

DECISION NOTICE: REFER FOR INVESTIGATION

Reference WC - ENQ00172

Date Issued

7 March 2017

Subject Member

Councillor Simon Killane, Wiltshire Council

Complainant

Mrs Alison Cross-Jones

Representative of the Monitoring Officer

Mr Paul Taylor

Review Sub-Committee

Councillor Horace Prickett - Chairman
Councillor Dennis Drewett
Councillor Charles Howard

Independent Person

Mr Stuart Middleton

Complaint

The complainant alleges that Councillor Killane is using social media to carry out continued and sustained harassment of the complainant, defaming her character and honesty and damaging her reputation and that of the charity HEALS for which the complainant works.

The complainant further alleges that Councillor Killane made a misleading statement to a meeting of the Malmesbury Area Board on 6 July 2016, with regard to a grant application from HEALS, which he re-iterated by way of a website post on 11 July 2016.

Councillor Killane has thereby allegedly breached paragraph 1 of the Code of Conduct and the principles of selflessness, integrity, objectivity, accountability, openness and honesty and leadership.

Decision

In accordance with the approved arrangements for resolving standards complaints adopted by Council on 26 June 2012, which came into effect on 1 July 2012 and after hearing from the Independent Person, the Review Sub-Committee decided to refer the complaint for investigation or other suitable action by the Monitoring Officer.

Reasons for the Decision

Preamble

The Chairman led the Sub-Committee through the local assessment criteria which detailed the initial tests that should be satisfied before assessment of a complaint was commenced.

Upon going through the initial tests, it was agreed that the complaint related to the conduct of a member and that the member was in office at the time of the alleged incident and remains a member of Wiltshire Council. A copy of the appropriate Code of Conduct was also supplied for the assessment. The reasoning of the representative of the Monitoring Officer that the website posts were undertaken in the subject member's official capacity as an elected member was accepted.

The Sub-Committee therefore had to decide whether the alleged behaviour would, if proven, amount to a breach of that Code of Conduct. Further, if it was felt it would be a breach, was it appropriate under the assessment criteria to refer the matter for investigation.

In reaching its decision, the Sub-Committee took into account the complaint, the response of the subject member, the initial assessment of the representative of the Monitoring Officer to refer the matter for investigation and the subject member's request for a review of that decision.

Incidents

The complaint principally related to a meeting of Malmesbury Area Board at which the subject member made a statement about the complainant and her employer, who were applying for a grant from the Area Board. The complainant alleged that the statement, exacerbated by further comments on the subject member's website and social media, breached the Nolan principles of leadership listed under the Code of Conduct, as well as Paragraph 1 of the Code, which holds:

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

The allegation was that in making the statement he had in the manner he did, the subject member attempted to improperly disadvantage the complainant and the organisation that employed her in the eyes of the Board, with direct potential negative financial consequences. Furthermore, that by following up with public posts casting doubt on the integrity of the complainant and the organisation she represented, it could be seen as an unreasonable or excessive attack which could be a breach of the obligation to promote and support high standards of conduct.

Analysis

The submissions from the parties detailed a history of complaints against the subject member on an array of issues in the community from a number of persons. The complainant had submitted a complaint against the subject member in 2014, but stated they had not been involved in any other matter until the subject member's statement to the Area Board in July 2016. The subject member stated the current complaint was part

of a concerted and organised campaign against him from certain elements of the community.

Area Board Meeting

The subject member clearly had a right to freedom of expression, which was particularly strong in the context of political debate. A finding that his statement at the area board was capable of breaching the Code would be an interference with that right and would need to be both proportionate and necessary. The Sub-Committee, analysing the evidence as submitted, needed to determine whether the manner of the subject member's intervention at the area board and his subsequent commentary on the matter, was of sufficient seriousness, if proven, to justify such interference.

It was clear that there had been a history of multiple complaints against the subject member over an extended period, which was a relevant factor when considering the reasonableness of any action taken. It was noted that the history between the parties had been taken into account by the subject member in preparation for the meeting in question, seeking advice on whether he should participate in the determination of the grant request along with advised wording that could be used to clarify his position.

The subject member was not obliged to follow any advice received, nor to approve a grant he did not support. However, in seeking advice on an explanatory statement to make clear why he was not participating in the debate and determination of the complainant's grant, the subject member had indicated he accepted advice it would be better not to participate to avoid any appearance of bias or attempt to disadvantage, given the history between the parties. However, as stated in the initial assessment, *'in making the statement to the [area board] in the manner he did and notwithstanding the advice he had received, it appears that the subject member was seeking to do the very opposite of that which he claimed he did not wish to do, namely to participate and potentially influence adversely the outcome of the decision'*. The Sub-Committee were of the view that although the subject member did indeed withdraw prior to the vote on the grant, his statement, if proven, would demonstrably be participating in the meeting. As stated by the subject member in his request for a review, he *'gave full reasons for not approving [the grant], rather than merely abstaining or leaving the room with minimal comment'*. Therefore, the question was one of attempted disadvantage.

In the request for a review of the initial assessment, the subject member had noted that the complainant had not been disadvantaged as the grant request had in fact been granted by the rest of the area board and he had presumed beforehand that this would be the case. Nevertheless, the question for the Sub-Committee was whether his actions had been an attempt to improperly disadvantage the complainant, not whether the attempt had been successful, and would making such an attempt, if proven, be a breach of the Code.

Web Posts

The review request from the subject member also stated that in addition to not, in his view, disadvantaging the complainant, his actions were in the public interest in revealing his concerns about awarding a grant to an organisation run by persons he did not feel should be entrusted with public funds, and in order to promote and support high standards of conduct it was necessary for him to publicise those concerns on his website and elsewhere. He stated any seeming delay from historic provocation by the

complainant and his posts had been necessary due to waiting for all the complaints against him to be resolved before he clarified his position and cleared his name.

The initial assessment had considered the nature of the posts, casting doubt on the integrity and trustworthiness of the complainant and her organisation, and considered that in the absence of any recent provocation from the complainant, they could be seen as an unreasonable attack, and therefore, if proven, a breach of the obligation to promote and support high standards of Conduct. The Sub-Committee considered the nature of the statements was indeed of such a level, having regard to the justifications given by the subject member and strong protections on political speech.

Conclusion

On the evidence as presented, the Sub-Committee upheld the initial assessment decision that the behaviours alleged above could amount to breaches of the Code of Conduct. An attempt to improperly confer a disadvantage would, if proven, be a breach of paragraph 1 of the code, and sufficient evidence had been submitted to indicate this may have occurred. In relation to the web postings, while the subject member was understandably frustrated by the history of complaints from other parties, the Sub-Committee was in agreement with the initial assessment that the absence of recent provocation by the complainant and the nature of the comments, and notwithstanding the existence of complaints by other persons, could make such public attacks by the subject member be seen as unreasonable or excessive, and therefore, if proven, a breach of the Code.

In considering whether it was therefore in the public interest to refer the matter for investigation, the Sub-Committee took account of the subject member confirming to them that that he would not be standing for re-election, and would therefore cease to be a member of Wiltshire Council, in May 2017.

Notwithstanding that intention, the Sub-Committee considered that the alleged breaches were a serious matter which in their view required investigation to determine the facts and existence of any breaches for the public record, regardless of whether the subject member would indeed cease to be a member of Wiltshire Council.

The Sub-Committee were informed that the subject member had stated that the complainant was no longer employed as a director of HEALS. However, they did not consider that this information altered their views on the complaint.

Additional Help

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