

Decision Notice

Hearing Review Panel
Friday, 17 January 2025 10am



SOUTH
KESTEVEN
DISTRICT
COUNCIL

This notice confirms the decision taken by the Council's Hearing Review Panel held on 17 January 2025 regarding an investigation into alleged breaches of the Councillor Code of Conduct by Councillor Steven Cunnington.

Panel members present

Councillor Pam Byrd
Councillor Chris Noon
Councillor Peter Stephens
Councillor Sarah Trotter

In attendance

Councillor Graham Jeal (complainant)
Councillor Penny Milnes

Gordon Grimes – Independent Person
Graham Watts –Monitoring Officer
James Welbourn –Deputy Monitoring Officer

Estelle Culligan – Investigating Officer, Wilkin Chapman Solicitors (virtually present via MS Teams)
Gill Thompson – Investigating Officer, Wilkin Chapman Solicitors (virtually present via MS Teams)

1. Introductions

A formal investigation was undertaken further to allegations made by Councillor Graham Jeal that Councillor Steven Cunnington had breached the Councillor Code of Conduct. The investigation found that breaches of the Councillor Code of Conduct had occurred. The matter was referred to a meeting of the Hearing Review Panel (the Panel). The Panel was requested to consider the investigator's report in accordance with the Council's procedures for dealing with complaints against councillors. It was the role of the Panel to make a decision on the investigator's findings as to whether Councillor Cunnington had breached the Councillor Code of Conduct.

2. Election of Chairman

Councillor Pam Byrd was elected as Chairman of the Panel.

3. Declarations of Interests

Although not an interest, the Monitoring Officer reported that Councillor Cunnington had sent an email to him on the morning of 17 January 2025 stating that he had been called away with work and would therefore be unable to attend the hearing. He requested that the hearing be rescheduled. Having considered the request, the Panel unanimously decided to proceed with the hearing as it felt that there was sufficient evidence within the reports pack to make an informed decision. In taking this decision the Panel noted that Councillor Cunnington had failed to engage or co-operate with the investigation, despite a number of attempts by the Investigating Officer and Monitoring Officer.

4. To consider any requests for the exclusion of the Press and Public

It was confirmed that there had been no requests to hold the hearing in private. The Monitoring Officer confirmed that the report contained redactions of personal information of some third parties which did not impact on ability of the Panel to understand the report. The Panel determined to hold the hearing in public.

5. Councillor Code of Conduct Hearing - Councillor Graham Jeal v Councillor Steven Cunnington

The Monitoring Officer confirmed that the Council's procedure for dealing with complaints against Councillors had been followed fully from the outset in relation to the complaints under consideration at this hearing. The Chairman confirmed that Members of the Panel had not discussed details of the case beforehand and had not pre-empted any decision.

It was confirmed that Councillor Cunnington had signed the Code of Conduct on becoming a Councillor in 2023, and had also participated in Code of Conduct training, which was mandated for all members of the Council. He had subsequently attended Code of Conduct training after the complaints had been submitted against him.

The Investigating Officer (IO) introduced Wilkin Chapman's report, and the supporting evidence bundle and summarised the three complaints made against Councillor Cunnington by Councillor Graham Jeal.

Complaint 1

The liking by Councillor Cunnington of a member of the public's comment about Councillor Green on Facebook on 2 March in which the member of the public called Councillor Green "a self-promoting pratt"

Complaint 2

Councillor Cunnington's comments underneath a Facebook post by Councillor Green on 1 May 2024. Councillor Cunnington called Councillor Green a 'vile disrespectful piece of garbage' and a "vile disrespectful fool".

Complaint 3

The liking by Councillor Cunningham of a comment by a member of the public under the same post as in Complaint 2. The member of the public called Councillor Green a 'disgusting little turd'. Councillor Cunningham liked the comment and said "Well said..."

Overall, the complainant alleged breaches of the Nolan Principles (the seven Principles of Public Life), and that Councillor Cunningham had been disrespectful towards Councillor Green, had been dishonest and selective with the truth and had brought the Council into disrepute.

The Investigator explained that the Nolan Principles underpin the Code of Conduct but do not form part of it. Allegations must relate to behaviours under the Code and the IO confirmed that they were able to investigate any behaviours which they felt were relevant. They investigated against the behaviours of disrespect, bullying and disrepute, under parts 1, 2 and 5 of the Code of Conduct.

