

Our reference number: 2023/192021
Your reference number: TBC



PO Box 473
Sale M33 0BW

Northamptonshire Police, Fire and Crime Panel
One Angel Square,
Northampton,
NN1 1ED

Blwch Post 473
Sale M33 0BW

Tel/Ffôn 0300 020 0096
Text relay/Cyfnwidi Testun 18001 0207
166 3000
Email/E-bost
enquiries@policeconduct.gov.uk
Web/Gwefan www.policeconduct.gov.uk

Catherine.Whitehead@westnorthants.gov.uk

10 August 2023

Dear Ms Whitehead,

Referral of Serious Complaint to the IOPC – Mr Ian McCord

Thank you for your referral of 1 August 2023.

The IOPC has decided that this matter should be returned to you to be dealt with in accordance with Part 4 of the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012. Based on the information provided, we do not feel an investigation by the IOPC is required at this stage. This is because it was not considered that there was an indication that Mr Stephen Mold's conduct constituted or involved, or appeared to constitute or involve, the commission of a criminal offence at this time.

When considering whether this complaint requires investigation, I have considered if the conduct complained about constitutes or involves, or appears to constitute or involve, the commission of a criminal offence.

In his complaints, Mr McCord has alleged the following;

- Unlawful appointment of Ms Marzec to Acting Chief Fire Officer
- Multiple breaches of the OFPCC Code of Conduct
- Misconduct in a Public Office and failure to make a disclosable pecuniary interest

My decision has concentrated on alleged criminality as any possible breaches of codes of conduct (while relevant to the overall decision) do not fall within the remit of the IOPC. The two criminal offences being alleged are a failure to declare a disclosable pecuniary interest contrary to s.34 of the Localism Act 2011 and Misconduct in Public Office (MIPO).

The Localism Act provisions relate to the obligation on members of "relevant

authorities” to declare a “disclosable pecuniary interest” in relation to the functions of that authority. S.43(1) of the Localism Act 2011 defines a “relevant authority” as

“(i) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies, or
(j) in relation only to sections 38, 40 and 41 and this section, a fire and rescue authority created by an order under section 4A of that Act”.

This means that ss. 30 and 31 of the Localism Act do not apply to Police, Fire and Crime Commissioners because they are not relevant authorities for the purposes of those sections of the Act. In addition, while there is an obligation for PCCs to publish a register of interests, it is not a criminal offence to fail to do so. The Localism Act would not therefore appear to be applicable in these circumstances.

The offence of MIPO is committed when;

- a public officer acting as such
- wilfully neglects to perform their duty and/or wilfully misconducts themselves
- to such a degree as to amount to an abuse of the public's trust in the office holder
- without reasonable excuse or justification

I have therefore considered if Mr Mold made the appointment of Ms Marzec knowing it to be wrong or with reckless indifference as to whether it was wrong or not. Also whether he abused the public's trust without reasonable justification or excuse. There is a very high bar of seriousness for a MIPO offence. The alleged conduct must have injured the public interest or abused public trust to such a degree as to warrant criminal punishment. Mere negligence or even a serious mistake will not suffice.

In terms of the procedural aspect of the appointment, Mr Mold had access to legal advice from outside of his office (so arguably some level of independence) that he could make the appointment without going to the panel. It is therefore unclear to me that Mr Mold made the appointment knowing it to be wrong even though the legal advice has subsequently been shown to be incorrect. In terms of reckless indifference, it is a concern that Mr Mold has subsequently admitted that he has a personal friendship with Mrs Marzec beyond work. As a result, it should perhaps have been clear to Mr Mold that even though the legal advice may have allowed him to make the appointment, not declaring the apparent conflict or seeking additional approval would leave him open to challenge. That said Mr Mold has provided mitigation in respect of the fact the appointment was only ever temporary, he had no deputy but needed an urgent appointment to cover the Grand Prix and Ms Marzec had the requisite experience. In light of the fact that an urgent appointment may have been justifiable, I am again unclear as to how it can be currently argued Mr Mold acted with reckless indifference and therefore that there is an indication he may have committed the offence of MIPO.

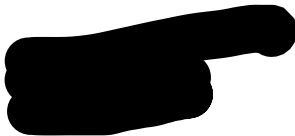
Considering the nature of what has been alleged and the information provided, I do not consider that an investigation is necessary as there is not an indication the circumstances as set out involve or appear to involve the commission of a criminal offence. We have therefore decided to return the matter to you to be dealt with in a

manner that you consider appropriate in accordance with Part 4 of the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012. If at any point following this decision the appropriate authority identifies new evidence which might merit this decision being reconsidered, the matter should be re-referred.

A copy of the letters sent to Mr McCord and Mr Mold have been enclosed. A copy of this decision letter is also being provided to Mr McCord.

If you have any questions about this matter, please do not hesitate to contact me.

Yours sincerely,



Brett Gerrard
Head of Assessment Unit
Independent Office for Police Conduct (IOPC)
P.O.Box 473
Sale
M33 0BW


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