

Decision Notice

HEARING REVIEW PANEL
TUESDAY, 28 JANUARY 2025 10AM



This notice confirms the decision taken by the Council's Hearing Review Panel held on 28 January 2025 regarding an investigation into alleged breaches of the Councillor Code of Conduct by Councillor Tim Harrison.

Panel members present

Councillor Pam Byrd
Councillor Richard Dixon-
Warren
Councillor Chris Noon
Councillor Sarah Trotter

In attendance

Councillor Tim Harrison (subject councillor)
Councillor Matthew Bailey (complainant)

Councillor Ashley Baxter
Councillor Phil Dilks
Councillor Graham Jeal
Councillor Paul Stokes

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 Matthew Bailey that Councillor Tim Harrison 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 Harrison had breached the Councillor Code of Conduct.

Prior to the commencement of formal business, the Panel were informed that the Council's current Independent Person was unable to attend the Hearing due to ill health. However, the Council's former Independent Person Fred Mann had given his views on the complaint and these views were circulated to Panel members, the subject councillor and the complainant. After deliberating, both the Panel, the complainant and the subject councillor confirmed that they were content to proceed in the absence of the current Independent Person.

2. Election of Chairman

Councillor Pam Byrd was elected as Chairman of the Panel.

3. Declarations of Interests

Councillor Chris Noon wished to highlight that Councillor Tim Harrison was the Leader of the Grantham Independent Group on the Council, of which Councillor Noon was a member. Councillor Noon confirmed that he would make an informed decision based on the evidence before him.

Councillor Richard Dixon-Warren commented that the complainants in this case were Conservative Councillors, and that he was the Conservative Group whip. He emphasised his commitment to make a judgment based on the evidence as presented.

Councillor Pam Byrd stated that the members of the Panel had not met beforehand to discuss content and had not arrived at a pre-determined outcome.

It was confirmed that Councillor Harrison had attended the Code of Conduct training that was mandatory for all councillors. He had also signed the Councillor Code of Conduct upon taking office.

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 Matthew Bailey v Councillor Tim Harrison

The Investigating Officer (IO) introduced Wilkin Chapman's report, and the supporting evidence bundle. The IO summarised the complaint made against Councillor Harrison by Councillor Bailey, who alleged that Councillor Harrison posted a screenshot of a private text message conversation between Councillor Bailey and Councillor Harrison, accompanied by the words 'oh dear' in a comment made on a Facebook post.

Councillor Harrison posted a text exchange between himself and Councillor Bailey on 10 March 2024 in the comments section of a post by Councillor Ben Green on Councillor Green's page. The original post is a video of Councillor Ben Green on the verge of the A1. Councillor Green was highlighting the financial reserve of £60,000 which had been voted through into the budget for 2024/25 at the Council meeting on 29 February 2024. The amendment to the budget had been proposed by a member of the opposition groups and seconded by Councillor Green.

The complainant alleged breaches of paragraphs 1.1, 'Respect' and 4.1, 'Confidentiality' of the Council's Code of Conduct). He also alleged breaches of three of the seven Nolan Principles (the seven Principles of Public Life). The Investigator explained that the Nolan Principles underpinned 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 therefore investigated against the behaviours of disrespect, confidentiality and disrepute, under parts 1, 4 and 5 of the Code of Conduct.

The IO outlined the principles of freedom of expression and the relevant European and UK legislation, alongside Article 10 of the European Convention on Human Rights (ECHR). The right to freedom of expression was enhanced in the area of political commentary, but mere personal abuse did 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 and European caselaw which supported this which were referenced in the IO's report.

Both Councillor Bailey and Councillor Harrison were interviewed as part of the evidence gathering process. These interviews were part of the evidence bundle; Councillor Bailey had signed his as a correct record, but Councillor Harrison had refused to sign his as he did not agree with the conditions put forward by Wilkin Chapman.

