

DECISION NOTICE: BREACH **Reference COC149256**

Subject Member

Cllr Charles McGrath, of Salisbury City Council and Wiltshire Council

Complainant

Mr Paul Smith

Investigating Officer

Marion Stammers

Monitoring Officer

Perry Holmes

Independent Person

John McAllister

Hearing Sub-Committee

Cllr Allison Bucknell
Cllr Gordon King (Chairman)
Cllr Mike Sankey

Decision Date

15 May 2024

Issue Date

21 May 2024

Complaint

It was alleged that following a Facebook post made by the Complainant on the 'Salisbury Soap Box' group page, the Subject Member responded with "disgraceful language, bullying and abusive behaviour" towards the Complainant and to others.

In doing so it was alleged that the Subject Member breached sections of the Salisbury City Council's Code of Conduct.

Salisbury City Council and Wiltshire Council have adopted versions of the Local Government Association Model Code of Conduct, which contain the following wording:

1.1 I treat other councillors and members of the public with respect.

2.2 I do not bully any person.

2.3 I promote equalities and do not discriminate unlawfully against any person.

5.1 I do not bring my role or local authority into disrepute.

Meeting

1. The Hearing Sub-Committee (“The Sub-Committee”) met on 15 May 2024 at the Kennet Room, County Hall, Trowbridge, to hear the complaint.
2. A Chairman was elected for the meeting and there was opportunity for any declarations from the Sub-Committee members before the procedure for the meeting was noted and introductions were made for all those present. After deliberation the Sub-Committee did not exclude the press or public from the remainder of the Hearing. The Chairman then briefly detailed 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, Protocol 11 of the Constitution, which had been circulated with the agenda papers.
3. The Subject Member was present at the Hearing.
4. The Complainant was not present at the Hearing but had provided a written statement which was circulated to the Committee and parties in advance of the Hearing.
5. At the Hearing the Investigating Officer presented their Report and confirmed that no witnesses would be called. In accordance with the procedure the Sub-Committee were invited to ask questions of the Investigating Officer to assist with their assessment of the complaint.
6. In accordance with the procedure the Sub-Committee considered a written statement from the Complainant in support of their complaint.
7. The Sub-Committee noted the additional materials which had been provided by the Complainant and the Subject Member, in the form of screenshots detailing further discussion on the ‘Salisbury Soap Box’ group page and other online comments. Consideration of the relevance of the subsequent material would be given during deliberation.
8. In accordance with the procedure the Sub-Committee received a verbal statement from the Subject Member as evidence and to make representations regarding the incident, whilst providing context to mitigating factors he believed to have been in place.
9. The Subject Member stated that the comments of the Complainant on the ‘Salisbury Soap Box’ Facebook group on the day the allegations related to, were not a single incident and that the Complainant and other group members persistently criticised councillors for a perceived lack of action, which he believed bordered on harassment.
10. The Subject Member accepted that as councillors were public figures, some level of criticism was expected and should be tolerated, however he believed that singling out individual councillors was unacceptable.

11. The Subject Member set out examples of the alleged persistent poor behaviour targeted towards Conservative councillors serving on City and Town councils, in order to highlight the extent of the accumulative derogatory remarks posted.
12. The Subject Member accepted that the language he had used in the comments to the Complainant and others during the interaction was inappropriate in his elected position, however he explained that at the time his physical and mental health were in a poor state and had impacted on his judgement.
13. The Subject Member stated that he had made efforts to provide a heartfelt apology as part of an alternative resolution, which had originally been agreed to by the Complainant. However, due to confusion around when the apology was to be made, the Complainant had then retracted his agreement to accept the apology.
14. The Subject Member further stated that following the retraction of the apology, the Complainant made public accusations against him on the 'Salisbury Soap Box' group, comparing elements of this complaint to those of another complaint relating to a separate matter and councillor, suggesting that the Conservative party was racist.
15. The Subject Member believed that in doing so, the Complainant had breached confidentiality rules which were in place until a complaint was concluded.
16. The Subject Member believed that the complaint against him had reached the stage of being unreasonable, due to the rescinded acceptance of an apology and the additional public slurring. He stated that the Complainant was using the complaint as a political tool and that his actions were politically motivated due to him being against Conservatives. However, he did accept the conclusions of the Investigating Officer's report as to the unacceptability of his remarks at the time.
17. No witnesses were called by the Subject Member.
18. The Sub-Committee then withdrew into private session, together with the Independent Person, the Monitoring Officer, and other supporting officers.
19. The Independent Person was consulted throughout the process and their contributions were taken into account by the Sub-Committee in reaching their decision.
20. The Hearing resumed at the conclusion of deliberations, and the decision of the Sub-Committee was announced to the parties and their representatives as follows:

