Appendix 16

From: [redacted]
Subject: Mr Benson incident
Date: 4 May 2021 at 17:09
To: [redacted]

Good afternoon Kirsten.

Having discussed this incident with my Sargent it would seem like this is clear defamation of character and we suggest to seek solicitors advice. There is no crime that has occurred and I believe that the council need to step in and take action against Mr Benson. If you like I can still call Mr Benson tomorrow and see what he has to say about this matter

Appendix 17

Private & Confidential

Investigation into a complaint against The Monitoring Officer of Waverley Borough Council by Cllr Dr Ellis of Haslemere Town Council.

Introduction

Investigation into a complaint against the Monitoring Officer of Waverley Borough Council by Cllr Dr Ellis of Haslemere Town Council.

I have been asked to investigate a complaint made by Dr Kirsten Ellis concerning the actions of the Monitoring Officer (MO) of Waverley Borough Council (WBC) as well as other officers, in considering three Code of Conduct complaints against Cllr Dr Ellis.

The complaint made by Cllr Dr Ellis was transposed into Terms of Reference for this investigation by WBC which establish the parameters for the investigation.

In carrying out this investigation, I have considered the document bundle provided to me by WBC and emails sent to me by Cllr Dr Ellis.

I have also asked questions in writing of the Monitoring Officer, the Independent Person and Cllr Dr Ellis.

The Arrangements for dealing with Code of Conduct complaints appear in WBC's constitution.

As the complaint in the terms of reference and Cllr Dr Ellis's response is in narrative form, I have distilled it into a set of fifteen questions. I have done this for clarity, but in responding I have sought to ensure that the issues raised by Cllr Dr Ellis are properly covered. The questions are as follows;

1. The MO failed to fully share details of the complaint before requiring a response at the zoom meeting.
2. Cllr Dr Ellis has been provided with no evidence about alleged failure to disclose pecuniary or non-pecuniary interests which may justify the informal investigation and no explanation has been provided as to what a non-pecuniary interest is.
3. Cllr Dr Ellis has not been given a proper explanation as to why anonymity was provided to two complainants. The granting of anonymity was unjust and failed to balance the interests of the complainants and Cllr Dr Ellis.
4. Why did Cllr Dr Ellis only get a copy of the complaints 2 months after the zoom meeting?
5. Cllr Dr Ellis went into the zoom meeting without a copy of the complaints or a clear understanding of what they were. This is unfair and their was an imbalance of power at the meeting. As the subject of the complaints, Cllr Dr Ellis should have had the same information at her disposal as the investigator. This left Cllr Dr Ellis feeling stressed and anxious.
6. At the outset, the MO should not have asked the complainants what outcome they sought. The approach of the complainants, who had a clear vested

interest, and their communications with the MO must have influenced his decisions, which is not right. Cllr Dr Ellis should have been made aware of this and should have been able to have a say.

7. The MO should not have rejected the recommendation of the Independent Person to pursue an informal resolution to the complaints.
8. Having commissioned an investigation into allegations of a non-pecuniary interest, the MO sent the investigator a 370 page file. Cllr Dr Ellis has not seen that file, despite repeated requests. Cllr Dr Ellis is concerned this file will contain irrelevant material. Cllr Dr Ellis needs to know exactly what the investigator has been asked to investigate and that he has not been sent information relating to the withdrawn complaint.
9. Cllr Dr Ellis still does not know how it is alleged that she had a non-pecuniary interest. Accordingly she does not know what the allegation is that she is trying to answer.
10. Cllr Dr Ellis is concerned that an additional complaint received in December 2020 was given straight to the investigator to deal with and without her being given a chance to respond. This is unfair.
11. Cllr Dr Ellis believes there is a perception that the complainants, through their behaviour, have been allowed to influence how the complaints have progressed.
12. There is political bias in favour of the Red Court development and against Cllr Dr Ellis as an independent Councillor, demonstrated in the way the MO has dealt with the complaints. That the actions of the MO amounted to institutional bullying and harassment.
13. The file sent in connection with the formal investigation did not include the 13 page response sent to the MO by Cllr Dr Ellis prior to the zoom meeting in June 2020.
14. In general, Cllr Dr Ellis believes that due to the clear vested interests of the complainants, the MO should not have entertained the complaints under the WBC arrangements.
15. In general, Cllr Dr Ellis believes that procedural errors and omissions throughout the informal investigation process have denied her the opportunity to properly answer the allegations and thereby prejudiced her and caused unnecessary distress.

Approach

In addressing these questions, I will follow instructions in the Terms of Reference about the scope of the investigation and limitations on the investigation. I should make it clear that in considering the actions and decisions of the MO, it is not for me to substitute my own opinions for his. I will consider whether the actions and decisions were reasonable given the circumstances that prevailed and the information available at the time.

In considering the complaints made against Cllr Dr Ellis, The MO was obliged to comply with the requirements of the arrangements for dealing with Code of Conduct complaints, which have been adopted by WBC; and in doing so to act in a manner which is rational and reasonable. The complaint uses terms such as 'due process' and 'natural justice'. As this is not litigation, I will not take a narrow legalistic approach to

such terms but will interpret them broadly to align with the duties I have outlined here. Before seeking to answer the questions put to me, I will summarise what is required of the MO. Any views I form on the correctness of those actions will take into account where in the process the action took place and what the Monitoring Officer could reasonably have known at that stage.

The initial action of the MO, upon receiving a complaint is to consider whether it is 'valid' in accordance with criteria set out in the Arrangements. If the complaint is determined to be valid, the MO must then consider how best to take the complaint forward. In so doing, he may investigate informally and/or commission a formal investigation. The MO should inform the Councillor complained about of his decision within 30 days. The informal stage should include consideration of whether an informal resolution to the complaint is possible and if it is not, the MO will determine whether the complaint or any part of it should be dismissed or formally investigated. If a decision to formally investigate is made, this will be commissioned externally.

Findings and Rationale

In the following paragraphs I will provide my answers to the questions set out above and explain my reasons for reaching those conclusions. Although facts are relevant to all the questions, my conclusions will require judgements to be made and these are based on my experience as a MO and senior manager.

1. **The MO failed to fully share details of the complaint before requiring a response at the zoom meeting.**

In answering this point, it is important first to establish the status of the initial complaint as drafted by the complainants against Cllr Dr Ellis. It must be remembered that the process exists only to address complaints that a breach of the councillors code of conduct has taken place. It can consider no other complaints. It is vital, therefore, that before any form of investigation can take place, the complaint must be interpreted in terms of the relevant code. It will need to be worded in a manner that references the code and excludes extraneous matters, so far as possible. As is often the case, these complaints did not always reference the code of conduct and contained much verbiage.

The MO therefore summarised the complaints into one set of points, to focus on the matters that may relate to the code and to exclude the verbiage. This is what was conveyed to Cllr Dr Ellis in the MO's email of 26th May. It seems to me that this was a reasonable summary of those complaints. I have one qualification, however. The element of the complaint alleging that Cllr Dr Ellis had unduly manipulated others lacked specificity. At the time of contacting Cllr Dr Ellis, the MO had no further details, but I can see that Cllr Dr Ellis would have found it difficult to respond meaningfully to this point. I think it would have been better had the MO ensured that there was clarity on what was meant by this part of the complaint before the subsequent zoom meeting. Whilst the exact wording of the original complaints will quite naturally be of keen interest to Cllr Dr Ellis, that does not dictate to the MO the terms of what he chooses to investigate.

I am satisfied therefore that what the MO set out for Cllr Dr Ellis in advance of the zoom meeting was an accurate interpretation of the complaints' substance. The MO was also of the view that producing the original text of the complaints at that stage would make finding an informal resolution to the complaints more difficult. I am inclined to agree with this view.

2. **Dr E has been provided with no evidence about alleged failure to disclose pecuniary or non-pecuniary interests which may justify the informal investigation and no explanation has been provided as to what a non-pecuniary interest is.**

I will address the second part of this question first. Cllr Dr Ellis complains that at no point has she been provided with an explanation as to what a non-pecuniary interest is. Whilst she may have an issue with the MO's reasoning, it seems to me that Cllr Dr Ellis has shown a good working understanding of what non-pecuniary interests are. The main subject of the complaints made against Cllr Dr Ellis relate to a meeting of Haslemere Town Council on 28th November 2019. I have seen in the document pack, an exchange of emails with the deputy MO a few days prior to that meeting where Cllr Dr Ellis discussed the advice she had received with reference to paragraphs 6.4 and 6.5 of the Code and in which she appeared to understand what was required of her and the test to be applied. It also seems to me that in the substantial discussion on this point during the zoom meeting, Cllr Dr Ellis set out a clear understanding of the issue.

The first part of this question is that no evidence has been put forward to justify the informal investigation into the allegation of a non-pecuniary interest. I will first observe that, although the informal and formal investigations represent different stages; they are both part of the investigation of this complaint. Although the person charged with running any investigation should have sound reasons for the actions they take, it cannot be for the investigator to satisfy the person complained about that an investigation should continue. In short, it seems to me from the documents that the MO has concluded from his initial inquiries, that there may be a non-pecuniary interest arising from Cllr Dr Ellis's property interests and association with the HSRA. Whilst being in no position to judge the complaint, it seems to me that this conclusion is within the range of those which the MO was entitled to reach following his inquiries. The question of evidence will be key when the investigator produces his conclusions, but I do not think that it can be a requirement part way through the process.

