

Borough Council of
**King's Lynn &
West Norfolk**



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**Standards Committee Hearing
(held in exempt session)**

Date: 25 January 2024

Borough Councillor Simon Nash

DECISION NOTICE

Standards Committee Members	Borough Councillor A Ware (Chair of the Panel) Borough Councillor B Ayres Borough Councillor S Ring
Council Officers	Wendy Vincent, Democratic Services Officer
Independent Person	Amanda Orchard
Deputy Monitoring Officer	James Arrandale
Investigators	CH&I Associates - Alex Oram and Mark Hedges

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Standards Committee Hearing

Borough Council of King's Lynn and West Norfolk (the "Council")

Date: 25 January 2024

1. Summary of the Complaints:

- 1.1 This hearing was convened to consider two complaints against Borough Councillor Simon Nash. The complaints were submitted by Lorraine Gore, Chief Executive, and Councillor Dark, who was at that time the Leader of the Council.
- 1.2 The complaints relate to Councillor Nash's conduct towards officers in the period 2019-2021. The complainants alleged that Councillor Nash failed to comply with the Council's Code of Conduct for Members and the Member/Officer Protocol. The complainants in particular pointed to the Code principles of Selflessness, Objectivity, Honesty and Integrity and Leadership.

2. Relevant sections of the Council's Code of Conduct

- 2.1 The Code in force at the time of the Complaints (the "Code") contains the following provisions that are relevant to these complaints:

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

As a Member of the Borough Council of King's Lynn and West Norfolk my conduct will in particular address the statutory principles of the Code by:

- Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind

those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it.

- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

3. Procedural Matters

Witness evidence

- 3.1 The Investigators did not consider it necessary to call any witnesses as to the events and concerns which had prompted the conduct complained of (see paragraph 4.1(c) below).
- 3.2 The Panel made a number of requests of Councillor Nash as to whether he wanted to call witnesses, and on 15 January 2024 set a deadline by which it required any proposed questions to witnesses to be provided in writing, and a deadline by which the evidence of any witnesses would be submitted in writing. This Order was not complied with.

Late Request for Alternative Representation

- 3.3 At the outset of the Hearing, the Panel considered a request from Councillor Nash to be represented by two members of the public. This request had been made for the first time by email on 24th January – less than 24 hours before the Hearing - and was not compliant with the Second Procedural Order made by the Panel in preparation for the Hearing.
- 3.4 The Independent Person made the following points for the Panel's consideration:
- a. The Panel did not have to consider this request;
 - b. Councillor Nash relied (in email on 24th January) on the parties' right in Court proceedings to request "McKenzie Friends" to accompany them. However, the Panel was not bound by Court rules regarding McKenzie Friends;
 - c. The Court can decide whether or not to allow any request for McKenzie Friends. In any event, it is normal that the Court will only allow one;
 - d. If the Panel decided to consider this request, it may want to consider:
 - whether the presence of the individuals is necessary and proportionate in the context of this hearing;
 - Whether there is a risk to the proceedings of having members of the public present, who are not bound by the same rules as the other parties attending, and whether this risk can be mitigated; and

- Whether any inference could be drawn from the attendance of the individuals; and
 - Whether allowing the request would set a precedent for the proceedings of future Panels.
- 3.5 The Panel determined to consider Councillor Nash's request, and invited submissions from him.
- 3.6 Councillor Nash stated that the two individuals were his friends and had varied interests in the law and business. He considered that he should be entitled to have both present in the same way as "McKenzie Friends" in Court proceedings.
- 3.7 The Panel retired and considered the points raised by the Independent Person and Councillor Nash's submissions.
- 3.8 The Panel took note of the extreme lateness of this request, in the context of procedural communications with Councillor Nash that had been going on since October 2023. The Panel also took note that it had already made provision, via a Second Procedural Order on the morning of 24th January, for Councillor Nash to be represented by up to two Councillors who Councillor Nash had previously requested to be present at the hearing.
- 3.9 In that context, the Panel was concerned that there was no apparent justification for Councillor Nash to have only informed the Panel of this new request on the afternoon before the Hearing.
- 3.10 The Panel took account of the points raised by the Independent Person regarding risk to the procedure and proportionality, and its concerns over the failure to raise the request earlier. It did not accept the relevance of the comparison with McKenzie Friends, and noted that Standards Hearings are not Article 6 Hearings due to the lack of serious sanction that can be imposed, such that the Court rules relating to McKenzie Friends did not apply in Standards Hearings.
- 3.11 The Panel therefore determined not to allow the late request for representation.
- 3.12 Following this decision, Councillor Nash and the two members of the public left the Hearing.

