

PAPER A

Case References: PC. 85/18, PC: 86/18, PC: 87/18, PC: 88/18 and PC: 92/18

Report of an investigation by Simon Wiggins appointed by the Monitoring Officer, Mrs Helen Miles, for the Isle of Wight Council into an allegation concerning Councillor Thomas Millington of Bembridge Parish Council.

Dated 1 November 2018

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1. Executive Summary

- 1.1 Five complaints have been received alleging that Councillor Millington has breached the members Code of Conduct. It is alleged Councillor Millington failed to treat others with respect and that he had brought his office into disrepute through his actions during a meeting of Bembridge Parish Council. It is alleged Councillor Millington has failed under the same grounds above due to the content of communications between himself and the parish office and those posted on a social media webpage(s). Furthermore that he has brought the office into disrepute through his driving conviction.
- 1.2 During my investigation I have had cause to contact the complainants to advise them of my appointment as investigating officer and to seek to arrange individual interviews. During this activity the complainant associated with PC.85/18 and 88/18 advised that they no longer wished to proceed with their complaints and for them to be withdrawn. The request was accepted and therefore I have not made any further considerations on those complaints. I have however continued to investigate the remaining three complaints.
- 1.3 I find in relation to the remaining allegations made by Mrs Emma Goldring and Councillor Sheila Weedall that Councillor Millington has breached the Code of Conduct as it applies to Bembridge Parish Council.

2. Councillor Millington

- 2.1 Thomas Millington was elected to office on 4 May 2017 for a term of four years on Bembridge Parish Council.
- 2.2 Councillor Millington gave a written undertaking to observe the Code of Conduct on 10 May 2017.
- 2.3 The Assistant clerk to Bembridge Parish Council has confirmed that Councillor Millington has not received any training on the Code of Conduct.

3. The relevant legislation and codes

- 3.1 The Localism Act 2011 requires local authorities including Parish Councils, to adopt a code which sets out rules governing the behaviour of their members and based on the seven general principles of public life, as prescribed by the Localism Act (2011).
- 3.2 Bembridge Parish Council has adopted a Code of Conduct, which has since been updated. However, the Code of Conduct relevant at the time of these allegations (adopted 18 July 2017) includes the following paragraphs:

Paragraph 2 (a)

“Subject to the sub-paragraphs b to e you must comply with this Code whenever you:

- i. Conduct the business of the Bembridge Parish Council (which, in this Code, includes the business of the office to which you are elected or appointed); or
- ii. Act, claim to act or give the impression you are acting as a representative of Bembridge Parish Council, and references to your official capacity are construed accordingly.”

Paragraph 2 (b)

“This Code does not have effect in relation to your conduct, other than where it is in your official capacity.”

Paragraph 3 (a)

“You must treat others with respect.”

Paragraph 5

“You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Bembridge Parish Council into disrepute.”

4. Summary of Complaint(s)

PC.85/18

- 4.1 The complainant alleged that Councillor Millington has failed to “treat others with respect” and “conducted themselves in a manner that could reasonably be regarded as bringing the office of Bembridge Parish Council into disrepute”.
- 4.2 The complainant alleged Councillor Millington interjected during a debate on an item at the Extraordinary Finance and Assets Committee on 13 March 2018, using language that was not befitting of an elected member.
- 4.3 As stated in paragraph 1.2, the complainant has since requested to withdraw their complaint, which was accepted. However, it is of note that the complaint numbered PC.87/18 is of a similar vain.

PC.86/18

- 4.4 The complainant alleged that Councillor Millington had brought the office into disrepute through two independent actions. Firstly, the email response from Councillor Millington to the complainant dated 19 March 2018 contains a threat

that if he finds money has been used he will have everybody sacked. Separately it is alleged Councillor Millington has breached the Code through his driving offence conviction.

PC.87/18

4.5 The allegations contained within this complaint are consistent with those within PC.85/18. This complaint has not been withdrawn and therefore I have investigated the facts.

PC.88/18

4.6 It is alleged that Councillor Millington has breached the Code through the language he adopted within a post on a social media site. Councillor Millington asks “how does everyone feel, that we have a bunch of crooks running things.... Patronising is an understatement..”

4.7 As with PC.85/18, the complainant has since requested that the complaint be withdrawn which was accepted. However, it is of note that the complaint numbered PC.92/18 is of a similar vain.

