

Cheltenham Borough Council

Standards Committee

8th December 2021

Report of Monitoring Officer on a complaint that Councillor Sandra Holliday has failed to comply with the Cheltenham Borough Council Code of Members' Conduct

1. Background

1.1 A Complaint that Councillor Sandra Holliday has failed to comply with the Cheltenham Borough Council Code of Members' Conduct, has been received by the Monitoring Officer. The complaint arises from the participation of Councillor Holliday at the Annual meeting of Cheltenham Borough Council held on the 17th May 2021 at which the election of the Mayor and Deputy Mayor for the forthcoming year form an integral part of the proceedings. In September of 2021 a complaint was received by the Monitoring Officer from Councillor Wendy Flynn raising an issue of a departure from the Members Code of Conduct by Councillor Holliday.

1.2 To understand the nature of the present complaint it is necessary to relate some history of dealings which provide the background context to the present matter;-

I. The Standards Committee has previously dealt with a complaint against a former Councillor, Dennis Parsons, which centred upon a speech he made at a Council Meeting which was found to contravene the Code of Conduct for Members and he was subsequently sanctioned by this Committee.

II. Sometime in the early part of June 2020 Councillor Sandra Holliday sent an email communication to all Members of the Liberal Democrat Group of Councillors which, due to its contents, gave rise to a complaint being made by Councillor Wendy Flynn to the national Liberal Democrat Party which in itself led to a hearing of the Liberal Democrats Complaints Panel on the 16th March 2021 at which a finding against Councillor Holliday was made and a sanction of being suspended from the Party for a period of six months imposed together with a requirement to attend training.

III. Subsequently, in early 2021, in preparation for the Annual meeting of the Council Councillor Holliday was put forward to be the Deputy Mayor of the Borough Council for the forthcoming year. In this regard Councillor Flynn was opposed to her fulfilling that role based on the previous issues that led to the decision by the Liberal Democrats Complaints Panel. At the Annual meeting of the Council on the 17th May 2021 Councillor Flynn spoke in opposition to the proposed election of Councillor Holliday as Deputy Mayor and her speech is attached to this report at Appendix 1.

IV At the meeting, having heard Councillor Flynn's speech, Councillor Holliday made a reply which is attached at Appendix 2 and which forms the basis for the complaint by Councillor Flynn.

2. The Complaint

2.1 Councillor Flynn has raised the following issues:-

- (a) Councillor Holliday's response to Councillor Flynn opposing her election was to attack her character and she alleges that Councillor Holliday's speech was not in keeping with several of the Nolan Principles specifically:

Selflessness – Councillor Holliday spoke in her own interests, not those of the public interest

Accountability – in being accountable, a member must be willing to submit themselves to scrutiny. Public attacks on character of those who seek to scrutinise is not being accountable.

Honesty – Councillor Holliday inaccurately reported the process within the Liberal Democrats Complaints Panel and has thereby not been honest

Leadership – holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs. .

- (b) Cllr Holliday's speech made a number of allegations which Councillor Flynn has identified and appear in quotation marks:-

"The outcome was accepted by myself and it's disappointing that Councillor Wendy Flynn has chosen not to accept it also."

"This was an internal matter within the Liberal Democrat Party which Councillor Flynn's tried to make greater than it is and cause a rift due to her as the complainant not seeing to accept the ruling."

"This illiberal attitude is against our party values."

"It is deeply disappointing then that these roles have been made political."

"when I was told that Councillor Flynn had issued an ultimatum that she intended to make a statement unless I withdrew my nomination, I felt that this was intimidation, blackmail and is bullying. And I feel it's important to stand up to bullies."

Councillor Flynn states that she has never issued any sort of ultimatum to Councillor Holliday nor has she blackmailed, bullied or intimidated her. In addition she states she has not tried to cause a rift in the Liberal Democrat group and is not illiberal. She further states that she has not made the roles of mayor and deputy mayor political. She states that she has not had any direct contact with Councillor Holliday since well before the meeting in June 2020 and any such contact has been in online meetings, full council and the online Standards hearing, always with others present at which she has not directed any comments to her but to the wider meeting. She says therefore the suggestion that she has bullied intimidated and/or harassed Councillor Holliday is untrue.

