

Standards Hearing Sub-Committee

MINUTES OF THE STANDARDS HEARING SUB-COMMITTEE MEETING HELD ON 23 SEPTEMBER 2020, 2 NOVEMBER 2020 AND 6 NOVEMBER 2020 AT ONLINE MEETING.

Present:

Councillor Peter Evans, Councillor Richard Britton, Councillor Ruth Hopkinson and Mr Richard Baxter (non-voting)

Also Present:

Ian Gibbons (Monitoring Officer), Alice Ryan-Lowes (Trainee Solicitor), Kieran Elliott (Senior Democratic Services Officer), Stuart Middleton (Independent Person), Councillor Mary Douglas (Subject Member), Dr Roger Kiska, Christian Legal Centre (supporting the Subject Member), Marie Lindsay (Investigating Officer), Frank Cain (Head of Legal Services, supporting the Investigating Officer).

1 **Election of Chairman**

Nominations for a Chairman of the Standards Hearing Sub-Committee to consider the listed complaints were sought, and it was,

Resolved:

To elect Councillor Ruth Hopkinson as Chairman for the Hearing Sub-Committee in consideration of Complaints COC126486 and COC126543.

2 **Declarations of Interest**

Councillors Richard Britton and Peter Evans declared a non-pecuniary interest that they were members of the same political group on Wiltshire Council as the Subject Member. It was confirmed by all parties that this would not prevent them sitting in fair consideration of the matter.

3 **Meeting Procedure**

The procedure for Hearing Sub-Committees was noted.

The Chairman advised that the Sub-Committee was required under the Localism Act 2011 to seek and take account of the views of an Independent Person before making a determination on an allegation of a breach of a Code of Conduct. The Independent Person assigned for this purpose was unfortunately unable to be present, and as had been communicated to all parties before the meeting it was therefore intended to adjourn the meeting to a future date following agreement of procedural matters. All parties confirmed they were content with that approach.

All parties present were then introduced.

4 **Exclusion of the Press and Public**

The Chairman sought views from the parties, including legal representatives, as to whether the Hearing should be conducted in public or whether the press and public should be excluded.

No objections were raised to the Hearing being conducted publicly in the interests of openness and transparency. This would not prevent a resolution during the Hearing to enter confidential session if necessary, at some point. As it was intended to adjourn the remainder of the meeting to a future date, however, it was agreed that all documentation should remain confidential until at least the resumption of the Hearing and a decision taken at that time.

Accordingly, whilst indicating that it was the current intention that the Hearing be conducted publicly once rescheduled, for the time being it was,

Resolved:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Item Number 5 onwards because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

Following resumption of the meeting on 2 November 2020, it was resolved to proceed in public, as detailed further under Minute 5-6.

5 **Determination of Code of Conduct Complaint COC126486 Regarding Councillor M Douglas, Wiltshire Council**

6 **Determination of Code of Conduct Complaint COC126543 Regarding Councillor M Douglas, Wiltshire Council**

23 September 2020

The Hearing would be in relation to two complaints (COC126486 and COC126543) received against Councillor Mary Douglas of Wiltshire Council (the Subject Member), each in relation to the same facts and incident, and so both would be considered and determined together.

For the reasons set out under Minute 3, the Hearing was then adjourned to a future date. It was agreed that there would be an exchange of written submissions from the legal representatives for the Investigating Officer and the Subject Member in advance of that date, for publication within Agenda Supplements.

The meeting was therefore adjourned until 2 November 2020 at 1230.

2 November 2020

Background

The Chairman, Councillor Ruth Hopkinson, summarised the business that had been conducted on 23 September 2020 when the meeting had been convened, including election of a Chairman, declarations of interest, meeting procedure and exclusion of the press and public. Introductions of each party present then took place. It was confirmed that one complainant had provided a statement in place of attendance, and the other had indicated they did not wish to attend.

The Sub-Committee, after taking comments from the parties present, resolved to conduct the remainder of the Hearing in public session.