In the view of the IO the sharing of text messages by Councillor Harrison constituted a breach of the Code of Conduct under 'respect', 'confidentiality', and 'disrepute'

Respect

The IO felt that the revealing of the text message conversation was clearly meant to belittle Councillor Bailey alongside the posting of a sarcastic emoji. However, Councillor Harrison was making a political comment. If the exchange had originally been made in public, it would have been fully protected under political freedom of expression. However the issue was impacted by the issues of data protection.

The IO felt that the text message exchange was a private conversation. Because Councillors were data controllers in their own right, Councillor Harrison's right to free speech had to be balanced against other fundamental rights such Councillor Bailey's rights to data privacy. Under the UK GDPR Councillor Harrison must have had a lawful reason for sharing Councillor Bailey's personal data (i.e. his personal opinions). The Information Commissioner's Office had confirmed that the two most likely lawful purposes for local councils to process information are consent and

legitimate interest. Councillor Harrison did not have Councillor Bailey's consent to share the information and there was also no legitimate purpose in doing so. The IO commented that councillors were entitled, and had the right, to have private conversations with each other, which they would not expect to be made public.

Confidentiality

The IO explained that Councillor Bailey's private text messages were confidential to him. Local Government Association (LGA) Guidance explained that the disclosure of confidential information must be reasonable, made in good faith and in compliance with the requirements of the local authority. Guidance was also taken from the definition of public interest in the context of confidential information, where reasons for disclosure of such information would include criminality, failure to comply with legislation or a miscarriage of justice. An individual did not have to explicitly say information was confidential for it to be classed as confidential, and a potential discloser of that information should check first with the owner of the confidential information. Councillor Harrison could have told Councillor Bailey that he intended to publish the text messages on Facebook and did not do so. The IO found that this was obviously because Councillor Bailey would not have consented to the texts being shared. When Councillor Bailey was made aware of the exchange being posted on Facebook, he asked Councillor Harrison not to put the messages on Facebook, and Councillor Harrison refused to remove them.

Disrepute

The IO found that Councillor Harrison brought the Council and himself as a Councillor into disrepute. Whilst it was commendable to be open and transparent, individuals had the right to data privacy and Councillor Harrison had disregarded Councillor Bailey's rights. It was clear that Councillor Harrison's actions had cooled ward relations with Councillor Bailey and the two councillors were no longer collaborating on ward matters as they had done prior to the incident. The IO was concerned about how other councillors and members of the public might view Council Harrison's comments that he regarded it as his right to make everything public if he thought it was right to do so. The IO felt this would inhibit councillors' ability to talk freely and share views and would therefore impact on the business of the Council.

Councillor Bailey provided a written statement to the Panel which supported the 'thorough and detailed investigation' carried out by Wilkin Chapman Solicitors. He accepted the conclusions within the report, and claimed that his offer of an informal resolution, which included the deletion of the post, and a simple apology had previously been rejected by Councillor Harrison.

The Panel was then 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 definitions of trust, privacy and confidentiality
- Councillors needed to understand the importance of data privacy as they were data controllers in their own right

- The 'reasonable person' test would be described as a member of the public reading something with a reasonable understanding of the issues

Councillor Harrison as the subject councillor had the 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:

- The IO was at the Hearing to present the facts, and also present their findings and conclusions
- The IO was not looking to reduce Councillor Harrison's ability to abide by the Nolan principles of selflessness and openness
- The commitment to openness and transparency was potentially limited by certain factors, one of these factors being data privacy

The meeting adjourned at 10:50am to allow the Panel to consider extra evidence submitted by Councillor Harrison, in the form of the full version of the text messages which contained the relevant text exchange between himself and Councillor Bailey. The meeting reconvened at 11:03am.