PC.92/18

4.8 The allegations contained within this complaint are consistent with those within PC.88/18. This complaint has not been withdrawn and therefore I have investigated the facts.

5. Evidence gathered

5.1 I have taken into account the following:

- The written undertaking from Councillor Millington to observe the Code of Conduct.
- The relevant Code of Conduct in place at the time of the allegations.
- The documentary evidence submitted in support of the allegations.
- The audio recording of a section of the Bembridge Parish Council Extraordinary Finance and Assets Committee Meeting on 13 March 2018. The assistant clerk of Bembridge Parish Council has confirmed they do not audio record committee meetings. The audio recording was provided as part of a complainant’s submission and it is stated the recording was made by a member of the public present at the meeting.
- The agenda and minutes (amended) of the Bembridge Parish Council Extraordinary Finance and Assets Committee Meeting on 13 March 2018.

- The minutes of the Bembridge Parish Council Finance and Assets Committee Meeting on 1 May 2018, which do not indicate the amendments made to the previous meeting minutes (13 March).

5.2 I have been unable to take into account any oral evidence through interviews with either the complainants or Councillor Millington. This is despite repeated attempts to secure engagement in the investigation. These attempts have included written correspondence, email and telephone and evidence of those attempts and responses provided have been included at Appendix A.

5.3 I have also been unable to consider oral evidence from any witnesses, due to not being able to discuss the matter further with either the complainants or Councillor Millington and therefore no suggestions coming forward.

6. Summary of the material facts

6.1 PC.86/18

6.1.1 On 14 July 2017 Mrs Emma Goldring in her capacity as Bembridge Parish Clerk contacted the Isle of Wight Council Monitoring Officer, Helen Miles and her deputy Justin Thorne seeking provision of a specific session on the Code of Conduct and real examples that could also act as a mediation type session.

6.1.2 A response was provided by the deputy monitoring officer the same day, which advised there was an identified collective need through the Isle of Wight Association of Local Councils (IWALC) for the provision of such training to parish/town councils, provision of 2 collective sessions could be considered. The deputy monitoring officer continued that it was not normally the role of the Monitoring Officer to provide something more discrete to cover some of the issues that may have arisen or were about to arise to help the council move forward.

6.1.3 A follow up email was sent from the Monitoring Officer on 31 July 2017 to the clerk (Mrs Emma Goldring) advising the Isle of Wight Council does not provide general support to parish councils, and the role of the Monitoring Officer in relation to Town and Parish Councils was to consider member complaints both formally and informally.

6.1.4 However, the Monitoring Officer acknowledged that mediation may assist and advised there were various external providers of member training and it was suggested that the clerk identify a provider who could assist. The Monitoring Officer suggested an alternative approach, which involved the

use of a local resident, who had a good understanding of the functions of town/parish councils and who would be willing to act as a mediator.

- 6.1.5 The clerk made contact with a provider (1) on 23 August 2017 explaining that Bembridge Parish Council was seeking their intervention with a dispute resolution course. The email contained a brief summary of the current divide within the council and issues that had arisen. It sought a proposal and quotation.
- 6.1.6 A response was provided on 24 August 2017, which indicates there had been further conversation between the clerk and provider 1. The email explained that owing to the geographical location, the cost was higher due to travel. It also suggested a commencement date from late September or early October 2017 given the providers other diary commitments. The email also contained an attachment with the outline proposal. The proposal suggested a number of phases and meetings, all of which would result in an expenditure (excluding expenses) of £7,700 + VAT.
- 6.1.7 The clerk made contact with a local provider (2) on 21 September 2017, seeking quotations for the provision of a singular session covering mediation/dispute resolution to 12 councillors and two members of staff. The local provider replied on 23 September. It advised the cost would be £200 per hour and therefore for an eight hour day, with one hour lunch, the cost would be £1,400. Any time after 5pm would be charged at time and a half.
- 6.1.8 An email was sent from the clerk to all Bembridge Parish Council Members (date unknown) advising that they had spoken with the Chief Executive of the Isle of Wight Council (John Metcalfe) and he had confirmed that a Designated Independent Person could not help with mediation as that was not their role. On that basis the clerk had attached the previous quotes that had been provided for mediation training.
- 6.1.9 An iPhone response to the clerk in relation to the email trail for one of the provider quotes (1) was sent from Cllr Millington on 19 March 2018. Within that message he stated "this is complete bollocks. If I find money has been used I will have everybody sacked....". It is unclear if this was an individual response solely to the clerk or if other individuals/councillors were included.
- 6.1.10 An article was published in the Isle of Wight County Press on 16 March 2018, which reported that "commercial fisherman Thomas Millington was banned from driving for a year after driving with cannabis in his bloodstream". "Millington 33, of Steyne Road, Bembridge, admitted driving with a controlled drug above the specified limit when he appeared before Island Magistrates". "Police had stopped him because his car was in a poor