Following reconfirmation of the procedure that would be followed in accordance with Paragraph 8 of Protocol 11 of the Constitution, and noting the papers provided in the Agenda, Agenda Supplement 1 and Agenda Supplement 2 including the written submissions on behalf of the Investigating Officer and the Subject Member, the meeting then proceeded.

Investigating Officer

Frank Cain, Barrister, Head of Legal Services, presented the findings of the Investigating Officer, Marie Lindsay, as detailed in her reports set out in the Agenda and the written submission and supporting information in Agenda Supplement 1.

The complaints each related to a meeting of Salisbury Area Board on 4 November 2019 where it was alleged that Councillor Douglas had breached the 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.

The complainants, Maxine Nutting and Lisa Taylor, were not present at the meeting, but separately submitted complaints following media reports of the meeting and the statement which Councillor Douglas made at the meeting. Although the accuracy of media reporting had been raised during the investigation, a copy of the statement had been provided by Councillor Douglas, and it was that statement which formed the basis of the investigation and assessment. The statement was as follows:

"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".

It was also agreed by both parties that Councillor Douglas is and was at the time of the meeting a Member of Wiltshire Council, that the Code of Conduct was in effect at the time of the meeting, and that the Public Sector Equality Duty extended to Councillor Douglas and her decision making at the meeting on 4 November 2019.

Mr Cain stated that the complaint raised fundamental issues of freedom of speech and the Public Sector Equality Duty, and that the Investigating Officer had concluded that a breach of the Code of Conduct appeared to have occurred.

It was raised whether there was evidence in the statement made that the Subject Member had had due regard to Public Sector Equality Duty as required. The submissions on behalf of the Investigating Officer concluded that the statement did not demonstrate such due regard to the need to promote good relations and other requirements, and that the statement was not merely about the personal, sincere beliefs of the Subject Member, but expressing judgement on the beliefs or actions of others including that others had been 'misguided by a powerful ideology'. Mr Cain invited the Sub-Committee to consider the matter if the comments had been directed at other groups or individuals.

A further question raised was whether, if there was a failure by the Subject Member to have due regard to the Public Sector Equality Duty, would that amount to a breach of the Code of Conduct. The Code itself included no reference to Public Sector Equality Duty but included provision on promoting and supporting high standards of conduct and to have regard of the Nolan Principles of Conduct in Public Life, including leadership, objectivity, selflessness and more. The Code also requires Members to have regard to Part 11 of the Wiltshire Council Constitution – Roles and Responsibilities of Members – which included references to being aware of equality issues, acting as a community leader and setting aside personal views in decision making. The Investigating Officer was of the view that there had been a failure to have

due regard to Public Sector Equality Duty, and that this would in this case amount to a breach of the Code.

Finally, Mr Cain stated that if it was determined there had been a breach, it must also be considered if there was sufficient justification to interfere with the Subject Member's right to free expression. He stated the case was about political leadership and inclusiveness, not direct discrimination, and that the government had recognised through the Public Sector Equality Duty and legislation a pressing social need to develop an inclusive society. Therefore, the issue was not about the personal capacity of the Subject Member but her obligations as an elected Member and, at the time, a Portfolio Holder, a position of seniority among Members. It was suggested that if the council had made such a decision on the same basis it could be legally challengeable, and that if the personal beliefs of the Subject Member meant she felt she could not support the grant application in question, she could have taken other actions or statements which did not contradict the Public Sector Equality Duty as the statement she made did. As such, interference in this instance was justified.

A statement from Maxine Nutting, complainant, was then read out to the Sub-Committee. The statement asserted that the Subject Member's actions were not in accordance with the Equality Act 2010, and treated people less favourably based on their sexuality, a protected characteristic, to further the personal beliefs of the Subject Member, and that free speech did not permit the Subject Member to infringe the rights of others and improperly influence her decision making.

Councillor Douglas and her legal representative, Dr Roger Kiska, then had the opportunity to ask questions of the Investigating Officer and her legal representative.

In response to queries it was confirmed the Investigating Officer was a trained ethical governance officer but did not hold legal qualifications.

