perhaps opportunities for matters of courtesy to be included in Parish and Town Council policies and referred to by Chairman to avoid issues in future.
25. The Panel also concluded that the omission of the incident from the FTC printed minutes was of some concern and did not reflect best practice. The panel considered that there was perhaps another opportunity for a wider learning point for all Parish and Town Councils in the District. To request that minutes include reference to any instances where the meeting is paused due to the Chairman or other Councillor interacting with individuals from the public gallery, even if such an exchange is merely summarised.
26. At the hearing, Councillor Oliver confirmed to the Panel that on reflection, he considered his choice of words to Mr Forster on the first exchange in respect of the recording instance were disrespectful.
27. The Panel concluded that Councillor Oliver's language and phrasing was gratuitous and personal, as opposed to having been offered as part of a political argument, idea or discussion. As a result, the Panel decided that this was a clear breach of the FTC Code of Conduct.
28. Given the context of the comment, the Panel agreed that the statement was not protected by Article 10 of the European Convention on Human Rights (ECHR) in particular relating to freedom of speech, however it was likely to require assessment under the Equality Act 2010 due to the choice of language pertaining to mental health which is a protected characteristic under the Equality Act in relation to disability. Both pieces of legislation (the ECHR and Equality Act) are cited within the FTC Code of Conduct and the Panel agreed that they were required to consider them.
29. The Panel resolved that the comment was both disrespectful and inappropriate.

Conclusion on first exchange

30. The Panel concluded that there was a breach of the FTC Code of Conduct by Councillor Oliver, arising from the first exchange.

Second exchange

31. The Panel heard that the second exchange took place just after the formal close of the FTC meeting by the Chairman, which was stated on the FTC printed minutes to have been closed at 9:38pm.
32. The Panel agreed that in line with the above assessment on reasonable impression and perception of which capacity someone is acting in, when the second exchange took place Councillor Oliver would have been reasonably perceived at that time as speaking and acting in his capacity as Town Councillor.
33. The Panel agreed that at the time of the second exchange, by the same token Mr Forster would have been reasonably perceived at that time as speaking and acting in his capacity as County Councillor.
34. The Panel concluded that this was a Town Councillor - to- County Councillor exchange however it was not an exchange in the political sphere as it did not involve the proposition of political ideologies or debate on policy. The Panel were clear that the second exchange and neither party involved would benefit from political freedom of speech protection afforded by Article 10 of the ECHR.
35. The Panel considered that outside of political debate and expression of political ideas, targeted comments aimed at an individual or group concerning a protected characteristic would clearly breach the Equality Act.
36. The Panel also considered that the status, capacity and remit of individuals in terms of perception and impression was likely to change the further the attendees were from the meeting venue and the further in time that people were from the meeting having been closed. At the time of the second exchange, very shortly after the meeting had formally closed and within the same building, the Panel felt that a reasonable person would interpret this as a Councillor-to-Councillor exchange.
37. The Panel further discussed that even if they were wrong on the point of which capacity each individual was acting in, the FTC Code of Conduct clearly says that it applies to all situations where there is an impression or reasonable perception that you are acting in a capacity of FTC member or representative.

This was not restricted to conduct or exchanges during and (when still on the premises) after FTC meetings.

38. Given the conclusion that there would have been an impression or reasonable perception that Councillor Oliver was acting in his FTC capacity during the second exchange, the Panel felt that the Advice notes contained within the code of conduct were particularly relevant (Advice note on Disrepute, on Respect, on Discrimination and on Bullying).
39. The Panel noted that Councillor Oliver continuing to use inappropriate and distressing words after he observed the distress being caused (including physical shaking by Mr Forster) compounded the effect.
40. When asked, Councillor Oliver could provide no justification for his choice of words.

Conclusion on second exchange

41. The Panel concluded that there was a breach of the FTC Code of Conduct by Councillor Oliver, arising from the second exchange.

FTC Advice note on Disrepute

42. The FTC Advice note says:

“...your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. Article 10 of the European Convention on Human Rights protects your right to freedom of expression, and political speech as a councillor is given enhanced protection but this right is not unrestricted.”

43. The Advice note continues that “In general terms, disrepute can be defined as a lack of good reputation or respectability.”
44. The Panel considered that Councillor’s Olivers conduct within the first exchange and second exchanges appeared to contravene the advice note on disrepute.

FTC Advice note on Respect

45. The FTC Advice note says:

“Showing respect to others is fundamental to a civil society. As an elected or appointed representative of the public it is important to treat others with respect and to act in a respectful way. Respect means politeness, courtesy and civility in behaviour, speech, and in the written

word.”

46. It continues to state: “Rude, offensive, and disrespectful behaviour lowers the public’s expectations and confidence in its elected representatives.”

47. The Panel considered that Councillor’s Olivers conduct within the first and second exchanges appeared to contravene the advice note on respect.

FTC Advice note on Discrimination

48. The FTC Advice note says:

“The Equality Act 2010 imposes positive duties on local authorities to promote equality and to eliminate unlawful discrimination and harassment. Under the Act your authority may be liable for any discriminatory acts which you commit. This will apply when you do something in your official capacity in a discriminatory manner. You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority’s fulfilment of its positive duties under the Act.”

49. It continues “Examples of discriminatory behaviour include but are not limited to: ... comments, slurs, jokes, statements, questions, or gestures that are derogatory or offensive to an individual’s or group’s characteristics”

50. The Panel considered that Councillor’s Olivers conduct within the first and second exchanges appeared to contravene the advice note on discrimination.

FTC Advice note on Bullying

51. The FTC Advice note says:

“Bullying, harassment, discrimination, and victimisation (either directly or indirectly) are unacceptable and should not be tolerated. It is important to recognise the impact such behaviour can have on any individual experiencing it, as well as on the wider organisation in terms of morale and operational effectiveness.”

52. It continues: “You should always be mindful of the overall potential impact of the behaviour on others. First and foremost, bullying can have a significant impact on the recipient’s well-being and health.”

53. It later explains: “Like disrespectful behaviour, bullying can be difficult to define. When allegations of bullying are considered it’s likely that the person handling the complaint will consider both the perspective of the alleged victim,

and whether the councillor intended their actions to be bullying. They will also consider whether the individual was reasonably entitled to believe they were being bullied.”

54. The Panel were mindful that the complaint from Mr Forster alleged bullying and this was hard to define, as set out within the FTC Advice Note on bullying.
55. The Panel concluded that Councillor Oliver’s conduct within the second exchange would appear to contravene the advice note on bullying, particularly from the alleged victim (Mr Forster’s) perspective. The Panel felt that this was evident regardless of whether there was an active intention to bully.

Findings

56. The panel concluded that the comments made by Councillor Oliver towards Mr Forster in the second exchange were unacceptable comments surrounding a protected characteristic. The comments breach the code of conduct and fail to adhere to the guidance contained within the advice notes as set out above.
57. The Panel find that Councillor Oliver breached the FTC Code of Conduct in relation to both the first and second exchange.

SUGGESTED OUTCOME

58. The Panel’s findings are to be reported to FTC.
59. It is recommended that FTC obtain an apology from Councillor Oliver to Mr Forster at the next available FTC meeting.