

**Case References: PC.127.18**

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 Alasdair Steane of Bembridge Parish Council.

**Dated 12 August 2019**



## Contents

1. Executive Summary .....	A - 3
2. Councillor Steane .....	A - 3
3. The relevant legislation and codes .....	A - 4
4. Summary of Complaint .....	A - 5
5. Evidence gathered .....	A - 5
6. Summary of the material facts.....	A - 5
7. Additional Submissions.....	A - 6
8. Reasoning as to whether there have been failures to comply with the Code of Conduct .....	A - 7
9. Comments of the Designated Independent Person (DIP) – Alistair Drain .....	A - 11
10. Finding .....	A - 11

<b>Appendix A</b>	Schedule of evidence taken into account
	Councillor Steane's' comments on the draft report.



## **1. Executive Summary**

- 1.1 A singular complaint was received alleging Councillor Steane has breached the members Code of Conduct. It is alleged Councillor Steane has disclosed confidential information into the public domain, namely via a social media page.
- 1.2 During my investigation I have had cause to contact the complainant to advise them of my appointment as investigating officer and to seek to arrange individual interviews.
- 1.3 I find in relation to the allegation made by the complainant that Councillor Steane has not breached the Code of Conduct as it applies to Bembridge Parish Council. My reasoning for such a conclusion is explained in further detail elsewhere within this report.

## **2. Councillor Steane**

- 2.1 Alasdair Steane was elected to office on 4 May 2017 for a term of four years on Bembridge Parish Council.
- 2.2 Councillor Steane gave a written undertaking to observe the Code of Conduct through completion of his declaration of acceptance of office, dated 8 May 2017.
- 2.3 The clerk to Bembridge Parish Council has confirmed that Councillor Steane, was offered Code of Conduct training arranged on 11 June 2018, at County Hall. The clerk confirmed Cllr Steane did not attend that training. The clerk provided a list of the training that had been provided to members of Bembridge Parish Council since the election in 2017, including attendees. It appears from this list Councillor Steane has attended two sessions in 2017. Slide packs of the handouts are provided within the appendices to this report.

### **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, the version being in force at the time having been adopted in May 2018. That version of the code 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 4 (a)

“You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, ought reasonably to be aware, is of a confidential nature, except where –

- i. you have consent of a person authorised to give it;
  - ii. you are required by law to do so;
  - iii. the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person: or
  - iv. the disclosure is-
    1. reasonable and in the public interest; and
    2. made in good faith and in compliance with the reasonable requirements of the authority; or
- b prevent another person from gaining access to information to which that person is entitled by law”.

## **4. Summary of Complaint**

### **PC.127.18**

- 4.1 The complainant alleged that Councillor Steane had once again published on the Open Bembridge Facebook page a confidential item from the Council meeting agenda due to be held that evening (16 October 2018).
- 4.2 The complainant alleges this is not the first incidence of this nature and proffers the view that items on an agenda that are deemed to be confidential should never be published on a Facebook page by a serving councillor.
- 4.3 The complainant goes on to state that the Nolan code of conduct of openness cannot override a decision made that an agenda item is confidential whatever Councillor Steane's opinion.

## **5. Evidence gathered**

- 5.1 I have taken into account the following:
- The written undertaking from Councillor Steane 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.
  - Copies of the public and councillor versions of the Bembridge Parish Council extraordinary council meeting agenda on 16 October 2018 (both of which were accidentally water marked as confidential)
  - Replies to questions to the Clerk to ascertain the decision making behind the determination to list the agenda item as confidential and subsequently consider the item in private session.
  - Screenshot of the article posted on Facebook dated 11 October 2018 in the name of Alasdair Steane.
  - Assessment criteria comments and verdict of the Deputy Monitoring Officer dated 22 May 2018.
- 5.2 Upon contacting the complainant to advise of my appointment as investigating officer and seeking details of any interviewee, the complainant resubmitted the documents supplied for the original complaint and advised over 600 people had taken the opportunity to view the Facebook post in question. They did not supply any specific persons that should be interviewed. Councillor Steane was also contacted a number of times, with no response or suggestions forthcoming.