Several queries were made on the media reporting which had prompted the complaints which was stated to include several inaccuracies including on past alleged comments of the Subject Member, and the impact this had on the complainants and investigation. In response it was stated that direct evidence had been supplied by the Subject Member of the statement she had made at the meeting. The Investigating Officer did not refute the view of the Subject Member that the media reporting had contained inaccuracies, but this was not relevant to consideration of whether the statement itself, as made, was in breach of the Code, nor was the absence of the complainants from the meeting at which the statement was made relevant.

It was confirmed that because of the nature of the complaint and complex Public Sector Equality Duty issues it was not felt appropriate to seek alternative resolution or mediation in this case. Dr Kiska drew attention to references within the complaint itself to discrimination, and he considered that this related to

direct discrimination of individuals which was not alleged in these circumstances and asked whether either complainant had mentioned Public Sector Equality Duty as part of their complaints. In response it was stated then when there was an investigation all relevant factors and considerations were taken into account. Whilst the perceptions of a complainant as to whether and how there was a breach was relevant, an investigation was required to consider more broadly if from the evidence it appeared a breach had occurred, not be restricted to consider only the potentially narrow, lay person view of the events and the Code.

Reference was made by Dr Kiska to allegations of the Subject Member disadvantaging others through her actions, and it was stated that as the grant to Salisbury Pride had in fact been awarded by the Salisbury Area Board notwithstanding her statement and vote, no such a disadvantage occurred. In response it was stated that the Investigating Officer did not conclude there had been a disadvantage, but that the failure to have due regard to Public Sector Equality Duty amounted to a breach.

It was agreed that Councillor Douglas's stated position was that she did not believe sexual orientation was a choice, but that she considered the response to that orientation a choice.

Questions were raised on references in the Investigating Officer's report to political ideologies and worldviews not being relevant and whether a reasonable person could consider some LGBT advocacy groups as also being political in nature. In response, it was stated it was not felt that would be relevant to the particular finding and reasoning as to why a breach was felt to have occurred.

Questions were asked about biblical views on homosexual behaviour. The Chairman intervened to clarify that it was not in dispute that Councillor Douglas had strong and genuine religious beliefs to which she was entitled and to which others were entitled, but it was not the role of the Investigating Officer or the Sub-Committee to consider theological debates, only if the actions of the Subject Member had been a breach of a Code of Conduct.

Mr Cain was asked why it was considered the balance of free expression and Public Sector Equality Duty were in conflict on this occasion. It was stated in response that looking at the requirements of Public Sector Equality Duty, the Code and Part 11 would establish what might be required by an elected Member and that while sometimes there would be no conflict with free expression on occasion there would be, and the needs would need to be balanced. It was accepted as set out in the report that the threshold for interfering with the free expression of an elected Member was high, but that the argument of the Investigating Officer was that the Public Sector Equality Duty was a pressing social need which justified that interference on this occasion.

The Sub-Committee then had the opportunity to ask questions of the Investigating Officer and her representative.

The status of the Subject Member as a Portfolio Holder was raised, and whether this was relevant at her attendance at an Area Board meeting in her capacity as a local member. It was stated that whilst she had not been attending in that capacity at the time she did hold the role, a senior position at the council, and this had relevance on the perception and impact of her comments including as a community leader.

The need to have due regard to the Public Sector Equality Duty was raised, and how Area Board members and the council generally could or should meet that requirement. It was accepted that it could be difficult to evidence having that regard in some situations, but that all public bodies including during collective decision making were required to do so. It was asked whether the Area Board would have been entitled not to approve the grant to Salisbury Pride if they had wished, and it was stated they could have, though there would still have needed to be consideration of Public Sector Equality Duty in some form.

Questions were asked on how to define what amounted to conduct, and it was stated this would be actions taken in public office, including words and behaviour, and that Part 11 of the Constitution set out some expected roles and responsibilities for Members.

The media reporting was referenced, and details sought on why, if it was as accepted in some areas in error, it was and had been appropriate to investigate. It was confirmed a complaint was a catalyst which opened the investigative process, but that the investigation looked at actual actions not simply the complaint, and conclusions had been based on confirmed evidence and not any inaccuracies or misinterpretations.