3. **Cllr Dr Ellis has not been given a proper explanation as to why anonymity was provided to two complainants. The granting of anonymity was unjust and failed to balance the interests of the complainants and Cllr Dr Ellis.**

In this or any other complaints process, both complainants and those complained about will have reasonable expectations and these can sometimes come into conflict. This is the case with regard to the anonymity of some complainants in this case. There will be occasions where complainants are concerned that disclosure of their identity may lead to victimisation by someone about whom they have complained, or others. Such fears can discourage people from pursuing what might be legitimate complaints and should not be taken lightly. Equally, a person about whom a complaint is made will naturally wish to know the identity of someone who has made a complaint against

them; and more importantly, must not be disadvantaged in their ability to defend themselves. Balancing these two expectations is often difficult.

The Arrangements provide for a situation where the identity of the complainant may be kept from the councillors complained about in exceptional circumstances. When explaining to Cllr Dr Ellis that he would not at this stage disclose the identity of two complainants, the MO made it clear that this was during the informal stage of the process and would be kept under review.

The time taken to conclude the informal stage of the process was significantly longer than any of the parties had expected and in my view that is an entirely reasonable opinion. This length of time has undoubtedly had an impact on the effect the decision about anonymity had on Cllr Dr Ellis.

At the outset, the MO received representations from two complainants to the effect that due to past experience of harassment, including online, they were fearful for their wellbeing if their identities became known to Cllr Dr Ellis and subsequently to others concerned with development in Haslemere South. At the time, the MO didn't know and couldn't have known the veracity of those fears but regarded them as of concern. He recognised that anonymity should not be granted other than in exceptional circumstances in order to ensure a reasonable and fair approach to Cllr Dr Ellis and that for the same reason, any anonymity should be kept under review. He explained this to Cllr Dr Ellis. In striking a balance, the MO concluded that any disadvantage to Cllr Dr Ellis would be sufficiently limited as not to outweigh the fears of the complainants. In the circumstances, and given the nature of those concerns, it seems to me that he acted reasonably at the time. The decision was initially limited to the informal phase of the process and was not anticipated to have been in effect for a significant period without review.

At the outset, it would not have been in the MO's contemplation that the informal stage might last as long as it did. In the end, the formal stage of the process; and with it the reconsideration of the anonymity decision, did not take place until December. I have no difficulty in accepting that during this period of time, the level of stress experienced by Cllr Dr Ellis, would have been considerable and that not knowing the identity of some complainants contributed to that.

With the benefit of hindsight, I think that an earlier review of the decision might have been carried out. I think that it would be harsh to criticise the MO for not having done so, as at any point earlier in the process he would not have appreciated how long it would take to complete the informal stage. This is apparent from my analysis of the timeline in response to question 15.

4. **Why did Cllr Dr Ellis only get a copy of the complaints 2 months after the zoom meeting?**

In my response to question 1, I have set out my view that it was not the original text of the complaints that would form the terms of reference for the MO's investigation. I also set out my view that a reasonable summary of the complaints was given to Cllr Dr Ellis in the email of 26th May. This in my view enabled her to fairly respond to the heads of complaint at the zoom meeting. Indeed she was able to provide an extensive rebuttal

of the allegations to the MO in advance of the zoom meeting. This seemed to indicate that she was in a position to respond. There is one caveat to this, mentioned in my earlier response. I do not therefore criticise the MO for not disclosing the original text of the complaint letters in advance of the zoom meeting.

That said, Cllr Dr Ellis clearly requested a copy of those complaints and it was entirely reasonable that following the meeting they should be provided. The delay in providing them was too long in my opinion, amounting to about six weeks. This was due to workload demands on the MO and his staff, partly caused by the pandemic, which is referenced in my response to question 15. Whilst it would be harsh to criticise the MO for this, it is something for which the Council should accept responsibility, albeit largely beyond its control.

5. **Cllr Dr Ellis went into the zoom meeting without a copy of the complaints or a clear understanding of what they were. This is unfair and there was an imbalance of power at the meeting. As the subject of the complaints, Cllr Dr Ellis should have had the same information at her disposal as the investigator. This left Cllr Dr Ellis feeling stressed and anxious.**

My response to this question is in part covered in responses to previous questions, where I have concluded that the email from the MO set out a reasonable summary of the allegations, with the exception of the allegation of unduly manipulating others. That said, it is true that at the time of the zoom meeting, the MO and his colleagues had possession of material not available to Cllr Dr Ellis, including the original complaints and exchanges with the complainants.

I think it is important to distinguish between the way in which different stages of a complaint should be dealt with and what a person subject to the process may legitimately expect at each stage. At the conclusion of a process there may be a hearing which could lead to an outcome to that person's detriment. At that stage it is undoubtedly true that a person accused must have access to all the evidence that the tribunal will consider so that they have the opportunity to defend themselves. In my experience, however, that will not necessarily be the case at an earlier stage.

The investigation which may ultimately lead to a hearing is, in my experience, often an iterative process where issues/facts are clarified or where new issues/facts are identified as the investigation proceeds. This is entirely normal.

At an early stage, the investigator will not, by definition, have all the relevant evidence before them and will set out to fully understand the events surrounding the complaint in order to decide whether the investigation should continue and, if so, how. I believe that this accurately describes the stage in the investigation when the MO conducted the zoom meeting with Cllr Dr Ellis on 28th June.

At this stage, it is important that the person complained about must understand as far as possible what the complaint is, so that they can provide a response and answer the investigator's questions. It is not, in my view necessary for them to have access to all the information that the investigator has. I am not aware of any form of investigation process where that would be the case. In any event, from the documents I have seen, it appears to me that with the one exception, Cllr Dr Ellis had all the pertinent

information to respond to the allegations. In the case of the allegation that she had unduly manipulated other councillors, the MO had no further information himself at that time. I will also observe that having seen the zoom recording, it appears to me that the MO took trouble to give Cllr Dr Ellis time to formulate her responses and offered the opportunity for her to come back later with a response if she wished.

6. **At the outset, the MO should not have asked the complainants what outcome they sought. The approach of the complainants, who had a clear vested interest, and their communications with the MO must have influenced his decisions, which is not right. Dr E should have been made aware of this and should have been able to have a say.**

As the MO has explained to me, part of his approach in pursuing the informal investigation was to explore whether it was possible to reach an informal resolution to the complaints. This is, in my experience, perfectly normal. Cllr Dr Ellis is concerned that the MO had asked the complainants what solution they sought. I appreciate why this may have caused alarm to Cllr Dr Ellis given the responses from the complainants. It is, however, a perfectly normal approach for Code of Conduct complaints processes, as it helps identify early on whether the opportunity for resolution exists. In this case, the standard complaints form used by WBC for Code of Conduct complaints incorporates this question. It was not a decision of the MO in this case.

The suggestions from the complainants to resolve the complaints were draconian and were things that the MO could not possibly have sought to pursue, which he did not. Later in the process, there were numerous emails from the complainants to the MO which were contentious and sometimes hostile and most certainly sought to put pressure on the MO.

Those who are experienced in running complaints processes and carrying out investigations as the MO is, will be familiar with pressure and sometimes hostility from those involved in the process. I would not, therefore, assume that he was influenced by such pressure, in the absence of evidence to suggest that is the case. Having seen the manner in which the MO has conducted the process and the documents presented to me, I do not see that he has been swayed by external pressure. I appreciate that Cllr Dr Ellis may profoundly disagree with the MO in relation to some of his decisions and actions, but I see no sign of undue external influence in those matters.

7. **The MO should not have rejected the recommendation of the Independent Person to pursue an informal resolution to the complaints.**

It is important firstly to distinguish between the MO considering informal resolution and implementing an informal resolution. For reasons I will explain, I conclude that he considered the appropriateness of informal resolution throughout the process but concluded that it was not possible to implement such a resolution.

It is also important to say that an informal resolution is one which both the complainant and the Councillor will agree to. Any other sort of resolution is either a decision by the MO or the conclusion of a hearing.

Cllr Dr Ellis is concerned that the complainants were engaged in seeking an informal resolution. This was part of the WBC standard code of conduct complaints form. On that form a complainant is asked to indicate whether they believe an informal resolution to their complaint is possible and what that might involve. This is, in my experience, entirely normal and helps the Monitoring Officer at the outset to consider whether an informal resolution is likely. There is nothing improper about this, it is a practical measure and is an entirely normal part of a council's arrangements.

It was the responses of the complainants that are in part responsible for the MO's conclusion that an informal resolution was not feasible. More than one of the complainants suggested some quite draconian measures in response to the question about informal resolution. This included actions such as Cllr Dr Ellis resigning and agreeing not to stand for election for five years. These are not measures that the MO could possibly have engaged with and certainly not put to Cllr Dr Ellis. The MO has said that this made it appear most unlikely that an informal resolution was possible. I agree with this.

As the informal process proceeded, the MO states that he kept the prospect of informal resolution under review. As it appeared to him that the complainants were not altering their position and Cllr Dr Ellis did not accept any part of their complaints; there was no real prospect of informal resolution. I have to say that I agree entirely with this conclusion. Having sought clarity from the Independent Person and read her report to the MO, she confirms that she would have preferred an informal solution but accepts that for the reasons I have set out, one seemed very unlikely. She accepted, therefore, that the MO's decision to proceed to a formal investigation was the correct one.

