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Tim Pashen, Acting Chief Executive
& Alan McClafferty, Leader
Surrey Heath Borough Council
Surrey Heath House
Knoll Road
Camberley GU15 3HD

23rd April 2020

Dear Sirs

Report of the Independent Investigation into the (former) CEO and subsequent mishandling by Surrey Heath Borough Council.

I write this open letter on behalf of the MYTCHETT, FRIMLEY GREEN & DEEPCUT SOCIETY, the de facto residents association for the three villages. I have also included comments and questions based on my wide experience at senior levels within the Human Resources profession and as a former long-standing Chartered Fellow of the Chartered Institute of Personnel and Development.

We as a committee, along with many of our residents, are deeply unhappy with the revelations in the above report, the level of redaction in that report, the many unanswered questions raised by the report and by the actions or inactions by the Council. This letter of COMPLAINT also sets out to seek further information and to request urgent remedial actions.

1. As the report was published with redactions being justified under the Freedom of Information Act we request a review of those redactions in line with the Act and the FOI Code of Practice. We understand and accept that some elements in such a report should not be disclosed. However, the level and focus of redaction suggests that an over-cautious approach may have been taken. We find it hard to believe that, for example, the entire timeline warrants redaction. We hope that you can help facilitate a satisfactory response as this would be quicker and easier than taking it up with the Information Commissioner under Section 50 of the Act.
2. The report details a number of unlawful decisions. Can you please let us know the number and nature of disciplinary actions taken as a consequence. We do not expect you to reveal names or other personal details, simply to demonstrate that actions have been taken proportionate to the wrong-doing. The report is dated 22 November 2019 so there has been plenty of opportunity to take these actions prior to the resignation of the CEO and before we have all become embroiled in the Covid-19 crisis.
3. The report sets out payments that were made unlawfully, including as pay or allowances, expenses and benefits. It is standard practice where there have been incorrect payments or overpayments, whether

made innocently or otherwise, for an employer to seek to recover those amounts, usually by agreement or on termination of employment. Can you let us know what efforts were made to recover these sums and how much has been recovered. If there were no efforts made, or those efforts were inadequate, what action will you be taking, including disciplinary action against those who failed to take action, or those who may have blocked such action?

4. The authors of the report are of the view that it is not necessary to refer this matter to the Police. This was simply a recommendation and the Council presumably discussed and considered this option. We are of the view that the very council that behaved unlawfully should not decide upon its own fate. The management team and Councillors - albeit with some different individuals involved - should not vote on their own innocence. We therefore formally request that this matter is immediately put to the proper authority, the Police, for them to determine what charges if any should be made. The Crown Prosecution will then decide whether and whom to prosecute. The Council should not be seen to be judge and jury in its own case or in relation to individuals with whom they have worked so closely.
5. The report shows that the CEO received expenses and benefits over and above the rates agreed with HMRC. These sums should be taxable. Have you sent a copy of the report (unredacted) to HMRC? If not, we formally request you do so without delay.
6. The value of the car purchased by Ms Whelan is highlighted as significantly different to the amount she paid for it. How has this been addressed?
7. There is little reference in the report to the Council's Anti-Fraud and Corruption Strategy nor the National Code of Local Government Conduct. This may, of course, be in a redacted section. Can you please confirm how the Anti-Fraud and Corruption Strategy was applied, or not, in this case.
8. There are a number of Committees, such as the Executive, the Employment Committee and the Audit & Standards Committee, that presumably have an interest in this case, especially in ensuring that proper actions have been or will be taken. What actions have they asked you or other officers to undertake, and what other actions, if any, have you taken and will be reporting back to them?
9. The Report was presented in November 2019 after some delay. What was the cause of that delay and how has that been resolved? There was also a considerable delay (almost 5 months) in publishing the report. What was the cause of that delay and what happened during that intervening period?
10. Under 'The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015' a new process was introduced for disciplinary action against statutory officers. This is reflected in the 'Terms and Conditions of Service Handbook for Chief Executives and Chief Officers'. According to 'Local Government Lawyer' the investigation report should be considered by an independent panel and they should compile a report of their own. Both reports along with recommendations from the Employment Committee should go to full council for a final decision. Can you please confirm that this process was followed and provide us with a copy of the independent panel's report (with a minimum number of redacts please).
11. Investigations such as this one often uncover other factors. The type of leadership revealed in the report is sometimes also associated with other undesirable behaviours such as autocratic decision making, a culture of non-disclosure, fear of whistle-blowing, bullying and discrimination. What data or other evidence do you have on these matters (eg number of cases of bullying recorded)?
12. Karen Whelan is the sole Director of SHBC Camberley Ltd which is one of two unit holders in Main Square Camberley Unit Trust, a Jersey Property Unity Trust. Has Ms Whelan been replaced as Director? If not, when will this be done? Has this caused or might it cause any difficulties? Has Ms Whelan received, or might she receive, any personal financial benefit in this role or on her departure?

