

DECISION NOTICE: No Further Action **Reference COC126486 and COC126543**

Subject Member

Cllr Mary Douglas – Wiltshire Council

Complainants

- (1) Ms Maxine Nutting (COC126486)
- (2) Ms Lisa Taylor (COC126543)

Monitoring Officer

Ian Gibbons

(supported by Kieran Elliott, Senior Democratic Services Officer and Alice Ryan-Lowes, Trainee Solicitor)

Independent Person

Mr Stuart Middleton

Hearing Sub-Committee

Cllr Ruth Hopkinson (Chairman)

Cllr Richard Britton

Cllr Peter Evans

Mr Richard Baxter (Co-opted non-voting member)

Decision Date

6 November 2020

Issue Date

17 November 2020

Complaint

The Complainants each submitted a complaint alleging that at a meeting of Salisbury Area Board on 4 November 2019 Cllr Mary Douglas breached Wiltshire Council's Code of Conduct by failing to promote high standards of conduct in her public office in that she:

- did not act in the public interest when she expressed her personal views on the Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) community to justify her position in not supporting the provision of a grant for the Pride March in Salisbury during 2020;
- failed to have regard to the Public Sector Equality Duty (PSED) when she expressed her personal views in regard to the LGBTQ community; failed to consider the needs of different groups within her constituency; and in doing so,
- failed to have regard to the principles of selflessness, integrity; objectivity, accountability, openness, honesty and leadership as required by the Code.

Meeting

The Sub-Committee met on 2 November 2020 to hear the complaints.

The Chairman summarised the proceedings to date, including the outcome of the meeting on 23 September 2020 when the matter was adjourned as a result of the Independent Person being unable to attend due to unforeseen circumstances and directions for the hearing were given.

After introductions from those present, the Sub-Committee noted that the complainants had been informed of the hearing and had been given the opportunity to attend.

Ms Maxine Nutting provided a statement advising that she was unable to attend the hearing in person due to work commitments. No response had been received from the other complainant, Ms Lisa Taylor, who had previously confirmed that she would not be attending.

The Sub-Committee then considered as a preliminary issue whether the hearing should be in public. After hearing from the parties present and the Monitoring Officer, and in the absence of any objections, the Sub-Committee determined that the matters should be heard in public in the interests of openness and transparency.

The Chairman confirmed that the Sub-Committee would consider both complaints together as they arose from the same set of facts.

After confirming the documentation which had been circulated to the Sub-Committee and parties in advance of the hearing, the Chairman explained the process that would be followed for the hearing in accordance with Paragraph 8 of the Council's Arrangements for Dealing with Code of Conduct Complaints, which had also been circulated.

Matters agreed between the parties

The Sub-Committee noted that the following points were agreed by the parties:

- Cllr Mary Douglas is and was at the time of the meeting of the Salisbury Area Board on 4 November 2019 an Elected Member of Wiltshire Council; Wiltshire Council's Code of Conduct, as set out in Part 12 of the Council's Constitution, was in effect at the time of the Area Board meeting on 4 November 2019;
- The statement made by Cllr Douglas at the Area Board meeting is as set out in paragraph 4.7 of the Investigating Officer's reports (page 25 of the Agenda) and is taken from a prepared statement (page 55 of the Agenda). The statement made by Cllr Douglas is:

"I cannot support this. Not because I do not accept or respect or love people who identify as LGBTQ but because I do. I do not reject people who so identify, and I support completely their right to make choices and to live as they see fit. However, I do not support those choices themselves, nor the ideology they represent. These are beautiful people, well-meaning and sincere, but misguided

by a powerful ideology – google Gay Liberation Front Manifesto mid-20th C – which I do not want to be part of promoting. This is not just my view – it represents that of many people who are afraid to say so, ‘the silent majority’.