8. **Having commissioned an investigation into allegations of a non-pecuniary interest, the MO sent the investigator a 370-page file. Cllr Dr Ellis has not seen that file, despite repeated requests. Cllr Dr Ellis is concerned this file will contain irrelevant material. Cllr Dr Ellis needs to know exactly what the investigator has been asked to investigate and that he has not been sent information relating to the withdrawn complaint.**

I now understand that Cllr Dr Ellis has received a copy of the file sent to Mr Kenyon in its redacted form. Cllr Dr Ellis requested a copy of this pack from the MO on 3rd March and was sent the pack on 8th April. Although this might ordinarily seem an unusual delay, there are circumstances that explain this. Mr Kenyon is investigating a complaint against another councillor as well as Cllr Dr Ellis; that second complaint arising from similar circumstances. Accordingly, he was sent a single document pack covering both. The pack, of necessity contained personal information relating to both subject councillors and could not be shared without the express permission of both councillors, which was not forthcoming.

In those circumstances, the MO had to arrange for his staff to carry out an exercise to redact any personal information relating to the other councillor from the pack before sending it to Cllr Dr Ellis. This exercise took considerable resource to complete. This is the primary reason for the delay in sending the pack. A person is, of course, perfectly entitled to decline to have their personal information provided to another, but it was an

inevitable consequence of this that preparing the redacted pack for Cllr Dr Ellis took a little time.

It seems inevitable that the pack sent to Mr Kenyon will contain some material that is extraneous, including the other elements of complaint. Editing emails and letters to exclude references to other elements may make it rather difficult to interpret events. It is a question for Mr Kenyon to determine what information he considers relevant to his investigation and not WBC. Mr Kenyon is a very experienced investigator and will have no difficulty in distinguishing between what he considers to be relevant and irrelevant information; and excluding the irrelevant from his considerations. I consider it normal for an investigator to see a broad range of evidence, not least to provide context and so that he or she can determine what to take account of.

The brief given to Mr Kenyon for his investigation is short and to the point. He has been asked to consider whether Cllr Dr Ellis had a non-pecuniary interest in the Neighbourhood Plan discussion at the Haslemere Town Council meeting on 28th November 2019. It seems to me that Cllr Dr Ellis has had this information conveyed to her.

9. **Cllr Dr Ellis still does not know how it is alleged that she had a non-pecuniary interest. Accordingly, she does not know what the allegation is that she is trying to answer.**

This is in part covered by my response to question 2, so there is a degree of repetition in the response to this question. It seems clear from the document pack and other emails from Cllr Dr Ellis that she profoundly disagrees that she may have had any form of interest, whether pecuniary or non-pecuniary. As such she sees no train of logic that may suggest otherwise. I fully appreciate that; but it is somewhat different from her not having had the allegation put to her.

From her initial email exchanges with the deputy MO, it seems clear that Cllr Dr Ellis appreciated the requirements of paragraphs 6(4) and 6(5) of the Haslemere Town Council code of conduct and was able to consider their application to the meeting on 28th November. The question of a non-pecuniary interest will depend on what a reasonable member of the public who knew the facts would think. That is by it's nature rather imprecise, but is simply how things are.

10. **Cllr Dr Ellis is concerned that an additional complaint received in December 2020 was given straight to the investigator to deal with and without her being given a chance to respond. This is unfair.**

In December 2020, one of the complainants submitted a fresh allegation to the MO concerning Cllr Dr Ellis. This allegation related to a more recent meeting of Haslemere Town Council and concerned Cllr Dr Ellis taking part in the meeting without declaring an interest and withdrawing. The agenda item concerned in the complaint related to the Red Court development. There was, therefore, a degree of similarity between the new complaint and the one that had been referred to Mr Kenyon for investigation.

Having received the complaint when he did, the MO had a choice to make. Firstly, he had to consider whether the complaint was valid under WBC's Arrangements. He

concluded that it was. Given the subject matter's similarity to the complaint that had been referred to Mr Kenyon, that seems inevitable. Given that position, the MO had two options: either to begin a new informal or formal investigation process or to add the new complaint to the existing investigation.

The MO decided to add the new complaint to Mr Kenyon's investigation. For reasons I set out below, I think this was the preferable alternative. Given the history of the investigation at that stage and the time that had elapsed since the original complaints were made, beginning another process with an informal investigation would seem to me to be most unwise. It would serve to extend the timeline for the whole process significantly, which would prolong the effect on Cllr Dr Ellis and cost additional taxpayers money.

The Arrangements permit a complaint to be referred straight to formal investigation. To do so does not deprive Cllr Dr Ellis of an opportunity to defend herself. The formal stage is an investigation in its own right and will allow Cllr Dr Ellis to fully set out her position and for the investigator to ask any questions he wishes. I do not think, therefore, that Cllr Dr Ellis need be concerned about being afforded a chance to defend herself.

11. **Cllr Dr Ellis believes there is a perception that the complainants, through their behaviour, have been allowed to influence how the complaints have progressed.**

Cllr Dr Ellis is concerned that the correspondence sent by email from some complainants to the MO will inevitably have influenced his thinking and actions. It is undoubtedly true that many of those communications which I have seen in the document pack seek to put pressure on the MO. Some are openly hostile. Whilst I understand why Cllr Dr Ellis might be concerned that these would influence the MO, my approach has been to ask if there is any evidence in the documents of such an effect.

In terms of the complaints themselves, it seems to me that the MO's decisions have provided the complainants with little of what they sought. Their original complaints were extensive, including allegations of failure to declare a pecuniary interest, which would be a criminal offence. There are also other allegations of breaches of the Code. At the end of the informal investigation, the only allegation remaining in the process is one of failure to declare a non-pecuniary interest. This is plainly not something the complainants are happy with.

The other matter which seems to have exercised two of the complainants is the issue of anonymity. The MO made a decision prior to the formal investigation that anonymous complaints could not be formally investigated. Despite considerable and very robust communication from the complainants, the MO maintained his position. This resulted in one of the complainants withdrawing his complaint and the other agreeing to his name being disclosed to Cllr Dr Ellis.

It seems to me, therefore, that on the key issues being pursued by the complainants in their emails, the MO has demonstrably not given way to pressure.

12. **There is political bias in favour of the Red Court development and against Cllr Dr Ellis as an independent Councillor, demonstrated in the way the MO has dealt with the complaints. That the actions of the MO amounted to institutional bullying and harassment.**

The first part of this question alleges that the process has been influenced by political bias due to Cllr Dr Ellis's opposition to the Red Court development which she sees as having been supported by WBC. This is a very serious allegation.

I accept that Cllr Dr Ellis is unhappy with the way in which the investigation process to date has been conducted; but I cannot agree that one can infer political bias, even if some of those concerns are accepted. It seems to me that Cllr Dr Ellis is genuinely concerned and distressed about these issues and I would not in any way criticise her for that. Having considered her emails, it seems to me that she has concluded that given what she regards as significant flaws in the process and the approach taken by the MO, one can only infer that political bias must be a motivating factor.

Given my conclusions in relation to the process that are set out in this report and the absence of any evidence that political bias exists, I cannot support this allegation.

13. **The file sent in connection with the formal investigation did not include the 13-page response sent to the MO by Cllr Dr Ellis prior to the zoom meeting in June 2020.**

It is clear that the document Cllr Dr Ellis refers to was not included in the original document pack sent to Mr Kenyon for the formal investigation. It is accepted that this is plainly relevant to that investigation and should have been included. That document has now been sent to Mr Kenyon so that he is able to properly consider it. WBC has explained to Cllr Dr Ellis that this was an oversight and has been promptly remedied. I see no evidence in the documentation to suggest that this is not the case. It seems to me that there would be no logical reason why WBC would want to withhold this document from the investigator. In any event, this would inevitably be supplied to him by Cllr Dr Ellis herself when they communicated during the investigation. Cllr Dr Ellis will not have suffered any detriment as a result of the delayed forwarding of the document.

14. **In general, Cllr Dr Ellis believes that due to the clear vested interests of the complainants, the MO should not have entertained the complaints under the WBC arrangements.**

This is a procedural point where Cllr Dr Ellis believes the MO has significantly failed to do what was required of him in WBC's Arrangements. In particular Cllr Dr Ellis refers to the criteria in the Arrangements describing complaints that might not be considered valid. This includes 'Complaints containing trivial allegations, or which appear to be simply vexatious, malicious, politically motivated or tit-for-tat'. I interpret this as a means to exclude complaints which are made for no reason other than to pursue an ulterior purpose and are therefore an abuse of the system.

It is important here to recognise the purpose of the Code of Conduct and the complaints process that supports it. These exist primarily for the benefit of the public

at large in order to promote good conduct by elected members and to secure public confidence in local democracy. Their primary purpose is not to serve the needs of complainants.

Whilst complaints that serve no purpose than to settle scores ought not to be entertained, a potentially relevant complaint of a potentially serious nature should not be automatically dismissed, merely because the person raising the matter may have an axe to grind. Any evidence submitted by such complainants may need to be treated with a degree of caution, however.

In this case, the MO has recognised the potential motivation of some complainants but concluded that the complaints raised potentially serious matters relevant to the Code and should therefore be considered. I think he was entirely right to have taken this view.

15. **In general, Cllr Dr Ellis believes that procedural errors and omissions throughout the informal investigation process have denied her the opportunity to properly answer the allegations and thereby prejudiced her and caused unnecessary distress.**

As is apparent from my responses to the questions above, I agree that there were some aspects of the process that could have been done differently, but there are many areas where I have not agreed with the complaint made by Cllr Dr Ellis.

The nub of this element of the complaint is, however, that Cllr Dr Ellis has not been able to properly respond to the complainants' allegations and has thereby suffered prejudice. In answering this point, I should first look at the whole process. As I have already concluded, the WBC Arrangements permit an informal investigation, and this is not something that can reach a final conclusion on a complaint. The only way that a formal finding against a councillor which leads to consequences can occur is following a formal investigation.