Whether to proceed in the absence of Councillor Nash

- 3.13 The Panel then retired to consider whether to proceed in the absence of Councillor Nash.
- 3.14 The Panel noted that it had the authority to proceed in the absence of the subject Councillor. It took note of the time already taken to bring the investigation to a hearing, and the public resource that would be wasted by adjourning.
- 3.15 The Panel therefore determined to proceed with the Hearing.

Public or Exempt Session

- 3.16 The Panel considered a motion whether to conduct the remainder of the Hearing in public or in exempt session. The Panel observed that the complainants' allegations and the written submissions of Councillor Nash referred to serious accusations (including allegations of criminality) made against previous and current council officers. Given the nature of the investigation, those officers had not supplied defences to those accusations, and would not do so in this Hearing; as a result, the accusations against them might be treated as undisputed, and if the hearing was held in public, the accusations could be publicised via social media or otherwise in a prejudicial way. The Panel considered this concern was not

outweighed by the public interest in holding hearings of this nature in public.

- 3.17 As a result, the Panel considered that the Hearing met the statutory test for being heard in exempt session.

4. Summary of evidence considered and representations made

4.1 The Investigators addressed the following jurisdictional issues:

- a. The Code allows for robust challenge to officers. However, a line must be drawn between providing constructive criticism in forceful terms, and unreasonable or excessive personal attacks. The Investigators stated that Council employees have the right to expect the same level of behaviour and professionalism from councillors as they would in any other workplace.
- b. The Council's Member/Officer Protocol, which contains guidance on how communications should be managed, was not the basis of the Panel's jurisdiction, but underpins the Code and provides more localised guidance to Councillors on how to follow it.
- c. In order to properly consider Councillor Nash's conduct, the Investigators had had to evaluate whether he was raising his concerns against officers in good faith, or doing so maliciously to deliberately hurt or humiliate officers. This was the limit of the extent to which the Investigators had explored with Councillor Nash the basis of his allegations against the officers.
- d. The Investigators confirmed that in their view the following sections of the Code were engaged in particular:
 - o Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
 - o Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- e. The Investigators noted that the Code does not contain any caveats around these requirements.

Investigators' Assessment of the Complaints

- 4.2 The Investigators referred to the email exchanges between officers and Councillor Nash that had been supplied by the Complainants, the documents supplied by Councillor Nash, and to their hours of interview with Councillor Nash. They drew the Panel's attention to examples of the conduct complained of by the Chief Executive, how these were addressed in their report, and outlined the conclusions they had reached.
- 4.3 As a general matter, the Investigators were satisfied that, when expressing his concerns regarding officers, Councillor Nash was genuinely concerned about the way in which the Council was operating, had felt marginalised, had lost trust in officers and felt the need to be robust in challenging what he perceived as unacceptable behaviour. They did not consider that the conduct was malicious.
- 4.4 In respect of an exchange between Councillor Nash and an officer in June/July 2019

(paragraph 4.22 onwards of the Investigators' Report), the Investigators did not dispute Councillor Nash's right to challenge the Council's process (i.e. the underlying subject matter of the email exchange), they considered that it was unnecessary of him to have personally attacked the officer by accusing them of wilfully involving themselves in and contributing to a situation of gross dishonesty.