state of repair, the court heard". "Millington was also fined £40 with £30 surcharge".

6.2 PC. 87/18

6.2.1 An extraordinary meeting of the Bembridge Parish Council Finance and Assets Committee was held on 13 March 2018, commencing at 6.30 pm. A number of items were on the agenda for discussion and decision.

6.2.2 During the debate on items on that agenda (at a point unascertained), Councillor Millington was heard to address the chairman of the meeting "you're fucking cocky mate". The audio exert supplied confirms the chairman made efforts to bring order to the proceedings, including the use of his gavel. To which Councillor Millington is heard to say "don't bang your hammer at me". He continues "how come when you back hand everyone on questions nobody..." The audio becomes inconclusive to the remaining comment, it has therefore been impossible for me to ascertain what was said thereafter.

6.3 PC. 92.18

6.3.1 At a date unknown Councillor Millington engaged in a social media comment feed on matters relating to matters involving Bembridge Parish Council. There are two comments posted by Councillor Millington, the first states "the last two blokes that asked questions were clearly plants...". The second comment states "how does everyone feel, that we have a bunch of crooks running things..... patronising is an understatement....".

6.3.2 It has not been possible to interview Councillor Millington to seek the background or evidence to support these comments.

7. Additional Submissions

7.1 As investigating officer I have made numerous attempts to interview the complainants to ascertain the identity of further witnesses. In the same regard I adopted a similar approach with Councillor Millington. I used a number of approaches including email, phone and letter, each of which received limited, if any response. Therefore there are no additional submissions to be considered in regard to these complaints and my considerations are solely based on the complaints and documentation supplied and supporting information I have identified might assist in my investigation.

8. Reasoning as to whether there have been failures to comply with the Code of Conduct

8.1 PC.86/18

- 8.1.1 In regard to the comments made in response to the clerk's circulation of the estimated costs of mediation, I am of the opinion that whilst Councillor Millington and others are welcome to hold strong opinions on the allocation of parish funds, it is not befitting of the position held to use such a threatening tone and to suggest an outcome that "I will have everybody sacked" is wholly unacceptable.
- 8.1.2 In my opinion it appears that the clerk in this instance had followed the advice provided by the Monitoring Officer and had sought independent provision of mediation training. It is reasonable to assume that the provision of this training would come at a cost to Bembridge Parish Council.
- 8.1.3 The use of council resources and funding can always generate differences in opinion, but on this occasion the clerk was acting on advice, it appears they had not committed any expenditure and therefore it was inappropriate to be subjected to such strong language. I am of the opinion that as the estimated costs were supplied from the clerk to the elected members; any response that followed would have been in the capacity of a councillor.
- 8.1.4 In regard to the allegation that Councillor Millington's driving conviction also brings the office into disrepute. I have considered the judgement of Mr Justice Collins in October 2006. The judgement relates to *Livingstone v Adjudication Panel for England*. [2006] EWHC 2533 (Admin).
- 8.1.5 In essence the then Mayor of London was alleged to have made comments made to an Evening Standard journalist that breached paragraph 5 of their Code of Conduct and in particular (*"A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrespect"*). The key test for the case focussed on the interpretation of whether the Mayor was in the act of performing his functions as said Mayor at the time of the alleged incident.
- 8.1.6 Mr Justice Collins found that whilst the Code of Conduct could extend to a member's acts outside an official capacity, those acts had to be 'in performing his functions' and 'any other circumstance' was to be construed narrowly to that effect. He explained one effect of this interpretation: *"It seems to me that unlawful conduct is not necessarily covered. Thus a*

councillor who shoplifts or is guilty of drunken driving will not if my construction is followed be caught by the Code if the offending had nothing to do with his position as a councillor.”