The process under the Arrangements is still ongoing, with the formal investigation being carried out by Mr Kenyon. In respect of those elements of the original complaints the MO has set aside, Cllr Dr Ellis cannot be prejudiced, as they have been dismissed without consequences for her. In relation to the one element of complaint being investigated by Mr Kenyon, Cllr Dr Ellis will certainly have the opportunity to put forward any further evidence or reasoning she wants to. Only after Mr Kenyon has completed his investigation will there be any possibility of a hearing leading to material consequences.

Having said all of this, I appreciate that there will be an impact on Cllr Dr Ellis from the mere fact of the process taking place. It is inevitably the case that complaints processes will be stressful for people facing complaints, particularly in the public realm. The MO, as the person charged with running the process, should endeavour to carry out his responsibilities with as much sensitivity and consideration as he can, consistent with discharging those responsibilities.

It seems to me that there are two elements to this, one being the way the MO communicated with Cllr Dr Ellis and the second being the timeliness of the process.

So far as the first element is concerned, it seems to me from the documents that the MO was always respectful and considerate towards Cllr Dr Ellis, albeit that they did not always agree. Having watched the recording of the zoom meeting, I take the same view in relation to that.

With regard to timeliness, I think that an analysis of events is useful. For reasons I will explain, I believe that the informal stage of the process took longer than Cllr Dr Ellis might reasonably have expected. There are a range of reasons for this and to identify them, I will look at the process chronologically.

I believe that the gap between Cllr Dr Ellis being invited to a meeting and it taking place on 28th June, is adequately explained by the need to coordinate diaries. This is not the fault of any party.

Following the MO's interview with Cllr Dr Ellis on 28th June, there is a period of approximately 6 weeks before the MO is in a position to confirm the initial outcome of his informal investigation on 12th August. Whilst accepting that there was significant documentation for the MO to consider, it seems to me that the diverting of his attention to support the Council's efforts regarding the pandemic has resulted in this stage taking longer than Cllr Dr Ellis would reasonably expect. It has been confirmed to me by the Chief Executive that the Council made a corporate decision to divert resources where necessary for this purpose. It should be noted that other public services also suspended non-pandemic services, such as the Local Government Ombudsman.

The Arrangements adopted by WBC provide for the councillor complained about to consult the Independent Person and for the MO to consult them before an informal investigation can be commissioned. Following the MO notifying Cllr Dr Ellis of his initial decision on 12th August, this process then took until 30th October, when the MO was able to confirm his decision.

This again seems like a significant amount of time for these steps to be taken, but it appears to me from looking at the documentation, that this can be explained. Given the nature of the two elements to this stage, the Independent Person's consultation with the councillor, must clearly take place before the Monitoring Officer can consult them about the formal investigation. Through various means, including availability of diary appointments and personal circumstances, the independent Person and Cllr Dr Ellis were not able to speak as soon as might otherwise be the case. This delay was not helpful, but no blame can attach to either of the parties, it was simply a result of circumstances. It cannot, in my view, be considered the responsibility of the Monitoring Officer that the delay occurred.

Following her discussion with Cllr Dr Ellis, the Independent Person was able to consult with the MO on 27th October, which was perfectly timely. Three days after that, on 30th October, the MO wrote to Cllr Dr Ellis to confirm his conclusion that an allegation of failing to declare a non-pecuniary interest would be formally investigated by an independent investigator. This was also perfectly timely.

The next stage in the process involved correspondence with the two complainants who had been granted anonymity during the informal stage. This process took from 30th October until the week commencing 7th December to resolve. The outcome was

that the complaint of one would no longer proceed, as they did not agree to their identity being disclosed. The period of approximately 6 weeks that this stage lasted is plainly longer than one would normally expect. Given that two complainants had been afforded anonymity, it was necessary to review that decision before a final decision to start a formal investigation could be made. This is a requirement of WBC's Arrangements.

It is evident from the documentation that there was considerable correspondence between the MO and the two anonymous complainants during this time. Much of it, from the complainants, was rather argumentative. At the end of those exchanges, one complainant was prepared to have his identity disclosed, and the other was not.

The MO has said that during the email exchanges, he was conscious of the time being taken and had to consider whether on balance, he should impose an arbitrary cut-off date and require the complainants to respond, or to pursue the correspondence to a conclusion. He chose the latter course.

There is no easy answer to this dilemma in my view. Anonymity having been granted to start with, a decision to withdraw it should not be taken lightly. Against that, the process had already taken longer than one would have expected and both Cllr Dr Ellis and the complainants had a reasonable expectation that it would be taken forward without further delay.

There is no right or wrong answer to this, but I think that the decision made by the Monitoring Officer was one that he was reasonably entitled to make. Within approximately two weeks of the decision about anonymity, an independent investigator had been identified and instructed, and Cllr Dr Ellis informed of that fact. In my view, this was perfectly timely.

In summary, the informal investigation stage took longer than would reasonably be expected and I have endeavoured above to analyse why this was the case. I accept that the prolonged period taken to reach the formal stage will have added to the distress experienced by Cllr Dr Ellis. This is very regrettable, but I do not believe that this is the fault of the MO.

I believe that in setting out the complaint as I have, in terms of a series of questions, I have been able to provide a comprehensive and considered response to the complaint.

Stuart Caundle
Appointed Independent Investigator
21 June 2021

Appendix 18

From: Kirsten Ellis
Subject: Fwd: Surrey Police: 45210113650
To:

Begin forwarded message:

From:
Subject: Surrey Police: 45210113650
Date: 27 October 2021 at 22:14:15 BST
To:

Good evening Kirsten,

Thank you for taking the time to see me earlier, it was nice to meet you despite the circumstances.

For your information, the Crime Reference Number (CRN) in relation to the Criminal Damage is: 45210113650.

As we discussed the matter will be filed pending further information coming to light and I would encourage you to install CCTV and motion sensor lights so we can hopefully start developing further evidence or prevent the matter altogether.

If you have any questions, please don't hesitate to ask by either emailing me or calling 101 quoting the CRN.

Kind regards,

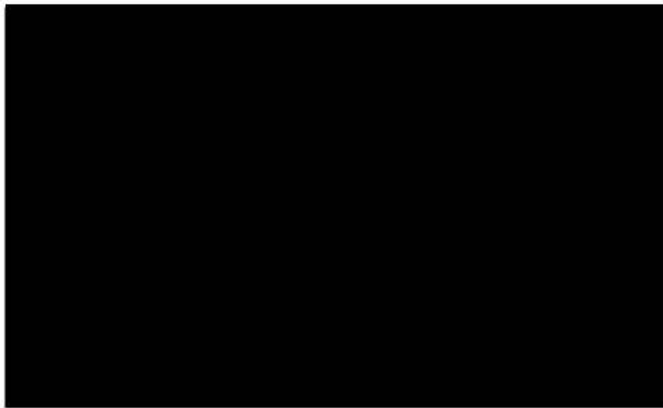
From:
Subject: RE: Surrey Police: 45210113650
Date: 28 October 2021 at 12:34

Good afternoon Kirsten,

Just a further quick update, I've reviewed some more legislation and feel it's best to also create an occurrence for Harassment which similarly to the Criminal Damage, can be opened again if further evidence comes to light.

The reference number for that is: 45210113865. I have also emailed the local Crime Prevention Officer to review the matter who may be in contact should they feel they can offer any more assistance/advice.

Kind regards,



Appendix 19

RESPONSE BY COUNCILLOR KIRSTEN ELLIS TO THE DRAFT INVESTIGATION REPORT PREPARED BY MELVIN KENYON FOR THE MONITORING OFFICER, WAVERLEY BOROUGH COUNCIL

Dated: 10 October 2021

This response is prepared by me, Kirsten Ellis, as my response to a Draft Report prepared by Mr Melvin Kenyon.

I have a number of serious concerns and will say from the outset that the Draft Report not only contains a number of unfair, biased and distorted views that have led MK to make defamatory comments about my honesty and integrity, but it is also a misleading presentation of the evidence and analysis of it. I have little doubt that this Draft Report would not be well received should it come up for judicial review.

In my view the conclusions reached by MK have no sound justification, as they are based entirely on his perceptions and assumptions, as well as the views of others whom he has preferred to accept as well as third party documents of which I had no involvement or knowledge.

On this tenuous basis, MK has concluded that I was dishonest. It is hard to imagine any greater damage that can be done an individual than damaging their reputation.

I set out my concerns as follows:

Scope of investigation.

The agreed scope of the enquiry was whether I *"may have had a non-pecuniary interest"* that I failed to declare at the meeting of the HTC on 28 November 2019. This was the single outstanding issue that remained after an extensive enquiry by the Council into various complaints it had received about me. I was notified by the Council that this was the matter for enquiry by MK. MK also confirms this as the scope of enquiry in his Draft Report at 2.1 and 5.3.

However, MK's 74-page Draft Report extends well beyond that agreed scope. MK has instead undertaken and acknowledged he has undertaken an extensive investigation into *all* complaints. The fact that MK was handed almost the *whole file* compiled by the MO into its enquiries of complaints against me was of itself was not an invitation for MK to commence a wholly new investigation into matters affecting me that fell outside of his principal brief.

In particular, the brief excluded the specific complaint that I had failed to declare a pecuniary interest at that meeting, an allegation that the Council had already determined required no further enquiry. I record that I was not notified at any time that his enquiries would extend to all of the allegations, and I entered and cooperated with the enquiry in good faith in the belief that I was aware of the scope of the enquiry.