Councillor Flynn acknowledges that Councillor Holliday was entitled to challenge, criticise and disagree with the statements she made and the views and opinions she expressed in her speech but not to deliver a personal attack on her character. Councillor Flynn is of the opinion that Councillor Holliday's behaviour at the AGM, was not just dishonest, it was offensive, possibly malicious, definitely insulting and was an abuse of her position both as a long-standing councillor as well as deputy mayor elect with 2 years prior as deputy mayor. She further states that accusing her falsely of: attempting to cause a rift within the Liberal Democrat group; being illiberal; making the roles of mayor and deputy political; issuing an ultimatum; blackmailing and bullying her, undermined and humiliated her. Councillor Flynn further

advances the view that Councillor Holliday's behaviour amounts to bullying and, in her opinion, is a clear breach of the Members Code of Conduct at para 7. She also believes there may have been a breach of section 7.3 in that she has suffered victimisation as defined by the Equality Act. She says she was treated badly because of standing up to and speaking out against racist behaviour.

3. Consideration and Determination of Complaints

2.1 The Council has made arrangements, in accordance with the provisions of the Localism Act 2011, for the determination of complaints that any Councillor has failed to comply with the Cheltenham Borough Council Code of Members' Conduct. All complaints must be made to the Monitoring Officer to whom the Council has delegated authority to consider and determine complaints and to seek to resolve complaints including, where necessary, arranging for an allegation to be investigated. The Monitoring Officer must, when assessing and determining complaints, consult with the two Independent Persons (who are neither Councillors nor Officers of the Council) appointed by the Council under the Localism Act 2011. The Council also provided the option for the Monitoring Officer to refer the matter to the Standards Committee where more appropriate to do so.

2.2 As part of the process of the consideration of complaints by the Monitoring Officer and Independent Persons, a number of preliminary tests are undertaken including whether

- the Member is acting in their capacity as a member,
- on the information available, is the behaviour complained of likely to be a breach of the Code
- it is necessary for the complaint to be investigated (fact finding)
- in the circumstances of the case, it is in the public interest for the complaint to be investigated and determined

2.3 Regarding the complaints the subject of this report, the Monitoring Officer, having consulted with the Independent Persons, formed the view that this matter is appropriately referred to the Standards Committee whose role it is to "exercise the Council's functions in matters relating to standards of conduct within the Council". In addition a separate investigation process did not appear necessary as the information upon which the complaint is based is a matter of record.

3. Factual Background and Context

3.1 On the 17th May 2021 the Annual meeting of Cheltenham Borough Council took place. The meeting was broadcast contemporaneously via YouTube.

3.2 One of the items of business considered by the Council was the election of the Deputy Mayor for the year 2021/22 and within the consideration of that matter Councillor Flynn made a speech opposing the election of Councillor Holliday to the position. Councillor Holliday responded to that speech. The contents of the speeches are a matter of record.

4. Cheltenham Borough Council Code of Members' Conduct

4.1 The Cheltenham Borough Council Code of Members' Conduct which was adopted with effect from the 1st July 2012 and is attached at Appendix 3, applies when Members are

acting in their official capacity as a member of Cheltenham Borough Council including when engaged in the business of the Council or when behaving so as to give a reasonable person the impression of acting as a representative of the Council. It does not seek to regulate what Members do when acting solely in a private capacity in their private life. Paragraph 5 of the Code sets out the general principles which Members are expected to observe when acting as Councillors. These principles are:-

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

4.2 Turning to the specific requirements of the Code of Conduct, paragraph 7 requires that Members observe a number of rules, of which rules 7(1)(2) and 7(8) below are relevant to this complaint and provide:-

- 7(1) “Do treat others with respect”
- 7(2) “Do Not bully a person”
- 7(8) “Do promote and support high standards of conduct when serving in your public post by leadership and example”

5. Consideration of Complaint

5.1 Application of the Code of Conduct

The Monitoring Officer has, in consultation with the Independent Persons, considered the complaint in the context of the Code of Conduct. The preliminary assessment (paragraph 2.2 above) of the complaints, has been carried out and is detailed in paragraphs 5.2 – 5.4 below.

5.2 The first consideration is whether Councillor Holliday was acting in her official capacity, thus engaging the requirements of the Code of Conduct. It is clear that Councillor Holliday attended and participated in the Council meeting in his capacity as a Cheltenham Borough Councillor. The Code of Conduct is therefore engaged.

5.3 In respect of the second consideration, it was concluded that it is likely, on the basis of the information provided, that there has been a breach of the Code of Conduct. In particular, clauses

- 7(1) “Do treat others with respect”
- 7(2) “Do Not bully a person”
- 7(8) “Do promote and support high standards of conduct when serving in your public post by leadership and example”

are relevant to the consideration of these complaints.

5.4 Finally, consideration has been given to whether it is necessary to seek additional information / investigate the facts before any decision can be made as to whether there is any breach of the Code of Conduct. If so, the public interest test is applied to determine whether the matter is serious enough so that an investigation would be in

the public interest. In this particular case, the facts of this case comprise Councillor Holliday's oral contributions to the meeting on the 17th May 2021 which have been broadcast and which remain available for viewing on the Council's website. Consequently, it was not considered necessary for any further investigation to be undertaken in order to determine whether a breach of the Code of Members' Conduct has occurred.