Subject Member

Councillor Mary Douglas, the Subject Member, then made a statement in response to the Investigating Officer's report. She stated her intent had only been to help people live well and promote wellbeing, and that she had shared some of her beliefs to explain her decision at the meeting in question. She felt the significance of inaccurate media reporting, including an incorrect claim that she had referred to transgender people as 'mentally ill' had been disregarded, as these had formed the basis of the complaints being submitted. She reiterated that the report repeated that she considered sexual orientation as a choice, which she had stated several times was not the case, and she disagreed with the report's assertion that her views on the political activity of some groups were not of relevance. She considered her views and words had been misrepresented.

Councillor Douglas then set out how she felt she had upheld the Nolan Principles of Conduct in Public Life, including acting with integrity with her beliefs, objectivity in that she felt she did not support council funding for promotion of worldviews even if she agreed with the worldview, and in taking a decision and explaining it fully although knowing it would not be universally

popular, had demonstrated selflessness, accountability, openness, honesty and leadership as required.

Dr Roger Kiska, Christian Legal Centre, with and on behalf of Councillor Douglas, then responded to the presentation by the Investigating Officer's representative with reference to the written submission and supporting information in Agenda Supplement 2.

Dr Kiska disputed the comment that there would have been similar issues had such a statement as made by Councillor Douglas had been made regarding Christians, but that this had not been raised before the Hearing so he did not have specific examples to hand but could provide these. It was considered relevant that the motivation of the complaints was inaccurate media reporting, as without that reporting there may have been no complaints, and the lack of participation in the Hearing by the complainants was also relevant, as was the lack of reference to Public Sector Equality Duty in the initial complaints. It was reiterated that the Subject Member had spoken to the grant applicants after the meeting to assure them that there was no personal issue, and it was stated if the complainants had been made aware of this they may not have chosen to pursue the complaints further.

Dr Kiska considered that the obligations of Public Sector Equality Duty had been applied too rigorously by the Investigating Officer. Having due regard gave discretion to the individual, and did not prevent the consideration of other factors, and it was not for the Sub-Committee to consider whether appropriate weight had been given to the Public Sector Equality Duty, only to consider if it had been given due regard, and that the views of others including Councillor Douglas also needed protecting. It was argued by the nature of her statement the Subject Member had shown due regard. Furthermore, whilst Public Sector Equality Duty allowed for groups to be treated more favourably than others where appropriate, this was not a requirement.

It was also argued that the report conflated being a member of an LGBT community with being a campaigner, even though not all those who were gay for example would be campaigners for an LGBT organisation, nor would all members of that organisation be gay. It was argued that organisations had a right to be explicitly political, but this meant that events from that organisation, such as Salisbury Pride, were capable of being political events in addition to other aims, and there was a difference between the message being promoted and the person.

Dr Kiska stated there was a perception that the Subject Member had been solely emphasising her personal views and so did not exercise the Public Sector Equality Duty and so showed a lack of activity. However, it was argued that many of her constituents, though not all, will have shared the views she expressed and that those views also deserved respect, that a multicultural society did not mean everyone had to agree, and that subjective offence being taken did not mean there was objective offence.

It was stated that a finding of a breach in this instance would be an unacceptable interference with free speech. This had the very highest levels of legal protection, was particularly vital in the context of debate, and the law only allows interference where proscribed by law to pursue a legitimate aim necessary to democratic society. It was argued that an exhaustive list of legitimate aims was set out in Article 10 of the Human Rights Act 1998, but that the reason relied upon by the Investigating Officer, equality considerations, was not one of them. This could not therefore form the basis of justifying an interference in the Subject Member's free expression. Reference had been made for a pressing social need justifying this, but Dr Kiska stated this referred to the legitimate aims.

Finally, it was argued that the Subject Member acted selflessly, knowing her actions would be unpopular but staying true to her beliefs whilst objectively treating all views the same, that she was open and accountable and showed leadership in not avoiding explanation for her view. It was stated it would be inappropriate to find Councillor Douglas to be in breach of the Code of Conduct, and that the role of a political body was to discuss views from all sides.