MK nevertheless took it upon himself to commence investigating all the complaints and took evidence from the complainants or their associates, and in his careful recording of their evidence, he began to lay down questions about me and my values that ultimately led to his view that I had been

dishonest! MK also gave considerable weight to other evidence from individuals or organisations who expressed certain positions or views which aligned with impressions he had accumulated, oftentimes favouring an interpretation that supported the allegations.

It is apparent from any reasonable reading of the entire Draft Report in a sitting, that MK, despite assertion of neutrality, commenced his Report with a view to justifying an adverse finding against me. This outcome was, ultimately, based on his preferences in interpreting information. In other words, in essence, MK's conclusions about my honesty are not based on clear evidence, but rather, on *his interpretation* of evidence, events and documents.

Brief background

The backdrop to the complaint involved an issue about where the "settlement boundary" should sit in Haslemere's Neighbourhood Plan (NP), this being material to the issue of housing development in Haslemere, eventually a matter for the Waverley Borough Council (WBC). Haslemere has a number of green spaces including Areas Outstanding Natural Beauty (AONB) and Areas of Greater Landscape Value (AGLV).

In terms of process, the decision about where settlement boundaries should lie is determined, in the first instance, by the Haslemere Town Council via its own procedures.

By end 2018 and early 2019, the redraft of an NP *as it then stood* included a part of protected AONB/AGLV land; this came to be referred to as the 'Red Court estate', and if ultimately approved by WBC, would become a possible site for housing development. The significance of this was that Redwood (South West) Ltd, a developer company, had purchased part of this protected land in 2017 with a view to doing a housing development (Red Court) there. Any failure to have the settlement boundary redrawn created a serious obstacle to that plan.

In May 2019 local elections were held and I was voted in as a Councillor. The new Council inherited the task of progressing the NP. The task was in the hands of Haslemere Vision (HV) and also the HTC NP working party of which I became a member.

When the issue of the settlement boundary came to a Council vote in November 2019, it was decided, in effect, that Haslemere's original settlement boundary should remain, in line with the public's wishes as expressed in an earlier survey which clearly showed that the majority of the Haslemere public (89 percent as surveyed) did not want development on the town's AONB/AGLV green spaces.

After the Council's November 2019 vote, the developers or their associates launched complaints against myself and another councillor who lives near to me, alleging we had failed to declare pecuniary and non-pecuniary interests in the matter, and that we should have abstained from voting.

The Council rejected the allegation of pecuniary interest. The remaining allegation, namely where I '*may have had*' a non-pecuniary interest was referred to MK for consideration.

Evidence relied on by MK

Jason Leete
MK interviewed Mr Jason Leete who is a local real estate agent. He is a known associate of Mr Brian Cox (a complainant) who has an association with Redwood (South West) Ltd. Mr Leete is one of Redwood's five original directors as well as being an advisor to Mr Cox, one of the complainants.

MK asked Mr Leete what my interest could be in the issue of development boundaries in Haslemere and recorded his reply – it was an issue of '*diminution of property values*', that he claimed to have '*a witness*' and then adding that they ('they', meaning myself and the other councillor the subject of a similar complaint) "*had no concern…about the community benefits*". MK then sought Mr Leete's "professional opinion" about the value of properties adjacent to the proposed development site and recorded his view that there would be an '*interim blight*' on property values and saleability.

On what basis would such a speculative leading question be put by MK? On what basis could Mr Leete have had any insight into what values drive me? What witness? Witness to what? This was an important enquiry as MK was developing his reasons for an eventual finding of dishonesty on my part.

Mr Leete is a real estate agent, and it is not surprising that he might view the world largely in terms of real estate values. Nevertheless, the direction of MK's questioning, and the detailed recording of Mr Leete's views as an associate (direct or indirect) of the developer, and perhaps with a future vested interest as a realtor, raises a question of why no disclaimer was also included in the Report.

Richard Benson
Richard Benson is associated with the Red Court developers. He himself was a member of the Haslemere South Residents Association (HSRA) when it set up its constitution in December 2018 but described the HSRA as 'toxic' barely a month later, soon after meeting the "*charming*" Mr Cox, an individual associated with the developer. MK's Draft Report records Mr Benson's apparent rapid change of allegiance.

With reference to the Benson interview, MK's Report refers to a proposed draft NP that was with the then local Council in March 2019, just prior to the new May local elections. MK's Report states, "So, the Town Council now "owned" and approved the NP". In relation to new incoming councillors,

including myself, MK then records Mr Benson's opinion that this gave me an opportunity to *"reverse what had been agreed..."*, and something they were *"desperate to do. They went ahead and did that and changed various policies. The most important policy chance involved the settlement boundary which had previously included the Red Court site"*.

MK made no attempt to question or qualify this erroneous assertion. The NP at that time was neither completed nor approved. It was an emerging draft NP still making its way through the statutory process. There had been no policy change, as the original position remained as it always had been, namely protecting certain areas of land according to national policy guidelines and WBC's own policy guidelines. In this case, as with the previous interview, MK failed to preface or caution the value of the evidence on the grounds of that association with the complainants/developers or correct this misinformation.

It is possible that MK simply accepted Mr Benson's assertion as it seems from his subsequent lines of questioning that MK held a view that new settlement boundaries had already been established by the late 2018 draft NP, and that the new councillors that arrived in May 2019 (including myself) somehow conspired to deprive developers of something they had already secured. This is patently wrong. The issue of settlement boundaries was very much current. I reiterate that this draft NP document was yet then to be put out for public consultation. (Incidentally, it has only recently been put to referendum on 7 October 2021, when 87 percent of eligible Haslemere residents voted to accept it.) Therefore it cannot be said that any decision on development (settlement) boundaries was to have been or had been agreed as a matter of planning law at the 28 November 2019 meeting.

MK's Draft Report also records his specific questioning of Mr Benson's knowledge of the HSRA, and records Mr Benson's information of the group's opposition to settlement boundaries in the HV proposal, and the HSRA's awareness of the upcoming Council election. It records Mr Benson's suggestion that *"part of the game of the HSRA was let's change councillors"*, and that *"the purpose of the Association was to stop development"*. Again, these are Mr Benson's own views, though not reflected in the HSRA constitution, and must be considered in light of his strong association with the developers and his disaffection with the HSRA. His views are not relevant to me.

I mention this especially as Mr Benson's assertion appears to have been accepted by MK, and later in his Report, MK makes much of the HSRA and my membership of it, and indeed concludes that the purpose of the Association was as described by Mr Benson.

It is troubling that MK has obtained the views of two witnesses who are clearly closely connected to the developers, where there is a significant financial stake involved, and fails to mention how he proposes to consider their evidence.

Other evidence

MK also sought information from the Town Clerk and the Deputy Town Clerk, the former (Lisa O'Sullivan) who is mentioned in MK's Draft Report as stating *".... that she believed that both councillors had a case to answer regarding their failure to declare a non-pecuniary interest."* It is not clear what evidential value this had, other than to insert further detrimental comments that could be used to support a view MK had already formed.

After the Town Clerk drew the Code and non-pecuniary interest provision to my attention ahead of the November 2019 vote, I followed her advice referring me to WBC's Monitoring Office then further discussion with Mr Daniel Bainbridge, the WBC solicitor. Mr Bainbridge's advice laid out the framework in which I should consider whether or not I might or might not have an interest to declare. Mr Bainbridge did not tell me I had an interest to declare, despite my having sought clear and specific guidance as to whether I needed to declare one, laying out all my circumstances. Had I considered there to be an interest which I should have disclosed in relation to the voting on the NP I would have done so.

Applicable Code

MK fails to confine his discussion and analysis to the Code that was applicable to councillors at the time of the complaint. Any alleged failure as a councillor on my part is to be determined within the framework of the Haselmere Town Council Code (HTCC) operative as on 28 November 2019. MK references at some length the Model Code and speculates on how that would have affected the enquiry were it to have been applicable. His speculations on this matter laid the groundwork for questioning my honesty. This is patent bias and manipulation.

The overall result is that MK showed an extraordinary excess of zeal in the task he was engaged to undertake.

General discussion

MK ultimately agrees that the Council's decision to dismiss the complaint alleging I had a pecuniary interest was correct. Despite that view, MK nevertheless decides that setting out his extensive thoughts on the matter "*would be helpful*", although why is not further explained.

MK's bias appears in his discussion about the influence of the HSRA on the Council's November 2019 decision. He does not accept, for the purposes of my disclosure obligations as councillor, any distinction between a Council meeting to consider an 'emerging' neighbourhood plan that involves deciding on development boundaries and draft revisions on the one hand, and a Council's planning application for housing development in late 2020 on the other. As to the former, I had not considered that I had any interest requiring to be disclosed (see above). Some 9 months later when the actual planning

application for Red Court came to Council, I declared my non-pecuniary interest and voted, as was my right to do.

MK challenged my view that there was 'no causal connection' (which he implied existed) between the HSRA's aims and the Council's November 2019 decision on the NP. I have never denied there was a link, as clearly the HSRA was concerned to ensure the protected green areas of Haslemere were not available for development ahead of brownfield. But a link, even a "strong link" is far from a "causal connection" which means a cause-and effect situation.

It is not difficult to see why this assumed causal connection was so significant for MK, who seems to have accepted, on the basis of evidence provided by the developers' surrogates, that new extended settlement boundaries had been decided - when this issue was by no means decided. At no time have I denied the significance of settlement boundaries to the issue of increased housing development, whether by Redwood (South West) Ltd *or anyone else.* It was solely an issue of boundaries for the protection of the protected land such as the AONB/AGLV on the one hand, and where housing might be built on the other. So of course this matter was of interest to anyone seeking to do future developments. But the evolutionary pathway of the NP was always subject to amendment until the plan was ultimately put through each statutory process, to WBC and referendum. Prior to that, no developer (including Redwood) could claim having a legitimate expectation.