8.1.7 Councillor Millington was not driving his vehicle in his capacity as a councillor. Whilst his actions may reasonably diminish public respect for him as an individual, that does not automatically engage the Code of Conduct in relation his role as a councillor. He is entitled to be “off duty” and when so the Code of Conduct does not apply, as it only applies when a member is acting in his/her official capacity or holding him/her self out as a member at the relevant time. I therefore do not agree with the allegation this was a breach of the code.

8.2 PC. 87/18

8.2.1 Consideration of this allegation has proven difficult. Whilst the audio exert supplied clearly confirms that the chairman was addressed in the manner alleged, I have been unable to ascertain the context within which those comments were made either through listening to a wider section of the meeting or through individual interviews. It is possible the item being discussed by its nature would elicit strong views, but it has not been possible to verify this point. Therefore I have based my assessment and opinion on the facts as lay before me. I have also taken into consideration the response received from Councillor Millington when he was notified of the details of the complaint dated 24 April 2018, within which he disputes the allegation and states he will fight them. Having listened to the audio, my mind is clear that the comments made at the meeting were not befitting of an elected member and were without doubt advanced.

8.2.2 Much the same as my comments on the previous allegation, it is fully acknowledged that individuals will harbour different views on matters being debated. Indeed such a situation is to be promoted, as it benefits a more wholesome debate of an issue prior to any determination. However, the manner in which those views are advanced during a debate must be considered and common courtesy maintained at all times. It should not be forgotten that such debate is being held in an open forum and as an elected member; you are acting on behalf of the electorate in the capacity as a councillor and there would be a reasonable expectation that in that position a good example would be projected.

8.3 PC.92/18

8.3.1 It is acknowledged that in order to facilitate and enhance the communication between councillors and their electorate they should use any communication

medium available and more so in recent times the use of social media has become a useful tool.

- 8.3.2 However, the use of these tools must be undertaken with caution, as they are accessible to a wider audience than those who might attend official meetings of the council. It is advisable therefore that for the avoidance of doubt, any comments made should not reasonably lead any person to perceive pre-determination on any matter, or contain strong or personal views that cannot be supported with factual evidence. Any comments or views proffered outside of these parameters could be perceived as damaging, criminal or libellous.
- 8.3.3 As I explain earlier I have been unable to discuss the background context upon which the comments of Councillor Millington are based and therefore I have made a judgement on the facts presented.

9. Finding

- 9.1 I note that throughout this process Councillor Millington has offered to provide a satisfactory apology to the complainants, but to my knowledge this has not been forthcoming.
- 9.2 In regard to Councillor Millington's comments contained within his reply to the clerk and based on the information available, I find Councillor Millington did breach the Code of Conduct. (PC.86/18)
- 9.3 In regard to the allegation concerning the traffic offence. Considering the information available, the Code of Conduct in place at the time and relevant case law. It is my view that at the time the traffic offence occurred, Councillor Millington could not be considered to be acting in his official capacity as a member of Bembridge Parish Council. I find therefore Councillor Millington did not breach the Code of Conduct in this instance. (PC.86/18)
- 9.4 In relation to the allegation regarding the comments Councillor Millington made during the Bembridge Parish Council Finance and Assets Committee held on 13 March 2018, I find that Councillor Millington did breach the Code of Conduct.(PC.87/18)
- 9.5 In relation to the allegation regarding the comments Councillor Millington posted on a social media site and considering the information available. I find that Councillor Millington did breach the Code of Conduct.(PC.92/18)

- 9.6 In regard to recommended sanctions it is acknowledged that since the abolition of the Standards Board Regime through the Localism Act 2011, the sanctions that can be applied to any breach not related to a pecuniary interest are limited.
- 9.7 In considering the nature of the breaches by Councillor Millington, it is my recommendation that censure would be an appropriate sanction. However, in addition I have taken into account that Councillor Millington has not undertaken Code of Conduct training, and recommend this should be rectified. I also note that Councillor Millington has indicated he would be willing to submit an agreed apology and again suggest that this option continues to be open as a means of “wiping the slate clean” on these complaints.

Appendix A (Confidential)

Schedule of evidence taken into account

Councillor Millington’s’ comments on the draft report

Comments of the Designated Independent Person (DIP)

List of unused materials

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