## **6. Summary of the material facts**

### **6.1 PC.127.18**

- 6.1.1 On 16 October 2018 Mr Geoffrey Green contacted the Isle of Wight Council's contact centre and provided a summary of the nature of his complaint. Those details were transposed into an internal Customer relation

Message (CRM) and were subsequently supplied to the Monitoring Officer and Democratic Services. A chaser email was sent on 4 December from the Monitoring Officer to seek an update on the processing of the complaint. A further chaser was sent to another member of the Democratic Team on 20 December 2018.

- 6.1.2 Councillor Steane was advised of the allegations on 21 December 2018, within which a response was sought within 10 working days of the date of that letter. Councillor Steane was asked to set out any information in relation to the complaint that he would like the Monitoring Officer to take into account. The complainant was also advised that Councillor Steane had been advised of the complaint.
- 6.1.3 A response was received from Councillor Steane, within which he provided the text from the social media post and his reasoning for the actions he had taken. Councillor Steane stated the parish clerk and chairman routinely placed high numbers of non-confidential items for discussion in private session of the council with the public and press excluded. Councillor Steane suggests this is more to do with not wanting the public to know what they are up to rather than any business or personal confidentiality. He continues that whilst he has disagreed with that, he has always respected the will of the council and not broken any confidentiality rules.
- 6.1.4 Councillor Steane explains the differences between the two agendas issued and suggests this makes it impossible for the public to know what the actual subject matter is and make their views known.
- 6.1.5 Councillor Steane continues that having marked the subject confidential Bembridge Parish Council does not then publish any of the discussion or resolutions in minutes for public consumption. The council does not report any of these decisions and so the community is totally unaware of what is being done allegedly on their behalf. Councillor Steane advises he believes that this is anti-democratic behaviour and not in the interests of the electors. Councillor Steane highlights that he considered the issue to be discussed was of critical importance to the community.
- 6.1.6 Councillor Steane says that he had thought long and hard about making public the actual subject to be discussed and continues that he did not disclose personal details in regard to the item. He states however that he believed the disclosure of the agenda information to be in the public interest. He then continues with a summary of the outcome of the voting undertaken in private session and the advice he provided during debate on that item.

## **7. Additional Submissions**

- 7.1.1 As investigating officer, I contacted the complainant to advise of my appointment and seeking if they wished to advise of any other witnesses to the actions and activity pertaining to the breach. The complainant responded that the Facebook site had over 600 members who all would have had the opportunity to see the posting. The complainant also provided a copy of the text of the post concerned. It was therefore clear to me that no further



interview with the complainant was required, to understand the context of his complaint.

7.1.2 In regard to Councillor Steane, I was of the view it would be beneficial in my consideration of the complaint to appreciate the thought process he had applied in undertaking the actions he had taken and his reasoning as to why publication of the information was in the interest of the electorate and that this outweighed the confidentiality.

7.1.3 I have made numerous attempts to arrange an interview with Councillor Steane. I used both email contact and residence information to issue letters requesting confirmation of a suitable time and location. Within that correspondence I provided clear contact details and advised on deadlines for receipt of any response.

7.1.4 At the time of writing this report, I have not received any return correspondence in regard to this complaint from Councillor Steane. I have therefore drawn my conclusions on the limited documentation submitted or available publicly to assist with my investigation.

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

8.1 PC.127.18

8.1.1 It is not in dispute the publication of confidential information could be considered as a breach of the Code of Conduct. Indeed, the Deputy Monitoring Officer provides comment in their conclusions that Parish Council meetings are governed by the Public Bodies (Admission to meetings) Act 1960.

8.1.2 The Act says broadly that meetings shall be open to the public unless the parish council, by resolution, exclude the public from a meeting (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings.

8.1.3 It is clear to me the agenda correctly used this provision to notify the public and press that items on that agenda would require the exclusion of the public and press. I have received the briefing note that would be presented to members, the content of which was deemed confidential and indeed I would concur it does indeed contain information not for publication. It is further clear to me that members of Bembridge Parish Council who were issued the summons for the meeting (the councillor agenda version), would have been in no doubt that certain details due to be considered as part of that agenda item were excluded from publication to the press and public, the agenda being watermarked as such.