I refer again to the witness statements MK took from the developers, who sought to express the proposed extended boundary in the draft NP accepted by the pre-May 2019 HTC as a *fait accompli*. It was not.

MK's reference to newspaper articles and Facebook pages of organisations unconnected me provides further examples that he uses to explain that I was conflicted to a degree that required disclosing a non-pecuniary interest. It is somewhat disturbing to see the extent of MK's research into seeking to justifying a finding that I had a non-pecuniary interest requiring disclosure. He appears to insist that the potential prejudice to the developers was a factor that I ought to have taken into account when considering settlement boundaries for Haslemere in general. There is nothing to indicate how MK exercised objectivity in this matter. He has failed to give proper weight to the fact that the location of settlement boundaries would inevitably impact on *all and any* Haslemere development; it would be extraordinary if every councillor had to disclose such an interest if they lived near a potential development site anywhere in Haslemere.

MK embarks on an extensive discussion of the "Model Code" that he contends "*would have*" required me to disclose that the proximity of the proposed development site to my home. I do not propose to comment on this, since the Model Code does not apply, and MK's discussion of it, all prejudicial to me, should be entirely removed the Report. Despite that it does not apply, MK considers he is entitled to use the Model Code for *"guidance"* in his analysis and expresses a view that I should have declared a non-pecuniary interest had that Model Code applied.

MK invokes the seven general Nolan principles of public life incorporated into the HTC Code although noting that they, like the HTC Code, provide no guidance as to what amounts to a non-pecuniary or non-registerable interest. MK then proceeds to discuss the principle of honesty in relating to conflict, stating that *"the principle of honesty is explicit that any conflict should be resolved in such a way as to protect the public interest rather than one's own private interest."* I absolutely agree. Honesty is essential to integrity in public life and is a principle that guides all of my conduct.

The Report continues, at p 64,

> "Hence, while we believe that Cllr Ellis should have declared an interest in respect of the proximity of her home to Red Court Estate in line with the principle of honesty as she had a private interest, we do not believe that her failure to declare, taking part in the discussion and vote and her failure to withdraw can be considered a breach of the rules around declarations of interest in the Haslemere Code as drafted, reprehensible though her actions might have been, as the Code is lacking in defining for these purposes what a private interest might be. It could be considered, however, that her actions failed to comply with the principle of 'honesty'".

And at p 65 he again seeks to apply the Model Code, but acknowledge it does not apply, and concludes with:

> "For that reason, whilst we conclude that Cllr Ellis should have declared an interest, we are unable to conclude that she breached the Code by failing to declare that interest because of the deficiency of the Haslemere Town Council Code of Conduct".

It is plainly wrong to accuse me of dishonesty, and clearly defamatory. It is an astonishing charge, and I wholly refute it. Any such obligation to declare is predicated on the existence of a "conflict." **There was no conflict.** I had no private interest in this issue, rather an interest that was shared by many Haslemere citizens. The matter under the Council consideration was where development boundaries should be, an issue central to the public interest, public benefit and for the common good of all Haslemere citizens. The NP that was placed before the Council in November 2019 was the result of extensive work, by the Haslemere Vision group, as well as the HTC NP working party which I had joined after I became a councillor. MK notes that HV met and ratified the NP the evening before the matter went to council for a vote. This NP plan as developed involved many individuals over a lengthy period of time.

It is simply wrong to allege that I was conflicted in participating in the vote concerning development boundaries for Haslemere. In conclusion, MK rejects any distinction between my obligations as a councillor in the subject matter of the November 2019 meeting, and my obligations as councillor at the planning application made some 9 months later. He conflates my obligations as one and the same.

In arriving at this conclusion MK makes several references to what the "ordinary man in the street with knowledge of the relevant facts" would have expected of me. it seems to me he is referring to the guidance offered by cl. 6(5) of the HTC Code of Conduct. The facts, as selected and set out by MK, are by no means all the relevant facts, and I am confident, as I was at the

time, that members of the public with knowledge of *all* the relevant facts would readily see the distinction, and moreover, would not discern any conflict.

The activities of the HSRA

MK discusses at length the HSRA and points out that different views of this organisation were held by me and by the complainants. I have already referred to Mr Benson's description of the HSRA. Whether MK gave any consideration to the possibility that Mr Benson had a vested interest in manner in which he described the HSRA's activities does not appear in the Report. MK does, however, repeat Mr Benson's view that the HSRA was formed to specifically to become an opposition group to Redwood (South West), and he is critical of my describing it as a 'vanilla' organisation. *This is his word, not mine.* He expressed scepticism about my comments that the HSRA had a larger interest in protecting the special local environment, rather than opposing a particular development.

MK implies that this there is something not quite straight about my evidence, although it is difficult to discern what exactly he is implying. Again, he emphasised that he is in "no doubt" about the importance to the HSRA to the Red Court development site. MK refers extensively to social media posting by the HSRA which he considers to be "telling". MK finally concluded that the sole purpose of the HSRA was to resist development of the Red Court site, although admitting that for the most part the website information was more generalised than Red Court. Nevertheless, in conclusion he rejects the larger green credentials of the Association. However, it is difficult to see what his criticism amounts to. When the protected area of AONB/AGLV came under threat by a proposed housing development, it is hardly surprising that local environmentalists sprang into action. When it became a formal organisation for the purpose of protecting the environment is immaterial. It is difficult to see any basis for criticising some 250 local citizens expressing their concerns.

MK went to considerable length to conflate the HSRA with me, although he is fully aware that I resigned as a committee member when I became a councillor, and that in the time frames he discusses I was not an active member involved with their activities. MK accepted that, albeit reluctantly. It is well known that I support the environmental objectives of HSRA, as I do the National Trust and the RSPB, both of which I am a member. His improper inferences are pure conjecture and highly prejudicial to my integrity.

Declaration of Interest

The final, and perhaps greatest 'justification' for MK's conclusions that I am dishonest, rest on the manner in which I filled in the "Declarations of Interest" form as a new councillor. New councillors had been given a training session on the Haslemere Council's Code of Conduct, which included identifying conflict of interests.

MK stated he found "puzzling" that I had written *"I have been asked to advise and observe Haslemere South Residents Association and represent members*

– *over 250 households in the Haslemere ward*". MK wrote that he found my explanation 'unconvincing' and considered that a member of the public would have regarded my choice of words as 'misleading'. This is astonishing, given that it has a plain meaning in our language, and I ask, misleading of what? It is clear from all of my actions that I went to some effort to try and ensure that I expressed the situation carefully and correctly. That my use of language did not meet MK's approval is irrelevant if he cannot explain in what way my words fell short of what they state. I add that I revisited the matter after the Town Clerk drew the Code and non-pecuniary interest provision to my attention ahead of the November 2019 vote, which had led to my careful review of my situation and further discussion with Mr Bainbridge, the WBC solicitor. I reiterate that in my exchanges with Mr Bainbridge regarding voting on the NP I sought clear and specific guidance as to whether I might or might not have an interest to declare. He did not tell me I had an interest to declare. Had I considered there to be an interest which I should have disclosed in relation to the voting on the NP I would have done so.

I also object to the insinuations that was I was devious and dishonest because I chose, and still choose, to withhold my home address from the public record. When I became a new councillor, I told the Town Clerk that I was the target of a stalker and wished to protect my whereabouts on the advice of the Surrey Police. I did not expect then, nor now, for this to become an issue on which I would be later deemed 'dishonest'.

Conclusion

In summary, I make an overall observation that the Draft Report prepared by MK is biased, prejudicial and supported largely (if not solely) by MK's interpretation and preferred views of information he received from those connected to the complainants. The Report is far from objective. In many instances there are indications of considerable zealousness in his efforts to denigrate me.

Furthermore, and crucially, I note in particular MK's 'finding' as set out in his Draft Report (at pp 64- 65), that MK concluded there had been NO breach of the Haslemere Council Code of Conduct. Yet in a final paragraph of his Draft Report he reaches an opposite conclusion, namely that I have breached that Code, referring to clauses 6(4) and 6(5).

MK claims that his Draft Report was "*peer reviewed - for quality and to ensure consistency of approach with similar cases across the country*". The peer review does not appear to have extended to accuracy of content and coherence of the conclusions.

In coming to his conclusion, based on his interviews primarily with the complainants, MK has concluded that I was dishonest. I stated at the outset that it is hard to imagine any greater damage that can be done an individual than damaging their reputation by the charge of dishonesty.

It is clear that the complainants (proxies for the developers) had a vested interest in seeking to have the Haslemere settlement boundary redrawn to open irreplaceable highly-valued green spaces for housing development. In this endeavour, they have challenged a legitimate democratic process by lodging complaints that have cast serious aspersions on two honest, hard-working councillors and caused considerable angst and stress.

Postscript: Local democracy marches on. This month matters have progressed. WBC's draft Local Plan Part 2 (LPP2) was voted through on 22 September 2021 and will now be subject to public consultation (now live until 12 November 2021). In the draft LPP2, the site allocation of Red Court has been replaced by a housing development at an alternative site on previously developed brownfield in a location deemed more suitable by the majority of its Council. On the 7 October 2021, the Haslemere Neighbourhood Plan was voted for, in favour, - by 87 percent of voters which means that the NP must now be adopted as local planning policy by WBC. If MK, in his Draft Report, was willing to uphold the complainants' strongly held view that in my efforts as a local councillor to uphold and represent the majority views of my constituents I was somehow aberrant, I suggest that the record of the local democracy – above and beyond myself – speaks for itself.