Decision

Having considered all relevant matters and evidence, including the complaint, the Investigating Officer's report, the submissions made by the parties as detailed in the agenda papers, the additional materials provided by the Complainant and the Subject Member circulated at the meeting and the verbal statements during the Hearing, the Sub-Committee concluded on the balance of probabilities that Councillor Charles McGrath of Salisbury City Council and of Wiltshire Council breached both Council's Code of Conduct under the following provisions:

- 1.1 I treat other councillors and members of the public with respect.**

2.2 I do not bully any person.

Sanctions:

The Sub-Committee agreed the following Sanctions be implemented by Wiltshire Council and forwarded to Salisbury City Council as a formal recommendation:

1. ***To Censure Cllr Charles McGrath for his conduct.***
2. ***To recommend Cllr Charles McGrath be provided and review online training information on the use of social media within the role of a Councillor and that completion of such to be confirmed to the Monitoring Officer of Wiltshire Council.***

Reasons for Decision

Background

1. The Subject Member is an elected member of Salisbury City Council and Wiltshire Council.
2. The Subject Member in his role as a Councillor has signed a declaration in agreement to abide by the Salisbury City Council and Wiltshire Council's Code of Conducts.

3. Bullying

Both of the Council's Codes include a definition of bullying, which states:

2.2 "The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as; offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate, or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others".

4. The Sub-Committee considered the evidence produced by the Investigating Officer relating to the interview with the Complainant, where it was noted, the Complainant had stated that he had felt threatened and intimidated when the Subject Member had threatened to get him out of the city as soon as possible.
5. The Sub-Committee noted the Investigating Officers findings that the actions of the Subject Member did appear to fall within parts of the definition of bullying, as they could reasonably be considered to have been offensive, intimidating, humiliating and denigrating towards the Complainant, and as such the Sub-Committee agreed that on balance of probabilities a breach of both of the Code's had occurred.

6. Respect

Both of the Council's Codes includes the following definition of respect:

1.1 *“Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. However, you should not subject individuals, groups of people or organisations to personal attack”*

“In a local government context (i.e. respect) can mean using appropriate language in meetings and written communications, allowing others time to speak without interruptions during debates, focusing any criticism or challenge on ideas and policies rather than personalities or personal attributes and recognising the contribution of others to projects.”

“Examples of disrespect in a local government context might include rude or angry outbursts in meetings, use of inappropriate language in meetings or written communications such as swearing, ignoring someone who is attempting to contribute to a discussion.”

7. The Sub-Committee noted the findings of the Investigating Officer, in that the Subject Member was found to have been acting in his official capacity at the time of the Facebook discussion, however by posting his remarks on Facebook he was not engaging in a political debate with fellow politicians. In addition, some of the remarks made by the Subject Member represented a direct personal attack on the Complainant and did not in themselves refer to political matters at all.
8. The Sub-Committee, on considering all of the evidence, on a balance of probabilities agreed with the Investigating Officers findings that a breach of paragraph 1.1 of both Council’s Code of Conducts was established.

9. Equality and Discrimination

Both of the Council’s Codes requires the following of elected and co-opted members:

- a. *I promote equalities and do not discriminate unlawfully against any person.*

10. The Sub-Committee considered the findings of the Investigation in that there was no indication in the evidence that the Complainant has a protected characteristic which the Subject Member was aware of and for which the Complainant could have been discriminated against.
11. The Sub-Committee agreed that whilst the choice of word “freak” used by the Subject Member was poor and inappropriate, there was no evidence to suggest that the Subject Member had used the word because of a particular characteristic, such as his gender, ethnicity or sexual orientation. Rather, it appeared that he used the word in a more general way to insult the Complainant in the context of a disagreement about local issues in Salisbury. Nor do any of the other comments made by the Subject Member appear to represent unlawful discrimination against the Complainant or a specific failure on the Subject Member’s part to promote equalities.
12. Disrepute
Both of the Council’s Codes states:

5.1 I do not bring my role or local authority into disrepute.

13. The Sub-Committee considered and agreed with the findings of the Investigation in that whilst the actions of the Subject Member had breached two requirements under the Codes, it was not considered that the instances of misconduct fell within the definitions of bringing his role, or his authorities, into disrepute.