In fact, even if I agree with the ideology, should local government be funding a march to raise the profile and promote the worldview of any one part of our community. In a diverse society, we need to tolerate different viewpoints and lifestyle, but we do not need to affirm them. Indeed, the very word ‘tolerate’ indicates that we disagree or potentially disapprove of that which we are asked to tolerate. We absolutely should permit marches promoting an ideology, religion or worldview but we do not need to and, indeed, should not promote them”.

- The public sector equality duty (PSED) extended to Cllr Douglas and her decision making at the meeting on 4 November 2019.

Decision

After hearing from the parties and their representatives in accordance with the agreed procedure the Sub-Committee withdrew, together with the Independent Person, Monitoring Officer and supporting officers.

The Independent Person was consulted throughout the process and his contributions were taken into consideration by the Sub-Committee in reaching their decision.

Following deliberations the parties were recalled and advised that further time was needed to reach a conclusion and that the Sub-Committee would therefore reserve their decision until a date to be agreed at the earliest opportunity.

The hearing resumed on 6 November 2020 for further deliberations at the conclusion of which the Sub-Committee’s decision was announced to the parties and their representatives as follows:

Having considered all relevant matters, including the complaints, investigating officer’s report, the submissions made on both sides, and the statement from one of the complainants, the Sub-Committee has concluded:

1. *On a balance of probabilities Cllr Douglas did have due regard to the matters set out in section 149 Equality Act 2010 and, therefore, met her obligations under the Public Sector Equality Duty.*
2. *Notwithstanding this, the Sub-Committee considered Cllr Douglas’ words and actions against the wider obligations of the Council’s Code of Conduct, including the overall duty to promote and maintain high standards of conduct, and specifically the requirement to have regard to the Nolan principles of conduct in public life, and the roles and responsibilities of councillors as set out in Part 11 of the Council’s Constitution.*
3. *The Sub-Committee concluded that Cllr Douglas’ actions, and in particular the content of her pre-prepared statement at the Area Board meeting on 4 November*

2019 and the context in which it was made fell short of these requirements such that this could amount to a breach of the Code of Conduct.

4. *However, we have considered Cllr Douglas' right to freedom of expression under Article 10(2) of the European Convention on Human Rights, and the relevant case law which identifies an enhanced level of protection for councillors engaging in political debate. We have further concluded that it would not be justified in this instance to interfere with her right to freedom of expression.*
5. *Therefore, whilst the Sub-Committee considers that Cllr Douglas' actions were not wise or helpful there was no breach of the Code.*

The Hearing Sub-Committee therefore determined to take no further action in respect of both complaints.

Reasons for Decision

1. In relation to the initial tests, the Sub-Committee were satisfied on the basis of the agreed facts that the Subject Member is a Member of Wiltshire Council, and that she was serving in her capacity as a Member of the Council for the duration of the meeting of the Salisbury Area Board on 4 November 2019. They were also satisfied that Wiltshire Council's Code of Conduct that applies to all Unitary Members of Wiltshire Council was in effect on 4 November 2019 and remains in effect at this time.
2. The Sub-Committee did not consider that it was appropriate to draw any adverse inference from the non-attendance of the complainants at the hearing. Further, their focus was upon the statement made by Cllr Douglas at the Area Board meeting, the content of which was agreed by the parties, rather than on any earlier statements attributed to her in the media.
3. Cllr Douglas did not explicitly refer to the PSED in her prepared statement but contended that she did give due consideration to it when making her deliberations, issuing her statement and voting on the grant application. The Sub-Committee noted her submission that she did not believe that funding a Pride Event would further the Council's duty to eliminate unlawful discrimination, victimisation and harassment, and would not create equality of opportunity or foster good relations among those with different protected characteristics. They also noted her submission that she voted against funding the Pride Event because of her opposition to the political message portrayed by it, and not the applicants' sexual orientation, and that it was her view that the council should not fund such campaigning events.
4. Therefore, taking this and all relevant circumstances into account, the Sub-Committee concluded, on a balance of probabilities, that the Subject Member had given due regard to the PSED in this instance. In reaching this conclusion the Sub-Committee was mindful of case law to which their attention had been drawn that established that it was not for them to determine if appropriate weight was given to the duty or to substitute their own views for those expressed by the Subject Member. [*R (Hurley & Moore) v Secretary of State for Business Innovation and Skills [2012]*]

