

TEST VALLEY BOROUGH COUNCIL

EMPLOYMENT APPEALS AND ETHICS SUB-COMMITTEE

MONDAY 6TH DECEMBER 2021

**REPORT OF HEARING AND DECISION WITH REASONS ON THE COMPLAINTS
MADE AGAINST**

COUNCILLOR CHRISTOPHER ECCLESTONE

BACKGROUND AND REPORT OF HEARING

1. Councillor Christopher Ecclestone has been a member of Test Valley Borough Council since 2nd May 2019 representing the Andover Millway Ward.
2. On 15th April 2021 a complaint was received that Councillor Ecclestone had breached Test Valley Borough Council's Code of Conduct in making certain social media posts on 9th April 2021 relating to an item heard in confidential session at a meeting of Test Valley Borough Council on 7th April 2021.
3. The complaint alleged breach of the Code of Conduct on the basis that Cllr Ecclestone had disclosed information of a confidential nature and did not treat fellow Councillors with respect.
4. Test Valley Borough Council's Code of Conduct for elected members sets out obligations for Members when acting in their role as a Member of the Council which include (using the numbering from the Code of Conduct itself):
 - 2.1(a) Do treat others with respect.
 - 2.1(h) Do not disclose information given to you in confidence by anyone or information acquired by you which you believe, or reasonably ought to believe, is of a confidential nature, except where:
 - i. you have the 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 legal advice provided that the third party agrees not to disclose the information to any other person; or
 - iv. the disclosure is:
 - a. reasonable and in the public interest; and
 - b. made in good faith in compliance with the reasonable requirements of the Council.

5. Due to the confidential nature of the core subject matter of the complaint, this report of the hearing and decision does not, by necessity, recite that confidential information.
6. The hearing took place on the 6th December 2021 and followed the prescribed procedure set out at Item 4 in the Agenda.
7. Councillor Karen Hamilton was elected as Chairperson. Having raised a point of order which was not upheld, Councillor Ecclestone left the hearing after Agenda Item 3 and did not return. The remainder of the hearing proceeded in his absence.
8. Under Item 5 the Sub-Committee considered whether the hearing should proceed as exempt business such that the public was excluded. The reason for this is that Item 6 contained exempt information in accordance with paragraphs 1 and 10 of Parts 1&2 of Schedule 12A of the Local Government Act 1972, being information relating to an individual, namely Councillor Ecclestone. The Sub-Committee resolved to exclude the public.
9. As and until a breach of Code of Conduct is formally found, that information should remain exempt.
10. The Monitoring Officer introduced her brief report which annexed the Code of Conduct and the report of independent investigator Mr M Lewin.
11. Mr Lewin, Independent Investigator then presented his report to the Sub-Committee.
12. The Independent Person asked a question of the complainant and the Sub-Committee asked questions of Mr Lewin, Investigator.
13. The Sub-Committee was unable to ask Councillor Ecclestone any questions or hear any statement on the matter from him as he had left the hearing.
14. The Sub-Committee retired to deliberate in private accompanied by Deputy Monitoring Officer and legal adviser Tracey Wilson, Independent Person Vera Hughes and Democratic Services Officers.
15. The Sub-Committee returned and the hearing resumed in open session. The Sub-Committee delivered their decision:
 1. **Having heard from the participants from today's hearing and in the absence of Cllr Ecclestone, who left the meeting at the start of the proceedings, the sub-Committee unanimously agreed with the findings of the independent investigator's report and finds that Cllr Ecclestone breached the Test Valley Borough Code of Conduct:**
 - a) **as he, without justification, disclosed information which he ought reasonably to have been aware was confidential.**

2. **With regard to sanction, the sub-committee:**
 - a) **note that their findings will be made public by way of publication of this minute and subsequent report of the hearing and decision on the Council's website; and**
 - b) **proposes that, additionally, the findings are published in the decision section of the council's website.**
3. **with regard to recommendations the sub-committee make the following recommendations:**
 - a) **that Cllr Ecclestone undergoes additional training on the code of conduct;**
 - b) **that Cllr Ecclestone make a full apology to all Borough Councillors.**
4. **A written report of the hearing and decision with reasons will be prepared within 5 working days.**

SUB-COMMITTEE'S DECISION WITH REASONS

16. We accepted the findings of Mr Lewin as set out in his report. In doing so we note that Mr Lewin is entirely independent and that he spoke with the complainant and met with Councillor Ecclestone in the course of his investigation and examined the relevant documents and social media postings.
17. On 7th April 2021 a meeting of Test Valley Borough Council heard an item in confidential session. No Councillor, including Councillor Ecclestone, dissented from the proposal that item should be confidential and heard in exempt session.
18. We agree with and adopt the findings of Mr Lewin. Namely, it is clear from Councillor Ecclestone's social media posts that they refer to and reveal the identity of the confidential item which encouraged others to speculate and led to wider publicity and publication.
19. The Agenda and reports pack for the meeting deliberately did not reveal confidential information. Councillor Ecclestone's posts did therefore breach confidentiality by revealing information which came to him in confidence.
20. We note that there are some situations in which a Councillor may disclose confidential information but we do not accept that the disclosure in this instance can be justified by relying on these exceptions. It was not reasonable to disclose the information. Councillor Ecclestone had not dissented from the motion to exclude the public. There was no obvious public interest in disclosing this information, it was not done in good faith and did not comply with the requirements of the Council because the disclosure clearly breached a democratic vote in favour of exempting the item.

21. The item in question was the subject of a recorded vote. In one of his social media posts, Councillor Ecclestone revealed how some of his fellow Councillors voted. In doing so, Councillor Ecclestone revealed further confidential information.
22. For these reasons we find that Councillor Ecclestone's social media posts breached paragraph 2.1(h) of Test Valley Borough Council's Code of Conduct by disclosing information given to him in confidence without justification.
23. Members who voted in confidential session in the circumstances they did were entitled to expect their confidentiality to be maintained. In publishing Councillors' names as he did, Councillor Ecclestone deprived his fellow Councillors of the confidentiality to which they were entitled and this constituted a failure to treat them (specifically their right to confidentiality) with respect.
24. For this reason we find that in posting his social media posts on 9th April 2021 Councillor Ecclestone was also in breach of paragraph 2.1 (h) of the Code of Conduct; failure to treat others with respect.
25. We noted the Investigator's conclusion that Cllr Ecclestone's criticism of an officer was an unfair and misleading characterisation of events.
26. When considering the matter of sanction, we noted that this was the first time Councillor Ecclestone had come before this Sub-committee and after some debate discounted formal censure. However we were concerned about Councillor Ecclestone's behaviour throughout the process. Most notably leaving the hearing before we could ask him questions and that the independent investigator had cause to characterise his actions as 'misleading' and 'hypocritical'. We noted that the minute of our decision and a report of the hearing would be published and that it should appear in the 'decisions' section of the Council's website. We concluded that this publicity will be sufficient sanction on this occasion. We also recommended that Councillor Ecclestone apologises to Borough Councillors and that he undergo training on the Code of Conduct.

Employment Appeals and Ethics Sub-Committee.