8.1.4 It appears that in addition to the councillor's agenda being supplied separately to those made public and being clearly marked as confidential, it

also contained additional wording and details that were not included on the public version. For ease, I have reproduced the differences below:

**i) Public Version**

Item 7 – 132/18 5/7 High Street

**ii) Councillors Version**

Item 7 – 132/18 5/7 High Street

132/18/01 To consider offers received for 5/7 High Street and agree which offer to accept.

132/18/02 To consider progress of leases with 5 and 7 High Street tenants.

132/18/03 To agree, if required, to issue notices accordingly.

- 8.1.5 I have also reasoned by default through the fact that only elected members would have received the confidential version of the agenda, that at the point Councillor Steane published the information on social media, it was in his official capacity as an elected member of Bembridge Parish Council.
- 8.1.6 With that in mind, I have considered the restrictions of the Code of Conduct that was in place at the time and in particular the relevant sections in relation to this complaint, as summarised at paragraph 3.2 of this report. It is clear Councillor Steane had not sought consent to publish the information nor had he been required to do so. The disclosure to a third party to obtain professional advice has also been discounted.
- 8.1.7 It is clear to me Councillor Steane was fully aware the agenda supplied to councillors of Bembridge Parish Council was in this case confidential and therefore the publication of those details was not in ignorance and therefore a deliberate action.
- 8.1.8 However, when considering if the disclosure was reasonable and in the public interest or made in good faith and in compliance with the reasonable requirements of the authority, drawing a conclusion on this has been more problematic. This mainly being due to my inability to discuss any reasoning with Councillor Steane during any interview.
- 8.1.9 Therefore, whilst there was a prima facie breach of the code of conduct by Councillor Steane, in that he disclosed a part of a document that was provided to him in confidence, the disclosure was justified on the grounds of public interest and that the information he disclosed was not properly attributed as confidential in the first place. I have laid out my reasoning for this conclusion below, based on the evidence on hand and included in the appendices to this report.
- 8.1.10 Cllr Steane disclosed on the Open Bembridge Facebook page details of the title of item seven on the separate agenda for the meeting, supplied to members and not the public and marked 'confidential'. There were no

specific reports prepared for the item in question that were classified as confidential. Instead, all that was submitted for discussion on item 7 was a briefing note from Gully Howard (which interestingly was not marked 'confidential').

- 8.1.11 Cllr Steane did not disclose or publish any part of the Gully Howard report or details of the debate or discussion on the item. Specifically, he did not disclose the identity of the bidders, the amount of their bids or any other relevant facts. He agreed with the discussion and decision being held in private session and voted for that to happen, in accordance with s.1(2) of the Public Bodies (Admission to Meetings) Act 1960. In all these respects, therefore, he acted appropriately and responsibly, in keeping with his duties under the code of conduct. He merely published the subject matter under discussion, considering it to be in the public interest. Paragraph 8.1.4 of this report summarises the material differences between the two agendas.
- 8.1.12 There is no doubt that the information contained within Gully Howard's report was properly considered as confidential (even though it was not labelled as such), in that it contained information relating to the personal, commercial and financial affairs of individuals. It is unclear, however, why the matters listed in the title of the confidential agenda were regarded as confidential and not in the public interest. Indeed, it could be argued that it was firmly in the public interest for the nature of the business to be transacted in closed session to be made public.
- 8.1.13 Despite requests, it has not been made clear by the Parish Council why there were two agendas and what it was about the second agenda that justified it being made confidential and its publication not in the public interest. Indeed, both the open and the confidential versions of the agenda were mistakenly marked confidential, as though that was a default watermarking applied to such documents, rather than necessarily denoting that either of them contained anything of a truly confidential nature. The following key questions were raised with the Parish Council but not satisfactorily answered:
- why the title to agenda item 7 was deemed confidential (as opposed to only the elements relating to identifiable persons and financial details in the Gully Howard report)
  - who took that decision
  - what consideration was given to the public interest when classifying the agenda as confidential
  - whether and if so why disclosure of the report title (as opposed to the personal and financial details) amounts to a breach of confidentiality contrary to the public interest

In the absence of answers to these questions, it cannot be safe to conclude that disclosure of the full title to agenda item 7 constituted a breach of confidence sufficient to amount to a breach of the code of conduct.