The IO outlined the principles of freedom of expression and the relevant legislation; Article 10 of the European Convention on Human Rights (ECHR). The right to freedom of expression was enhanced in political commentary, but mere personal abuse does not attract the higher protection. Freedom of speech may be curtailed if it was lawful to do so to protect the rights and freedoms of others; there were several pieces of UK caselaw which supported this which were referenced in the IO's report.

In the view of the IO only Complaint 2 constituted a breach of the Code of Conduct under 'respect'. This was due to their view that it fell within the realms of what could be considered personal abuse, did not attract the higher protection of political commentary and therefore it was reasonable to find a breach. The IO did not uphold allegations that Councillor Cunningham breached part 2, Bullying or part 3, Disrepute, of the Code of Conduct.

The IO found that Complaints 1 and 3 were not breaches of the Code of Conduct because Councillor Cunningham did not make the comments himself and, in the case of Complaint 1, the comment was very mild. The IO commented that they found Complaint 3 more difficult to assess because of the phrase used. However, because Councillor Cunningham had only liked the comment and said "Well said...", they did not find him in breach.

As part of the investigation the IO identified a further breach of the Councillor Code of Conduct. This was because Councillor Cunningham failed to engage with the investigation itself. The IO and the Monitoring Officer had both sent various emails to Councillor Cunningham to encourage him to engage, provide comments etc, but, other than initial comments to the Monitoring Officer at the start of the matter, Councillor Cunningham had not responded. The IO therefore also found Councillor Cunningham in breach of part 8 of the Code of Conduct, failing to cooperate with an investigation.

The IO's report and evidence bundle included statements submitted by Councillors Graham Jeal and Ben Green.

The Panel was provided with an opportunity to ask any points of clarification of the IO in relation to the report and evidence bundle. The IO provided clarity to the points raised, which covered explanations of the case law referenced in both documents, use of social media in general as a tool and the pitfalls associated with it and the difference in 'liking' comments as opposed to writing comments in your own words.

Councillor Jeal provided a written statement to the Panel which supported the investigation and conclusions carried out by Wilkin Chapman Solicitors. He was satisfied that a 'thorough and comprehensive process' had been undertaken.

The Independent Person praised the thorough and comprehensive report and findings of the IO and fully endorsed its conclusions. He agreed there had been a failure to comply with Article 10.1 of the ECHR in respect of complaint 2, and also agreed there had been no breaches in respect of bullying or bringing the Council or the Councillor's office into disrepute. He concurred with the IO that Councillor Cunningham had also breached the Code of Conduct by failing to engage with the investigation.

The Panel adjourned to deliberate and reach a conclusion at 11:11am and reconvened at 11:54am.

Conclusion

The Panel accepted the report in its entirety and agreed that whilst Complaints 1 and 3 appeared to be disrespectful they were within the legal limits of freedom of expression. The Panel concluded that Complaint 2 veered into personally abusive commentary and demonstrated unacceptable behaviour and concurred with the finding that Councillor Cunningham had failed to co-operative with the investigation.

The Hearing Review Panel therefore **AGREED** that the following elements of the Councillor Code of Conduct were breached by Councillor Cunningham:

1. Respect

As a Councillor:

1.1 I treat other Councillors and members of the public with respect

8. Complying with the Code of Conduct

As a Councillor:

8.2 I cooperate with any Code of Conduct investigation and/or determination

The Panel, having consulted with the Independent Person, **AGREED** that the following sanctions be applied:

- a. That Councillor Steven Cunningham be required to attend training on the appropriate use of social media whilst acting in an official capacity as a Councillor.

- b. That Councillor Steven Cunningham be required to attend further training on the Councillor Code of Conduct.
- c. That Councillor Steven Cunningham be required to attend the above training sessions within six months.
- d. That a Censure Notice be placed on Councillor Steven Cunningham's profile on the Council's website regarding his failure to co-operate with a Councillor Code of Conduct investigation, for a period of twelve months.

In addition, the Panel made the following recommendation:

- a. That all Councillors be recommended to consider use of the blocking facility on social media platforms.

In reaching these decisions the Panel acknowledged that Councillor Cunningham had been within his first year as Councillor at the time of the complaints being submitted and felt that such actions may have been attributed to his inexperience as an elected member.

Right of Appeal

Subject to judicial review, there was no right of appeal against the decision of the Hearing Review Panel.

The Hearing closed at 12:08pm.