Mr Cain and Ms Lindsay were then given the opportunity to ask questions of the Subject Member and her representative, and confirmed they had no questions.

The Sub-Committee then had the opportunity to ask questions of the Subject Member and her representative.

In response to queries the Subject Member stated she did not believe she had received representations relating to the grant application before the meeting in question, that her understanding of proselytising behaviour was to communicate a view with the aim of convincing others to agree with it and join with you through campaigning, but that it was a complicated area to draw a line.

Councillor Douglas further stated in response to queries that whilst she may not have directly referenced Public Sector Equality Duty in her statement, she did believe that the content of her statement indicated she had considered it as required. She stated she accepted sexual orientation was a protected characteristic and showed respect to others even when she disagreed with their actions.

In response to a query on why she had prepared a statement in advance, the Subject Member stated she was aware it would be a controversial topic and so wished to be careful in what she said and have evidence of her words. She stated she would have liked to have been clearer in setting out that she does not regard sexual orientation as a choice.

Concluding statements

Both parties were then given the opportunity to make concluding statements.

Mr Cain on behalf of the investigating officer asked the Sub-Committee to review the statement made by the Subject Member at the meeting on 4 November 2019 and determine if they felt that due regard had been given to the Public Sector Equality Duty. Although it was not for others to impose their own weight on how much regard should have been afforded to the Public Sector Equality Duty, legal cases indicated this was where there had been rigorous consideration of the duty. The statement was not merely a recitation of belief but included attacking those 'misguided by a powerful ideology', attacking a wider community and that while those persons might be nice, they are doing wrong. As a local authority the council under Public Sector Equality Duty had to seek to eliminate discrimination and foster good relations between communities, and it was argued that the statement made did not do so.

On the argument of the Subject Member's representative about legitimate aims it was argued that the Public Sector Equality Duty imposed by Parliament identified the rights of protected groups and the requirement to eliminate discrimination against those groups. Part 11 of the Constitution further referenced being able to set aside one's own views and act impartially, and that there were alternatives to the action the Subject Member took, including abstention, but that the statement went beyond requirements to seek to undermine a group protected under Public Sector Equality Duty.

Dr Kiska highlighted the main points set out in his submission and contended that there was a double standard in that had a Christian applied for a grant and been referred to in the same way there would not be the same response. It was reiterated that political speech was afforded the highest level of protection, and that the six legitimate aims to justify interference with free expression did not include that claimed by the Investigating Officer.

Councillor Douglas concluded by stating that to disagree is not to disrespect, that there was a responsibility to express disagreement in decision making, and she did not believe her statement could have been a breach of the Code of Conduct.

The Sub-Committee then withdrew along with supporting officers from Legal Services and Democratic Services and the Independent Person to consider the representations and submissions they had received.

Following several hours of deliberations, the Sub-Committee contacted the parties to confirm it would reserve its decision to a future date as it required further time to consider all information.

The meeting was therefore adjourned from approximately 1645 on 2 November 2020.

6 November 2020

Following further deliberation, the meeting reconvened on 6 November 2020 at 1630, where a decision was announced as detailed below.

Decision

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 Councillor 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 Councillor 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 Councillor 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, the Sub-Committee have considered Councillor 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. They 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 Councillor 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 Councillor 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. Councillor Douglas did not explicitly refer to the Public Sector Equality Duty 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 Public Sector Equality Duty 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 Councillor 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 Councillor 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, Councillor 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 Councillor 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 Councillor Douglas had on a balance of probabilities satisfied the Public Sector Equality Duty, even if they did not share her views, the Sub-Committee concluded, on balance, that interference with Councillor Douglas' right to freedom of expression by a finding of a breach of the Code and sanction was not justified in this instance.

Resolved:

Accordingly, for the reasons given above, there was no breach of the Code.

Duration of meeting

13.30 pm – 13.50 pm on 23 September 2020

12.30 pm – 16.45 pm on 2 November 2020

16.30 pm – 16.35 pm on 6 November 2020

The Officer who has produced these minutes is Kieran Elliott of Democratic Services,
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