- 4.5 In respect of an exchange between Councillor Nash and three other officers in October/November 2020 (paragraph 4.36 onwards of the Report), the Investigators noted that Councillor Nash appeared to have taken the view that, because he did not trust or respect a Council officer, he did not have to ever deal with that officer. The Investigators considered that this is not consistent with the Member/Officer Protocol, and that Councillors cannot pick and choose the officers who they treat with respect.
- 4.6 In respect of an exchange between Councillor Nash and further officers in June-September 2021 (paragraph 4.43 onwards), the Investigators acknowledged that the underlying issues were frustrating to Councillor Nash, but that it was wrong for Councillor Nash to have resorted to such inflammatory and disrespectful language, including that officers were either incompetent or had wilfully attempted to deceive him, and were guilty of fraud.
- 4.7 In respect of an exchange between Councillor Nash and other officers in September 2021, in which the Council's stance on his complaint is compared to a dictatorship, the Investigators characterised Councillor Nash's communications as "*needlessly dismissive*" and "*unnecessarily accusatory and inflammatory*".
- 4.8 In respect of exchanges between Councillor Nash and another officer in April 2022 (paragraph 4.92 onwards), and a further exchange with a fellow Councillor in July 2022 which raised accusations of fraud and gross negligence (paragraph 4.99 onwards), the Investigators similarly concluded that Councillor Nash was entitled to raise concerns, but he had failed to regulate the way in which he raised them.
- 4.9 In respect of exchanges between Councillor Nash and a further officer in September 2022 (paragraph 4.101 onwards), which included an accusation that the officer was "*making it up as you go along and saying whatever suits you best,*" and separate accusations of fraud and corruption, the Investigators agreed with the officer's response, which stated that Councillor Nash had translated "*speculation, conjecture, and assumptions about the actions of officers ... into alleged facts and conclusions that you broadcast widely, with little regard to the impact of the magnitude of your allegations on the officers concerned, or the existence of confirmed facts and the content of the member officer Protocol.*"
- 4.10 The Investigators then highlighted elements of their conclusions on the complaint by the then Leader of the Council.
- 4.11 In respect of an email exchange in November 2019 (paragraph 4.110 onwards), the Investigators considered that Councillor Nash was entitled to raise his concerns about the Council's management, but was wrong to use "*language that we find unacceptable [and] making accusations we find disrespectful.*"
- 4.12 In respect of an email exchange with officers in March 2021 (paragraph 4.116 onwards), the Investigators considered that "*Councillor Nash's communications with officers make no allowance for the pressures they have to make sound balanced decisions, or the fact that on occasions officers may have made mistakes or the fact that officers may have to take action which doesn't directly align with Councillor Nash's own views or position. Councillor Nash's default position when officers decide to do something that he doesn't agree with seems to be to accuse them of corruption, fraud, collusion, or gross incompetence. This leaves no room for any other explanations or debate. Councillor Nash uses these unsubstantiated allegations as statements of fact.*"

- 4.13 The Investigators therefore concluded that the evidence demonstrated that Councillor Nash's communications fell short of the standards required by the Code, both to value colleagues and staff, and to treat people with respect.
- 4.14 The Panel questioned the Investigators and received the following responses:
- a. The Panel asked whether there was a difference between having no respect and showing no respect. The Investigators emphatically agreed, saying that councillors will obviously have views on which officers they can trust the most, but they must treat officers with respect even where they don't believe the recipient is worthy of it.
 - b. The Panel asked how the Investigators' examination of the underlying facts behind Councillor Nash's concerns impacted on their findings about the Code. The Investigators confirmed that the underlying concerns raised by Councillor Nash are relevant in respect of the appropriateness of any sanction, but that even if those concerns were fully justified, this would not entitle a councillor to breach the Code.
 - c. The Investigators added in their response to this question that they would have expected Councillor Nash to be able to present evidence that officers had been found guilty of some sort of criminality before making accusations of that nature, but no evidence had been presented to them.
 - d. The Panel asked the Investigators whether Councillor Nash had shown objectivity in his discussions with the Investigators when looking back at these events, given that in the Panel's view he had raised his concerns with officers at the time in a subjective and passionate way. The Investigators responded that they had invited Councillor Nash to give comments on the draft of their Report, which might have given them further insight into Councillor Nash's retrospective views, but that they had not received any comments from him so were unable to add to what was in the Report.
 - e. The Panel asked whether Councillor Nash acknowledged that his accusations could affect staff morale and effectiveness. The Investigators' view was that Councillor Nash did not accept that, as he considered all of his remarks were ultimately justified.
 - f. The Panel asked the Investigators if, in their review of material, they considered Councillor Nash had followed officer advice resulting in concerns being addressed. The Investigators said that the material they had seen did not show this, but that this may have happened elsewhere in material they had not seen.
- 4.15 The Investigators made the following further observations in response to questions from the Independent Person:
- a. The Investigators were satisfied that Councillor Nash had had full opportunity to comment on the draft Report.
 - b. The Investigators added that they were not present as a prosecution, and that where they appear in Hearings where the subject Councillor is absent, they normally try to do their utmost to present the Councillor's case.
 - c. The Investigators reiterated that in their interviews with him, Councillor Nash had not indicated remorse for any effect of his conduct.
- 4.16 In summing up, the Investigators emphasised that it is important for Councillors to strongly challenge, scrutinise and question officers' work and Council business, and to properly raise concerns. The issue in this case was the way in which Councillor Nash raised those concerns.