13. What payments were made to the CEO to help facilitate her resignation? What other arrangements or deals were done? We understand that there are often non-disclosure clauses in Settlement Agreements but in the broadcast Audit Committee meeting on 20 April 2020 a so-called 'Compromise Agreement' was raised by the Auditor and discussed (perhaps inadvertently revealing more than should have been revealed). The fact is that this is now in the public domain and we as residents and ratepayers demand an explanation - you will know the mantra 'this is our money' and it is true. We do not want secret deals covering up, possibly even rewarding wrong-doing. This would be to simply compound earlier failings and bring the current council, members and officials, into even greater disrepute.
14. Was the pay rise or allowance retrospectively approved in secret by the full Council (or others)? If this was done (eg as part of a deal), were the Councillors fully briefed on the implications for the former CEO's pension? The tax implications (eg regarding her expenses)? How inexpensive it would be to pursue overpayment of expenses through a breach of contract claim in the Small Claims Court? Or was their decision made in ignorance of these and other important facts because officials had not properly briefed them? Most crucially, if this was awarded as an Allowance does it not still breach the Council Policy? If it was awarded as a backdated pay rise, was the proper benchmarking procedure followed along with a structural review of pay bands? Any pay rise without following the proper review procedures, even if approved by full council, would remain unlawful and should be subject to a second investigation.
15. The Localism Act 2011 requires councils to produce and publish a pay policy statement. According to the Act and statutory guidance published in 2012 and 2013, the statement should include the local authority's policy on specific aspects of chief officers' remuneration. Again, if any decision was made to retrospectively approve the pay rise given to Ms Whelan would you please provide details to demonstrate that it was fully in line with the published policy. Please note that the 'Joint Negotiating Committee for Chief Executives National Salary Framework & Handbook' states: "...it is essential for good governance that local authorities can demonstrate that decisions on pay and reward packages for chief executives have been made in an open and accountable way".
16. The report states that only limited information was provided about gifts Ms Whelan received (Para 148). Can you please provide us with details of all gifts valued over £50 since 2017. Can you also confirm that investigations were made into the potential non-registration of gifts. For example, on 24th May 2017 Ms Whelan claimed three taxi fares but no subsistence. Did she declare the cost of the meal she received?
17. The report itemises a number of unlawful payments but does not show an overall total (unless again this is in the redacted section). What was the total amount paid unlawfully or inappropriately to the CEO?
18. What has been the total cost of the investigation including the fees paid to Browne Jacobson and any other associated costs related to the investigation?
19. We believe that the Council should report back to residents on this whole debacle as openly and constructively as possible. We would welcome plans to provide further communications and engagement with residents (though we appreciate the limitations during the current lockdown). At the moment many residents are furious not just about past failings but how things are now being handled. We would welcome an end to secrecy, lack of accountability, the repeated lost opportunities to recover moneys and to punish wrong-doers. We would like to see the specific lessons learnt, the meaningful actions taken and your plans on how to communicate this to local people.
20. Are there any matters related to the above that the public should know about? Now is your opportunity to provide a full and open declaration. If there are any areas where you are legally restricted in what

you can disclose please provide an outline description of that area and the legal reasons why you cannot disclose further details. Please be as forthright as possible.

You may prefer to liaise and provide a joint response if you wish. We look forward to an early reply. If, in the light of current circumstances, there is likely to be any delay, please do give us an interim response and details of when we might expect a fuller reply.

As this is an open letter we will make your responses available to our members, other local residents and the wider community.

Yours faithfully

Graham O'Connell
For & on Behalf of the Mytchett, Frimley Green & Deepcut Society

<https://mfgdsociety.org.uk>

[Investigation Report](#)