Appendix 20

Gmail	Kirsten Ellis <kirsten.ellis@haslemeretc.org>

Declarations of NPI

Kirsten Ellis <kirsten.ellis@haslemeretc.org>
To: Pippa Auger <deputy.clerk@haslemeretc.org>

11 September 2020 at 10:00

Dear Pippa,

Of course. Please see below.

Kind Regards
Kirsten

I am declaring a non-pecuniary interest in that I live adjacent to the Red Court site, and I am a member of the Haslemere South Residents Association. I am also a member of the National Trust. My declaration does not prohibit me from taking part in this discussion and vote, and fulfilling my duties as a Councillor and representing my constituents. This vote -- either way -- does not determine whether or not this proposed application is approved -- but rather, its function is to reflect the wishes of Haslemere citizens so this can be recommended accurately to Waverley and be taken into account when they make ***their*** decision on this application -- a decision as I as a parish councillor, have no say in. I am looking forward with an open mind to learning more about this application and hearing all the facts put before Council tonight and being discussed by my Fellow Councillors so that I can make an informed consideration before coming to a decision.

[Quoted text hidden]

Appendix 21

Response to appellants WA/2020/1213 - Comment on Biodiversity Net gain calculation

Professor Tom Oliver, University of Reading **23 Dec 2021**

Following the appellants response as part of the appeal process, I feel compelled to write to clarify several important issues that pertain to the biodiversity net gain calculations. It is important to offer this evidence as there some factual errors in the appellant response that should be highlighted.

In a previous communication dated 21st October I stated that there would actually be -44.64% *loss* of biodiversity if the on-site woodland is actually in moderate condition rather than poor. The appellant rejects this argument[1] making two points. The first point is that the assessment is "based upon ecological assessments undertaken specifically for this purpose, by ecological surveyors, over a period of four years and with reference to the arboricultural survey and reporting undertaken for the application". The consultants themselves additionally state[2]: "We are not aware that Professor Oliver is experienced in the use of the Defra biodiversity metric...The biodiversity net gain information presented with the application is the result of the work of professional ecologists, trained and experienced in the application of the biodiversity net gain assessment process. We therefore believe that the inspector can rely on the conclusion that the development can deliver a net biodiversity gain...".

By way of background, after a PhD in ecology I have 8 years experience working specifically on biodiversity monitoring data at a UK government research institute for terrestrial ecology (UKCEH), then 7 years as a Professor of Applied Ecology at the University of Reading. In that role, my research focusses on analysis of UK biodiversity trends driven by land use, and I also teach on the use of biodiversity net gain to MSc students on the Species Identification and Survey Skills course (many who go on to develop careers in ecological consultancy). The biodiversity net gain metric is newly implemented for UK development planning, so not even the consultants are very experienced in it's use. I believe, it is important that diverse institutions work together to ensure the tool is applied correctly to allow appropriate development that protects biodiversity. I would like to note that the Engain consultancy employed by the appellants have made major errors in their initial use of the net gain calculation. Namely, in the first submission there was a double counting of habitats as both enhanced and created. This error has been rectified in the resubmission in the appeal although it was not acknowledged explicitly. There have also been changes in the classification of habitats throughout the process. Assuming these habitats haven't actually changed on the ground in that short timeframe, these amendments have been made by the consultants during the process of this planning application. Quality assurance checks should be made *before* any submission for planning and not *post-hoc*. This suggests to me that the consultancy are not highly experienced in the use of the tool and independent oversight is valuable.

The second point raised to attempt to reject my claim of biodiversity loss from this planning application is that my calculation 'omits from the area of woodland that would be retained and enhanced'. This is incorrect. If the on-site woodland were to be in moderate condition, then there can be no site enhancement of woodland to moderate conditions. Changing the condition of the woodland to moderate in the net gain calculator, and specifying zero hectares of woodland as enhanced (rather than 0.92 as enhanced from poor to moderate) alters the net gain headline from +20.22 to -44.64%.

The condition assessment of the woodland is clearly vital here[3]. The appellants have usefully provided a scoring of the woodland condition in relation to my scorings[4]. Most of the scores match, except four scoring items. These make the crucial difference between the onsite woodland being

scored poor (a total score of 25; as suggested by the appellants) versus a moderate woodland (any score of 26 or above). Hence, **a single point tips the difference from poor to moderate woodland and changes the net gain total from +20.22 to -44.64%.**

Two of the scoring items for which there are discrepancies between my scores and the appellant's relate to invasive species in the woodland. For scoring item 5, which asks about the proportional cover of native woodland, the appellants suggest this scores two (out of three) points on the basis that there are-non native species present. However, the consultants have failed to provide any figures on these proportions. The scoring criteria ask specifically *what proportion* of the woodland is non-native. Simply stating that there are some non-native species is present is not sufficient. Estimates of non-native species cover can be obtained through standardised transect sampling or remote sensing and these are needed to justify a lower scoring than three points.

Another item (#3) relates to non-native species. Again, the proportion cover of these species is not provided by the appellants. They state that rhododendron and laurel are present to justify the lowest scoring possible, but I note that there has been planting of laurel in the area, documented by the appellants themselves[5]. The total proportion of non-native species in the on-site woodland should be stated explicitly to justify a lower scorings.

The third discrepancy in my scoring versus the consultancy relates to tree health (item 8). Again, the scoring criteria asks for percentage estimates of tree mortality or crown die-back. These are not provided. The final point relates to veteran trees, with the appellants suggesting there are none on the site.

In addition to the important remaining issues around scoring of woodland criteria, I would note that several of my concerns in letter dated 21st Oct are not dealt with. These include the correct use of biodiversity offsetting guidance. Namely, according to Defra's guidance to developers, biodiversity offsets come at the end of the 'mitigation hierarchy' (e.g. *Biodiversity Offsetting Pilots Guidance for developers*, March 2012[6]). Before consideration of offsetting there is necessary due diligence to **Avoid** harm. This involves "**ensuring that negative impacts do not occur as a result of planning decisions by, for example, locating development away from areas of ecological interest.**" In their appeal letter, the developers suggest that "where possible, as part of the overall Ecological Impact Assessment (EcIA ref: eg17812.002 Land at Scotland Park Full Ecological Assessment) and this BNGA, **the mitigation hierarchy as set out best practice has been applied**". However, their sole proposed action to avoid harm in the appeal plans is through 'Retained woodland and hedgerows on site where possible'[7]. They propose to avoid harm by retaining less than a fifth (17.9%) of the original semi-natural habitat on this site, whilst covering 72.8% of the site in urban sealed surfaces, gardens and amenity grassland. This makes a mockery of the first principle to avoid harm on sites of high biodiversity value by ensuring that negative impacts do not occur as a result of planning decisions. Following the Defra guidance, due to the reasonably high biodiversity value of this site, the proposal should never have proceeded to such an advanced stage of development planning. Harm would be best avoided by finding alternative a lower biodiversity site.

The other point I made not dealt by the appellants relates to the nature of off-site enhancements proposed to improve habitat condition. Despite conversion of 73% of the site to urban land and amenity grassland, very little new habitat is created off-site as part of the proposed offsetting. In total, 4.23 hectares of the original site habitat will be lost, and only *0.39* hectares of new habitat will be created off site. This will be achieved by converting grassland into heathland. The majority of habitat units proposed to be gained involve converting supposedly 'poor' quality woodland and heathland into 'moderate' or 'fairly good' condition respectively. Details of all such enhancements are therefore crucial to assess the credibility of plans. For the heathland there are no specific details.

For the woodland it is stated to "Enhance (i.e. restore) it to 'Moderate' condition through management, such as planting standard trees, allowing existing mature trees to veteranize and maintaining the balance of scrub and grassland". It should be noted that much of this proposed enhancement would occur anyway with minimal effort (e.g. 'allowing existing mature trees to veteranize' means simply leaving them alone) or with light management. A credible net gain proposal would need to justify the 'poor' condition of current woodland with respect to conditions assessment criteria (worksheet 22 in Biodiversity Metric-version 3.0 Habitat condition assessment sheets with instructions'), and explain management actions that would enable criteria to change to 'moderate' condition, in the absence of standard ageing processes.

Please note, I once again confirm here that I have no vested interest in this planning application, nor affiliation with this particular site. I am concerned about seeing the correct use of Defra's net gain guidance for development, and of retaining the protection for biodiversity highlighted in local council and the UK national Government commitments. The UK is one of the most nature depleted countries in the world according to recent assessments[8]. We have failed to achieve national commitments to reverse biodiversity decline[9] (failing to achieve 14 out of 20 targets for 2020, in particular the key biodiversity targets related to species and habitat protection). Yet, this biodiversity decline fundamentally threatens the livelihoods and health of its citizens, for example Prime Minister Boris Johnson stated[10]: *"We must act now – right now. We cannot afford to dither and delay because biodiversity loss is happening today and it is happening at a frightening rate. Left unchecked, the consequences will be catastrophic for us all. Extinction is forever – so our action must be immediate."* Therefore, protecting remaining sites of high biodiversity is essential to our livelihoods. This early case of use of the net gain calculation for Planning Application WA/2020/1213 and this appeal highlights the need for better scrutiny of submissions to prevent development that contravenes mandatory requirements under the forthcoming Environment Bill and hastens national biodiversity loss.