14. Facebook 'Salisbury Soap Box' Group Messages

Extracts from the Salisbury Soapbox group chat posted by the Subject Member, in response to the Complainants posts include:

- “Are you still yapping on?”
- “I’m shocked you’ve made it this far in life with your attitude”
- “I won’t be deleting my remarks and I stand by them 100%. I’ve already made the decision not to stand for the council again so I feel I can speak more freely about the likes of you. You are a total disgrace to our city and we need to be shot of you frankly”
- “Freak”
- “You’re an utter prat.”
- “You really are pathetic. Please let me know the name of your freeholder so I can get you out of our city as quickly as possible.”

15. The Subject Member in his response to the Investigating Officer, confirmed that on reflection, the language he had used was not appropriate for an elected member, however there were mitigating circumstances which had contributed to a clouding of his judgement at the time, and that he would act differently, given the time again.

16. Acting in a capacity as a Councillor

In order for there to be a finding that the Subject Member was in breach of both Council’s Code of Conduct it was necessary to establish whether the Code applied during the time of the alleged behaviour of the Subject Member.

17. The Local Government Association’s Model Code of Conduct 2020 which the Council’s Codes are based on, states the following:

“This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- *You misuse your position as a councillor;*
- *Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;*

The code applies to all forms of communication and interaction, including:

- *at face-to-face meetings*
- *at online or telephone meetings*
- *in written communication*
- *in verbal communication*
- *in non-verbal communication*
- *in electronic and social media communication, posts, statements and*

comments”

18. The complaint referred only to Salisbury City Council’s Code of Conduct, as the Complainant believed the Subject Member was acting in his Salisbury City Councillor role during the alleged incident, as at this stage he was not aware that the Subject Member was also a member of Wiltshire Council.
19. The Subject Member posted the comments that gave rise to the complaint using a Facebook account that did not refer to his elected roles. The Subject Member also had a second account which referred to his position as an elected councillor and his ward area.
20. The relevant Facebook exchanges did repeatedly refer to “the council” and make reference to the fact that the Subject Member is a councillor. The discussion topic at least in part refers to local matters of council business.
21. The Subject Member in his response to the complaint, and in his statement to the Assessment Sub-Committee, he did not refute that he was acting in his elected capacity when posting the alleged remarks. As such, the Investigating Officer’s conclusion was that he was acting in at least one of his elected capacities at the time.
22. The Sub-Committee agreed that despite the Subject Member using his personal Facebook account when posting the comments, the discussion referred to his role as a councillor and council related business and as such he was acting in his capacity as an elected Member during his participation in the Facebook discussion. Accordingly, the Sub-Committee was satisfied both of the Council’s Codes were in effect.

Conclusions

23. The Sub-Committee considered the attempts to resolve the complaint by means of Alternative Resolution, which had initially been agreed by both parties and questioned the reasoning behind the retraction by the Complainant to accept the offer of a public apology, which had been agreed would have been made available for uploading to the ‘Salisbury Soapbox’ group page.
24. The Sub-Committee furthermore considered the subsequent confidentiality breach by the Complainant, in further posts on the ‘Salisbury Soapbox’ group page which were of a derogatory nature towards the Subject Member.
25. The Sub-Committee agreed that the Subject Member’s physical and medical wellbeing at the time of the Facebook posts did represent mitigating factors which should reasonably be taken in to account.
26. The Sub-Committee considered and accepted the additional materials provided by the Complainant and the Subject Member as relevant in providing additional context to the incidents.
27. The Sub-Committee agreed that the Subject Member would benefit from some refresher training on the use of social media by elected members, to enable him to function more effectively in a positive manner moving forward.

28. On balance, the Sub-Committee was satisfied that the Subject Member had breached the following sections of the Salisbury City Council and Wiltshire Council's Code of Conducts:

1.1 I treat other councillors and members of the public with respect.

2.2 I do not bully any person.

Sanctions

1. The Sub-Committee sought the view of the Investigating Officer in relation to recommendation of any sanction. The Investigating Officer made no comment.
2. The Sub-Committee sought the view of the Subject Member in relation to recommendation of any sanction. The Subject Member noted that he would not agree to further attempts to engage in alternative resolution given his previous attempts to do so had been refused by the complainant.
3. The Sub-Committee withdrew once more into private session for deliberation and, after consulting the Independent Person and noting the comments of the Subject Member, resolved to recommend that Salisbury City Council and Wiltshire Council impose the sanctions as set out above, as a result of a breach of the Code of Conduct.