

Date: 16 March 2021
Our Ref: DP/saw
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Councillor C Farrance
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Dear Councillor Farrance

The complaint submitted by you on behalf of Hartley Wintney Parish Council against Councillor Robertson, has been independently assessed. The assessment has been agreed by an Independent Person appointed under Section 28 of the Localism Act 2011 and the independent Chairman of Hart District Council's Standards Committee.

The specific allegation is that "*Cllr Robertson's actions have brought the Parish Council into disrepute*". This essentially is focused on the end of December Facebook posts that you have submitted in evidence.

The assessment has not extended to review the aspect of the complaint that relates to the Parish Clerk, Ms Read. The assessment's view is that Ms Reed herself is best placed to separately make that complaint. Nothing within this current assessment seeks to predetermine the outcome of any complaint should one be pursued by Ms Reed herself. It would be treated on its own individual merits.

The complaint has been assessed in accordance with the provisions of the NOVEMBER 2020 LOCALISM ACT 2011 SECTION 28 – CODE OF CONDUCT ARRANGEMENTS FOR DEALING WITH ALLEGATIONS.

CONTEXT

For a complaint to be valid it has to be about a named Councillor and the conduct complained about must relate to an alleged breach of the Code of Conduct whilst the Councillor was acting in their capacity as a member (Localism Act 2011, section 27(2): "*...a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity*" [my emphasis] and the Hartley Wintney Parish Council – Code of Conduct for Members: "*This code applies to you as a member or co-opted member of this council when you act in that role and it is your responsibility to comply with the provisions of this code*".

The complainant must also make clear:

- (i) what they believe the respective Councillor has done wrong (and explain how it relates to the Code of Conduct)
- (ii) the injustice they claim to have suffered as a direct result; and
- (iii) what they are looking for to put the matter right.

Finally, any decision to investigate an allegation must be a proportionate response to the issues raised when weighed against any likely sanction. It should take into account the wider public interest and the costs of undertaking an investigation. Vexatious, malicious, frivolous, trivial, politically motivated, or tit-for-tat complaints will not be investigated, and the complaint itself must have substance. The arrangements require allegations only to be investigated where the allegation is reasonably considered to be a serious matter which raises a matter of wider public interest.

Appendix A of the document “Arrangements for Dealing with Allegations” contains the adopted Public Interest Considerations which can be found on the Council’s website:

<https://www.hart.gov.uk/help-advice-1>

DECISION

The independent assessment is that the complaint should not be pursued further. The evidence submitted does not demonstrate that in making the Facebook Posts Councillor Robertson was acting in any capacity related to his role as a member of Hartley Wintney Parish Council. He therefore cannot be held to have breached the Hartley Wintney Parish Council – Members Code of Conduct. Furthermore, there is little within the complaint that raises an important matter of public interest to pursue further.

REASONING

1. Was Roger Robertson acting in any capacity as a member of Hartley Wintney Parish Council when he made his posts on Facebook?

The answer to this question lies in the very first post that is provided by the Parish Council itself (Exhibit 1).

Roger Robertson: “.....*I write as an individual, not as a Parish Councillor.....*”.

Throughout the exchange Roger Robertson does make reference to the Parish Council, and in the context of the Parish Council he occasionally says “we”. However, there appears to be nothing privileged in the exchange and neither did he seek to give any impression that he was responding for or on behalf of the Parish Council – he was simply imparting personal views and he made this clear at the outset.

In the assessment's view there is no blurring of his role. He had fully complied with his obligations under 9.3.5 of the Parish Council's own **Policy for Communications and Social Media** which states: "*Councillors using social media should make it explicitly clear whether they are communicating in a private capacity or as a councillor.*" This can be found on the Council's website as follows:
<https://www.hartleywintney-pc.gov.uk/wp-content/uploads/sites/49/2020/11/HWPC-Communications-and-Social-Media-Policy.pdf>

The Code of Conduct is not therefore, engaged and as a result there can be no finding of a breach of the Code of Conduct.

2. Is there any substance to the complaint?

The assessment is that there is insufficient substance to the complaint.

Roger Robertson in his Facebook Posts as provided by the Parish Council was simply raising in a public forum his objection to the removal of the benches and without notification. It does not matter whether it was raised in a personal or an 'official' capacity. Councillors should not be censured just because someone dislikes or disagrees with what they say. Standards in public life do not extend to adjudicating on matters of political debate – Article 10 of the ECHR allows controversial issues to be able to be raised in the public sphere, and for everyone (including Councillors) to have their right to form and hold opinions respected.

He accepts that he was 'angry' (Facebook post Exhibit 4) but throughout the exchanges his comments, whilst critical of the situation, are direct, measured, and are considered reasonable.

Given that the assessment is that Councillor Robertson has not broken the Code of Conduct and that he was simply raising in public a matter of legitimate local concern, there appears to be insufficient substance to the complaint.

3. Has any injustice to the Parish Council been demonstrated?

The assessment is that no injustice to the Parish Council has been demonstrated. The only injustice claimed is that through his Facebook Posts Councillor Robertson has brought the Parish Council into disrepute.

The Hartley Wintney Members Code of Conduct is silent on the point of bringing the Council into disrepute. As the Parliamentary Committee of Standards in Public Life has confirmed the Localism Act 2011 "does not extend the code of conduct to any behaviour that is sufficiently serious as to bring the office of councillor or the council into disrepute¹." It follows therefore, that unless otherwise specifically incorporated into a Code of Conduct, any allegation of bringing the Council into disrepute cannot be extended to be a breach of the Code of Conduct.

¹ [Local government ethical standards: Committee publishes report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/Local-government-ethical-standards-Committee-publishes-report.pdf),

Furthermore, there is no doubt that the point that Roger Robertson was raising was an important issue for the local community. It is certainly not an issue that anyone can reasonably argue should be confined solely to the debating chamber of the Parish Council particularly as the Parish Council itself subsequently confirmed in public that it could have handled things better and the Chairman recognised that the lack of communication was fundamentally a mistake on the Parish Council's part (**Minutes** of the Parish Council's meeting of 4 January 2021 which can be found on the website as follows:

<https://www.hartleywintney-pc.gov.uk/wp-content/uploads/sites/49/2021/02/4-January-2021-FC-Minutes.pdf>

and **Parish Council Facebook Post 5 January 2021**) -

<https://www.facebook.com/hartleywintneypc/>

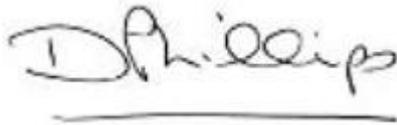
It can never be the case that through raising in public a legitimate concern which has been shown to have some merit can amount to bringing the Parish Council into disrepute.

CONCLUSION

I appreciate that you will be disappointed with this the outcome of this assessment. I hope however, that you will appreciate from the assessment of the evidence that you have submitted with the complaint why we have come to the conclusion that there has been no breach of the Hartley Wintney Parish Council – Members Code of Conduct.

A copy of this letter is being sent to Councillor Robertson and the outcome of this complaint will be published on Hart District Council's website.

Yours sincerely



Daryl Phillips
Joint Chief Executive
Hart District Council