Yours faithfully,

Tom Oliver
Professor of Applied Ecology, University of Reading

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[1] See Appendix 5 Response to Councillor Ellis representation (Engain)- Proof of Evidence of Charles William Collins MSc MRTPI

[2] eg17812 Land at Scotland Park-Further Information in relation to Submissions made during the planning appeal-21-12-21)

[3] http://publications.naturalengland.org.uk/publication/6049804846366720 see 'Biodiversity Metric 3.0 - habitat condition assessment sheets with instructions'

[4] Found in appendix 4 of the response from appellants in the document referenced in note 1 above.

[5] eg17812 Land at Scotland Park-Further Information in relation to Submissions made during the planning appeal-21-12-21

[6] *Biodiversity Offsetting Pilots Guidance for developers*, March 2012 *https://www.gov.uk/government/publications/biodiversity-offsetting-guidance-for-developers*

[7] Point 3.2 in *Engain Technical note Scotland Park Biodiversity Net Gain Assessment*

[8] UK has 'led the world' in destroying the natural environment | Natural History Museum (nhm.ac.uk)

https://www.nhm.ac.uk/discover/news/2020/september/uk-has-led-the-world-in-destroying-the-natural-environment.html

[9] https://jncc.gov.uk/our-work/united-kingdom-s-6th-national-report-to-the-convention-on-biological-diversity/ http://ww2.rspb.org.uk/Images/A%20LOST%20DECADE%20FOR%20NATURE_tcm9-481563.pdf

[10] https://www.theguardian.com/environment/2020/sep/28/world-leaders-pledge-to-halt-earth-destruction-un-summit

Appendix 22

Freedom of information request
Reference: FS239718659

Are you making this request on behalf of a company or organisation?:

How would you prefer to receive the information?: Email

Your name:

Title	First name or initial	Last name
Dr	Kirsten	Ellis

Email address: kirsten.ellis@haslemeretc.org

Confirm email address: kirsten.ellis@haslemeretc.org

Daytime phone number

Please describe the information you want in as much detail as possible:: On 26 May 2020, I was informed by Mr Robin Taylor, WBC Monitoring Officer, that I was the subject of an informal investigation following three complaints by members of the public, one being the representative of a property developer and two of whom were granted anonymity.

I am now informed that after almost three months of investigation, Mr Taylor is unable to specify for me the nature of the non-pecuniary interest he apparently still believe I "may have had" and which he finds 'unable to resolve informally' and is now referring to "one of Waverley's Independent Persons." As I have replied factually to the allegations raised by my complainants, both in a two-hour meeting and via lengthy documentation in circumstances I regard as very formal indeed, I am entitled to know at the very least what Mr Taylor suspects so strongly may require further investigation.

I am requesting via FOIA to be informed of my complainants' identities and any content of their allegations which was redacted from me and correspondence about this matter by all relevant parties.

I fail to see how any formal inquiry can be carried out honestly or fairly as long as these points remain hidden from my, or public, view.

I hereby insist formally that I be provided immediately with:

1. A full unredacted copy of all information and documentation about me being put before "one of Waverley's Independent Persons"

2. The identities of the two complainants granted anonymity, who filed seemingly coordinated complaints about me with the named complainant, some of which appear to be slanderous

3. Copies of all email correspondence between any and all of Waverley Borough Council and Haslemere Town Council Councillors and staff and the complainants regarding this matter.

Cllr Kirsten Ellis (PhD)
Independent Councillor for Haslemere South

If the information you require was produced on a particular date or between known dates, please provide these or an approximate date range.: November 2019 - August 2020

Please indicate which Waverley Borough Council service you think might hold the information. Please leave blank if you do not know.:

Please upload attachments related to your request here:

Ref FS239718659

Kirsten Ellis <kirsten.ellis@haslemeretc.org> Tue, 18 Aug 2020, 18:27

to foi

Dear Information Rights Co-ordinator

I submitted a FOIA request to Waverley Borough Council today. I would like to add a request for additional information. Please let me know if I need to fill out a separate form.

Otherwise can the following be added to my request Ref FS239718659:
I would like to know the cost of this investigation to the taxpayer, to date.

Sincerely
Cllr Kirsten Ellis (PhD)
Independent Councillor for Haslemere South

AutoResponse: Re: Update

Inbox

Freedom of Information <foi@waverley.gov.uk> Wed, 7 Oct 2020, 10:09

to me

Thank you for your email to the Information Rights service regarding Freedom of Information or Data Protection.

Please take this automated response as acknowledgement of your email. Please be aware that due to current events requests may not be responded to within the statutory deadlines. We are still working to ensure that business as usual remains where possible however please see below ICO guidance:

On 16 March 2020, the Information Commissioner's Office (ICO) published an announcement concerning public authorities' responses to requests for information under the Freedom of Information Act 2000 (FOIA) in view of the 2019 novel coronavirus disease (COVID-19).

The default timescale under FOIA requires public authorities to respond within 20 working days of receiving the request

Because of the potential diversion of resources from compliance and information rights work as a result of COVID-19, the ICO will not penalise public authorities for "prioritising other areas or adapting their usual approach". The ICO cannot extend

---------- Forwarded message ---------
From: **Kirsten Ellis** <kirsten.ellis@haslemeretc.org>
Date: Fri, 17 Sept 2021 at 10:22
Subject: Fwd: Freedom of Information request - Ref: FS352900116
To: Freedom of Information <foi@waverley.gov.uk>

Dear Information Officer,

I submitted the attached request for information under the FOI on July 29 2021, and aside from the automated response, have not received any reply within the statutory appropriate timeframe. I recognise the extra pressures of the coronavirus situation, however a significant time has elapsed.

As a Haslemere Town Councillor, I have now been the subject of an in-house investigation following complaints by the property developer Redwood's agent Brian Cox and his friend Richard Benson as to whether or not I may be in breach of the Haslemere Town Council Code of Conduct for some 16 months, in other words the majority of time since I was elected as Councillor. It is well acknowledged that simply being under investigation of any kind can cause serious stress for the individual placed in such a position.

I have asked for this information because I believe it is in the public interest.

Kind Regards
Kirsten Ellis

Kirsten Ellis (PhD)
Haslemere Town Councillor (Independent)
(01428) 653937

---------- Forwarded message ---------
From: **Waverley Borough Council** <noreply@waverley.gov.uk>
Date: Thu, 29 Jul 2021 at 16:46
Subject: Freedom of Information request - Ref: FS352900116
To: kirsten.ellis@haslemeretc.org <kirsten.ellis@haslemeretc.org>

Thank you for your Freedom of Information request.

Waverley Borough Council aims to respond to all Freedom of Information requests promptly and in any event within 20 working days. You will shortly receive a formal

acknowledgement setting out the date by which you should expect a response to your request.
Please keep this email as a confirmation of your request.
Do not reply to the email, as this inbox is not monitored.
If you need to get in touch, you can contact the Information Rights Co-ordinator at foi@Waverley.gov.uk

This email, and any files attached to it, is confidential and solely for the use of the individual or organisation to whom it is addressed.
The opinions expressed in this email are not necessarily those of Waverley Borough Council.
The Council is not responsible for any changes made to the message after it has been sent. If you are not the intended recipient of this email or the person responsible for delivering it to them you may not copy it, forward it or otherwise use it for any purpose or disclose its contents to any other person. To do so may be unlawful.
Please visit our website at http://www.waverley.gov.uk

Kirsten Ellis <kirsten.ellis@haslemeretc.org> Mon, 31 Jan, 09:53

to sarah.coates, Robin

Dear Ms Coates and Mr Taylor,

I write in relation to the request I made under the Freedom of Information Act on 29 July 21 2021 **FS239718659** and as a data protection subject access request on 26 November 21 2021 **WAV1405796.**

Following ICO advice, I registered on January 5 2022 a complaint about receiving neither the information requested nor a formal explanation of why my requests for information have been denied in full or in part despite my backup inquiries. While I have made it known that I want the information requested in relation to an upcoming public hearing about my case, this fact should not be acting as a bar to my access to it. As I have been advised, my statutory right to access to the information is as of right, not harnessed to my need for it as determined at its discretion by the organisation requested (in my case the HTC and/or the WBC).

I look forward to hearing from you very soon about this matter.

Regards
Kirsten Ellis

Dr Kirsten Ellis
Haslemere Town Councillor (Independent)

the statutory timescales, but will take into account the compelling public interest during the health emergency when assessing any complaint of non-compliance.

It appears that this approach will be taken in respect of requests for environmental information under the Environmental Information Regulations 2004 (SI 2004/3391) (EIR). The EIR apply the same default timescale for a response as is in place under FOIA.

In a separate announcement, the Local Government Secretary has stated that councils will be able to "use their discretion" on deadlines for FOIA requests (see Legal update, Government confirms support for local authorities in response to COVID-19).

We apologise for any inconvenience this may cause and thank you for your understanding.

If you require further information about our services please visit https://www.waverley.gov.uk/info/200364/freedom_of_information_and_data_protection

Kirsten Ellis <kirsten.ellis@haslemeretc.org> Wed, 21 Oct 2020, 13:43

to Freedom

Dear Sarah,

Further to our conversation, I am forwarding you the communication I received on 7 October in relation to my query regarding my FOIA request submitted 18 August.

Robin Taylor had said he would respond to me on this matter by 9 October; that deadline has passed.

As stated in my email to you 7 October if Robin Taylor intends to refuse my FOIA request, either in full or in part, a refusal notice that states the section of FOIA being relied upon, the reason for his decision, including details of any public interest and prejudice tests. The notice must inform me of my right to complain to the Information Commissioner, as standard.

Thank you for your assistance in this matter.
Kind regards
Kirsten

Dr Kirsten Ellis
Independent Councillor, Haslemere South