5. The Sub-Committee considered the Subject Member's words and actions against the wider obligations of the Council's Code of Conduct, including the general duty on Members to promote and support high standards of conduct when serving in their public post, and, more specifically, the obligation under the Code to have regard to:
 - the principles of selflessness; integrity; objectivity; accountability; openness; honesty and leadership;
 - the Roles and Responsibilities of Wiltshire Councillors in Part 11 of the Council's Constitution.

6. The Sub-Committee noted the Subject Member's observations on the above principles as read out in her statement to the hearing, and as set out in paragraph 33 of her representative's submissions. However, the Sub-Committee were not satisfied that Cllr Douglas had in this instance acted in accordance with the principles of public life in relation to:
 - Selflessness - holders of public office should act solely in terms of the public interest.
 - Objectivity - in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit;

7. The Sub-Committee considered that Cllr Douglas had allowed her strong and genuinely held personal views on the matter to pervade her public decision making to the extent that her ability to act solely in the public interest was or was perceived to have been compromised. Further, by her actions, including particularly the pre-prepared statement she read out at the meeting, Cllr Douglas had demonstrated a lack of objectivity and, had, arguably, predetermined the matter.

8. In relation to Part 11 of the Constitution, the Sub-Committee considered that the Subject Member's actions on this occasion:
 - were not consistent with or conducive to her role as a community leader, which required her (amongst other things) to:
 - Mediate fairly and constructively between people and groups with conflicting needs (7.2.1);
 - Create effective partnerships with sections of the community (7.2.2);
 - Work with partners to build strong and cohesive communities with a long-term vision and direction (7.2.3);
 - Failed to demonstrate the personal skills required to fulfil the role of an effective Unitary Member in relation to:
 - The ability to set aside own views and act impartially (8.1.4);
 - Good awareness of equality and diversity issues (8.1.5);

9. Accordingly, the Sub-Committee considered that Cllr Douglas' words and actions on 4 November 2019 had been unwise and unhelpful and could amount to a breach of the

Code of Conduct.

10. However, before making a final determination the Sub-Committee was obliged to consider whether a finding of such a breach would be compatible with the Human Rights Act 1998 and, in particular, the Subject Member's right to freedom of expression under Article 10 of Schedule 1 to the Human Rights Act 1998.

11. Article 10 provides:

Article 10

Freedom of expression

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.....*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

12. The Sub-Committee recognised that the right to freedom of expression is a crucially important right in a democratic society and may only be interfered with where there are convincing and compelling reasons within Article 10(2) justifying interference. Any restriction of this right had to be lawful, necessary and proportionate.

13. The Sub-Committee noted the principles established under case law, including those helpfully set out by Mr Justice Hickinbottom in *Heesom v Public Service Ombudsman for Wales* [2014] 4 All ER 269 where a councillor's right to free speech was considered in some detail. These were summarised at paragraph 66 of the investigating officer's representatives written submissions and the following were found to be of particular relevance:

a) While freedom of expression is important for everyone, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests.

b) The enhanced protection applies to all levels of politics, including local.

c) Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.

e) The protection goes to "political expression"; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the

adequacy or inadequacy of performance of public duties by others.

14. Recognising, therefore, the enhanced protection afforded to councillors engaging in political debate, and being cognisant of their finding that Cllr Douglas had on a balance of probabilities satisfied the PESD, even if they did not share her views, the Sub-Committee concluded, on balance, that interference with Cllr Douglas' right to freedom of expression by a finding of a breach of the Code and sanction was not justified in this instance.
15. Accordingly, there was no breach of the Code.