5.5 Having completed the preliminary assessment, consideration was given to the substance of the complaint and the main concern highlighted within it which can be summarised as statements being made in a speech by Councillor Holliday on the behaviour of Councillor Flynn which amounted to intimidation, blackmail and bullying. Made at a public meeting these remain available to be viewed on the Council website which amounts to a breach of the requirement within the Cheltenham Borough Council Code of Conduct to treat others with respect.

5.6 Consultation with the Independent Persons

The complaints were, as required, referred to the Independent Persons for comment and their response was that issues raised against Councillor Holliday did require consideration.

5.7 Analysis of complaints

Although the information in respect of the earlier incident involving the censure of another Councillor and the complaint in respect of Councillor Holliday to the Liberal Democrats Complaint Panel are contained in this report they are cited merely as context. The complaint presently for consideration revolves solely around the events that took place at the Annual Council meeting in May of this year. As previously stated the complaint is centred upon a speech made at that meeting by Councillor Holliday and as such only the contents of the speech needs to be considered together with an application of the requirements of the Code of Conduct to its contents

5.8 It is incumbent upon Councillors, at all times when acting in their capacity as a representative of Cheltenham Borough Council, to act on all occasions in accordance with the public trust placed in them. Members are also, in accordance with the CBC Code of Members' Conduct, expected to observe the general principles, of which integrity and leadership are relevant to the determination of these complaints.

5.9 Considering the complaint, the context set out above, the comments of the Independent Persons and the specific application of the Code of Conduct, it is clear that there exists a viable issue for the consideration of the Standards Committee in respect of the complaint. This is that the content of the speech in respect of the remarks made by Councillor Holliday in relation to the alleged behaviours of Councillor Flynn, which are not supported by any evidence, could be construed as impeaching her character and being in breach of the requirement of the Code of Conduct to treat others with respect.

5.10 The Monitoring Officer is delegated to seek a mediated resolution of complaints when they arise and, on this occasion, an attempt was made to conclude the matter by requesting Councillor Holliday to issue an apology to Councillor Flynn. Councillor Holliday declined to proceed by this course. It is correct to say that Councillor Holliday was able to decline this proposal and, except for reporting the fact that this approach was attempted, her decision not to apologise is not central to the Committees

deliberations. It is relevant however in explaining why this matter has eventually, with the approval of the independent Members, been referred to the full Standards Committee for decision and disposal.

5.11 Conclusion

In the absence of a mediated conclusion to the complaint the issue falls to be determined by the Standards Committee, The speech, the subject of the complaint, does not require any technical interpretation and can be assessed as to its effects on a straight forward consideration of its contents.

6. Sanctions

6.1 As the Committee is aware, the sanctions that may be imposed in respect of breaches of the Code of Conduct cannot include anything that would prevent a Councillor performing their duties as a Councillor and therefore do not extend to either suspension or disqualification from the role.

6.2 The Committee will recall that in its response to the 2018 consultation by the Standards in Public Life on its review of Local Government Ethical Standards, the point was made that the current sanctions do not appear to be adequate especially for more serious breaches of the Code of Conduct. The outcome of the review, with regard to sanctions, was a recommendation to the Government that a new power for local authorities to suspend Councillors for up to six months be introduced, but that requires legislative changes that have yet to take place.

6.3 Currently, therefore, the available sanctions are one or more of the following:-

- (a) Requesting the Member to undertake actions deemed appropriate e.g. issue an apology, undertake training,
- (b) censure;
- (c) report to Council;
- (d) recommend actions to the Leader of the Council;
- (e) recommend actions to Group Leader (e.g. removal from a Committee);
- (f) removal from Outside Bodies;
- (g) exclusion from the Council Offices, or other premises, with the exception of meeting rooms as necessary for attending Council, Committees or Sub-Committees and/or nominating a single point of contact

7. Considerations for Standards Committee

7.1 This report is brought to the Committee by the Monitoring Officer for the Committee to determine the sanction to be imposed in this matter.

7.2 Taking into account, the observations at 5.11 the Committee may consider it appropriate to impose a sanction requiring that Councillor Holliday makes a full apology to Councillor Flynn, which would be published on the Council's website.

7.3 The Council has a Member Training Programme which includes training for all Borough Councillors on various areas and the Committee may consider that attendance at specific training around the issue of the appropriate conduct for a Member in a meeting of the Council could be considered in the present circumstances.

7.4 The Committee may also wish to consider censure.

7.5 The Committee is also asked to consider whether there are any implications for the authority arising as a consequence of the matters covered in this report.

Report Author

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