- 8.1.14 References were clearly made elsewhere on the open version of agenda to the sale of 5/7 High Street, without any suggestion of them being

confidential. If publication of any information relating to the sale of 5/7 High Street was considered to be confidential, it is unclear why the following item was described so openly on the public agenda:

**130/18 PARISH FINANCES** *To discuss and identify how the loss of rental income to the Council would be met following any sale of 5/7 High Street.*

8.1.15 Interestingly, another item on the agenda of the same meeting was to consider and agree how Parish Council business and decision making could be made more open, transparent and engaging for parishioners. That does not appear to have been reflected in the actions of the Parish Council in producing two separate agendas.

8.1.16 For completeness and disregarding for one moment the issue of whether in fact the information disclosed was confidential, it is important to examine whether disclosure of the title to agenda item 7 was in the public interest. This involves looking at two issues:

- What was the public interest in this case
- Whether the balance was tipped in favour of disclosure

8.1.17 There is no legal definition of 'public interest', but Meredith Cook in her 2003 study "Balancing the Public Interest: Applying the public interest test to exemptions in the UK Freedom of Information Act 2000" identifies the following as relevant considerations in favour of disclosure:

- The information would assist public understanding of an issue that is subject to current national debate.
- The issue has generated public or parliamentary debate.
- Proper debate cannot take place without wide availability of all the relevant information.
- The issue affects a wide range of individuals or companies.
- A local interest group having sufficient information to effectively represent local interests on an issue.
- Facts and analysis behind major policy decisions.
- Knowing reasons for decisions.
- Accountability for proceeds of sale of assets in public ownership.
- Openness and accountability for tender processes and prices.
- Public interest in public bodies obtaining value for money.
- Public health.
- Contingency plans in an emergency.
- Damage to the environment.

8.1.18 In addition, in the introduction to FOIA, the Information Commissioner lists the following public interest factors that encourage the disclosure of information:

- Furthering the understanding of and participation in the public debate of issues of the day.
- Promoting accountability and transparency for decisions taken by public authorities.
- Promoting accountability and transparency in the spending of public money.

- Allowing individuals to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions.
- Bringing to light information affecting public safety.

8.1.19 The public interest test in Section 2 of FOIA provides that information must be released unless in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Where the balance between disclosure and withholding the information is seen as equal, the information must be released. This required the Parish Council to make a judgment about the public interest, but there is no evidence to suggest that this was done in the current case and no reasons were given for applying confidential status to the title of agenda item seven.

8.1.20 It is clear that most of the factors listed above are engaged in the current case, leading to the conclusion that the public interest in this matter tipped the balance in favour of disclosure, at least to the extent undertaken by Councillor Steane.

## **9. Comments of the Designated Independent Person (DIP) – Alistair Drain**

9.1 I am of the view that the Code of Conduct has been broken, and any decision not to acknowledge it as such could further erode standards, which are already difficult to maintain.

## **10. Finding**

10.1 Having not received any contrary explanation or input from Councillor Steane as to why he considered disclosure of the confidential material outweighed non-disclosure, I have had no option but to consider the confidentiality determination against the public interest test.

10.2 As explained earlier it is clear to me that Councillor Steane was in full knowledge that the content of the summons/agenda supplied was confidential and therefore was not to be disclosed. Therefore, it is clear that Councillor Steane accepts he undertook the action to publish the exempt information, as he believed it was in the public interest.

10.3 However, when considering the balance between the published information remaining confidential versus the public interest, I find that in this case the publication tips in the favour of disclosure and therefore I find no breach.

## **Appendix A**

Schedule of evidence taken into account

Councillor Steane's' comments on the draft report