

Decision Notice

HEARING REVIEW PANEL
FRIDAY, 17 JANUARY 2025 2PM



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
Councillor Penny Milnes (complainant)

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 Penny Milnes 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 Cunningham 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 Cunningham 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. Redactions were made in relation to personal information of other third parties not relevant to the matter under investigation. The Monitoring Officer referred to pages 46-48 of the reports pack where the word 'confidential' appeared. The Monitoring Officer confirmed that the information was now not confidential, but had been at the time it was received.

The Panel determined to hold the hearing in public.

5. Councillor Code of Conduct Hearing - Councillor Penny Milnes v Councillor Steven Cunningham

It was confirmed that Councillor Cunningham 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. The subsequent attendance at Code of Conduct training was after the complaints had been submitted against him.

The Investigating Officer (IO) introduced their report and supporting evidence bundle and highlighted the complaint made against Councillor Cunningham by Councillor Milnes. The complaint was submitted in relation to Councillor Cunningham's comment underneath a Facebook post by Councillor Green on 1 May 2024. The post contained a link to a Lincsonline news article about former Councillor Patsy Ellis' resignation from the Council. Councillor Green headed the post: *"Former portfolio holder for bins at SKDC, Cllr Patsy Ellis, has left the Cabinet and the Green Party. Did she jump before she was binned?"* Councillor Cunningham commented underneath, "Vile disrespectful insensitive scum".

Councillor Milnes alleged that the comment showed a clear lack of respect, breaching the Code of Conduct and the Nolan Principles (the Seven Principles of Public Life). The IO explained that the Nolan Principles underpin the Code of Conduct but did 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 and disrepute, under parts 1, and 5 of the Code of Conduct.

The IO outlined the principles of freedom of expression and the relevant legislation; in this case Article 10 of the European Convention on Human Rights (ECHR). Taken together, the right to freedom of expression could be subjected to restrictions provided they were lawful and necessary in a democratic society. Freedom of speech could 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.

In the view of the IO the complaint constituted a breach of the Code of Conduct under 'respect' which did not attract the protection of Article 10 of the ECHR. This was due to their view that it fell within the realms of what could be considered to represent personal abuse. They did not feel that there was anything within the comment subject to the complaint that brought the Council or the Subject Councillor into disrepute.

As part of the investigation the IO identified a further breach of the Councillor Code of Conduct. This was due to Councillor Cunningham failing to comply with the investigation itself. Various emails were sent to Councillor Cunningham by the IO and the Monitoring Officer during the investigation, but no response had been received. The only response by Councillor Cunningham to the Monitoring Officer was when he was first informed that a complaint had been received.

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

Councillor Milnes provided a written statement to the Panel which supported the investigation and conclusions carried out by Wilkin Chapman Solicitors. She was satisfied that there had been a 'detailed, balanced and exhaustive examination of the case'.

The Independent Person praised the comprehensive report and findings of the IO and fully endorsed its conclusions.

The Panel adjourned to deliberate and reach a conclusion at 2:14pm and reconvened at 2:44pm.

Conclusion

The Panel accepted the report in its entirety and agreed that the comment was personal and insulting and concurred with the finding that Councillor Cunningham had failed to co-operate with the investigation.

The also concurred that the comment did not bring the Council or the subject Councillor into disrepute.

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.

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 2:50pm.