Councillor Harrison then used the opportunity to give his position on the complaints, The following is a summary of the information expressed by Councillor Harrison:

- He was abiding by the Nolan principles of selflessness and openness.
- Others had not been privy to the entire text message conversation between Councillor Harrison and Councillor Bailey. Councillor Harrison's view was that he only released the pieces of the text message conversation that were relevant to Councillor Green's highlighting of the Conservatives role in £60,000 funding being achieved.
- Point 14 of Councillor Bailey's statement within the pack highlighted a 'hatred between the Conservatives and Councillor Harrison' at the time of the text message conversation.
- He felt that the public had a right to be aware of the proceedings of the Full Council meeting of February 2024 where the budget was voted on.
- There had previously been a relationship between the two Councillors, and Councillor Bailey had attended Councillor Harrison's surgery at different times prior to this investigation.
- A series of complaints, in Councillor Harrison's view had been stored for a period of time and then submitted within days of each other.
- He felt that Councillor Bailey had breached the Nolan principles of accountability, honesty and integrity.
- He did not have the time to sign the transcript sent to him by Wilkin Chapman due to his other jobs, roles and commitments.
- He disagreed that the phrase 'oh dear', posted with the text exchange was disrespectful.
- At no point had Councillor Bailey said the text message exchange was confidential.

The IO responded to some of the points raised by Councillor Harrison:

- The additional evidence submitted by Councillor Harrison could have formed part of the investigation had it been submitted at that time.
- Councillor Harrison had said that he and Councillor Bailey were communicating on private phones, therefore the IO concluded that Councillor Harrison was aware that their text message exchange was intended to be private.
- All Councillors have private opinions, and councillors should retain the right to express them in private. What matters in a public meeting is how councillors debate and vote on an issue.
- Highlighting that councillors are entitled to vote for or against a particular amendment to an issue and then vote in a different way on the relevant issue. That was part of politics.

Finally, the Panel asked any clarifications of the subject councillor. Who confirmed:

- In general lawyers or solicitors were better placed to investigate than people who were not legally qualified. There were good and bad solicitors.
- A district councillor could not exempt themselves unilaterally from the duties and obligations of the law.
- It did not necessarily follow that freedom of expression was limited when the data privacy of another was breached.
- It was for Councillor Bailey to inform Councillor Harrison that he did not give permission for text messages to be shared.
- He had been asked to remove the text message exchange from social media. However, recent apologies given by others within the Council towards Conservative Councillors had been used in the media for gain. Councillor Harrison had informed the Monitoring Officer that he would be prepared to remove the post on social media, but he was not prepared to apologise.
- If an assurance was given that any apology given would not be used for political gain, then Councillor Harrison was prepared to give an apology with the proviso that it was for perceived feelings of a breach of privacy, and not to admit he had done anything wrong.
- Both Councillors would have worked together previously, before this investigation.
- Councillor Harrison believed that if he had taken the post down immediately and apologised, the apology would have been used against him.
- The relationship between the two Councillors now was confined to a simple greeting and contact over joint emails for resident issues. Residents did not receive a lesser service just because their two ward councillors were not speaking; ward issues were being dealt with by both councillors.

The views of the former Independent Person were shared with all present. He supported the conclusion that the Code of Conduct had been breached in relation to 'respect', 'confidentiality' and 'disrepute'.

The Panel adjourned to deliberate and reach a conclusion at 11:34am and reconvened at 1:02pm.

Conclusion

The Panel reached a unanimous decision, whilst acknowledging there had been many legal clarifications for them to understand.

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

1. Respect

As a Councillor:

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

1. Confidentiality and access to information

As a Councillor:

4.1 *I do not disclose information*

a) given to me in confidence by anyone

b) acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature.....:

5. Disrepute

As a Councillor:

5.1 *I do not bring my role or local authority into disrepute*

The Panel **AGREED** that the following sanctions be applied:

- a. That Councillor Tim Harrison be required to attend additional training on the appropriate use of social media with an emphasis on respect, confidentiality and disrepute.
- b. That Councillor Tim Harrison be required to attend the above training session within six months.
- c. That a Censure Notice be placed on Councillor Tim Harrison's profile on the Council's website regarding the breaches of respect, confidentiality and bringing the council, and his office as a Councillor into disrepute, for a period of twelve months.
- d. That Councillor Tim Harrison be required to publicly apologise to Councillor Matthew Bailey, on social media or online. The apology is to be made using appropriate wording in the opinion of the Monitoring Officer.

Right of Appeal

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

The Hearing closed at 1:09pm.