4.17 The Independent Person gave her views. She stated that in her opinion the Investigators' investigation was fair and balanced, their Report was well-constructed and she agreed with its findings.

5. Conclusions and Reasons

5.1 The Panel carefully considered the hearing papers and submissions made, including the Independent Person's observations.

5.2 The Panel made the following observations on the procedure:

- a. It considered that the two complaints made by the Councillor and Officer were made in good faith and not maliciously or vexatiously.
- b. The investigation was done in a fair and balanced manner, and the Investigators' Report properly addressed the complaints and did not raise any concerns that were unable to be satisfied.
- c. Councillor Nash had been given the opportunity to put his case, both in the lead-up to the Hearing and on the day.

5.3 The Panel noted the Investigators' position on assessing the underlying issues raised by Councillor Nash. The Panel also noted remarks made by the Investigators regarding the positive value of challenge and scrutiny by councillors, and their views on Councillor Nash's motivations that had driven the conduct complained of. The Panel did not reach any conclusions as to whether or not the underlying issues raised by Councillor Nash were themselves deserving of scrutiny. Instead it focused on the way in which Councillor Nash pursued those issues.

5.4 The Panel agreed with the Investigators' assessments of the incidents complained of, namely that Councillor Nash's conduct fell below the standards required by the Code. In particular, the Panel considered that, whatever the basis for the underlying concerns that Councillor Nash raised, the language used towards officers was not acceptable.

6. Decision

6.1 The Panel found that as a result of the Conclusions set out above, Councillor Nash did breach the Code, specifically in respect of the following provisions:

- a. Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- b. Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- c. Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

7. Sanctions

7.1 Following its decision on breach of the Code, the Panel heard submissions from Councillors de Whalley, Moriarty and Parish (in his role as leader of the Independent Group).

7.2 The Panel heard submissions that:

- a. Councillor Nash is conscientious and respected in his ward,
- b. He is diligent in respect of his Council responsibilities,
- c. He has previously worked in a constructive way with fellow councillors on issues where officers have made mistakes.

Criticism was also made of the time taken to conclude this investigation and decision process, and the potential motivations behind elements of the complaints.

7.3 In considering sanction, the Panel took note of concerns raised by the Independent Person about the appropriateness of a Councillor continuing to sit on the Standards Committee where they had been found in breach of the Code in these circumstances.

7.4 The Standards Committee at the Council exists to maintain high standards of conduct amongst elected members in line with the Code and the expectations that the public have of elected members.

7.5 The Panel acknowledged the representations on Councillor Nash's behalf that he is a conscientious and diligent representative of his ward members. The Panel also noted and agreed with the submissions that Councillor Nash is a valuable contributor to Council scrutiny, including via his position on Corporate Performance Panel. The Panel specifically does not consider that Councillor Nash should be removed from that Panel, or that he should not sit on any other scrutiny panel.

7.6 The Panel however noted its concern that some of the submissions made on behalf of Councillor Nash did not appear to fully acknowledge the Investigators' and the Panel's conclusions that the use of language was not acceptable.

7.7 The Panel finally observed that it is confident Councillor Nash can, in future, channel valid concerns constructively in his engagement with officers. It noted that the Councillors who made representations on his behalf stand willing to work with him to support this.

7.8 The following sanctions were recommended:

- a. Councillor Nash should apologise in writing to the relevant officers;
- b. The Panel recommends to Councillor Nash's group leader that Councillor Nash be removed from his positions on the Standards Committee and the Appointments Board/Investigating and Disciplinary Committee.

Signed..

Date: 31st January 2024

(Councillor A Ware, Chair of the Standards Committee Panel Hearing)