

WINCHESTER CITY COUNCIL
STANDARDS (DETERMINATION) SUB COMMITTEE
RE CLLR GOTTLIEB
DECISION ON SANCTION AND CONFIDENTIALITY

1. The Sub-Committee reconvened on 8 October 2018 to consider two issues:
 - 1) Whether and if so how to publish the decisions of this Sub-Committee; and
 - 2) Whether any and if so what sanction should be imposed on Cllr Gottlieb in light of their finding of breach of the Code in respect of the statement dated 11 February 2015.
2. In addition to the oral submissions that we heard from Counsel on 8 October, we had the benefit of short oral statements from Cllr Gottlieb and Mrs Gottlieb, and detailed written submissions from both parties.
3. Our decision, reached after considering all these matters and Mr Bailey's observations as the Independent Person, is as set out below.

Publication

4. The full Decision of this Sub-Committee consisting of the three parts dated 5 August, 30 August and 8 October 2018 should be published on the Council's website.
5. There is substantial public interest in the electorate knowing how the Council deals with allegations of misconduct against elected Members and how these have been resolved. This applies both to the one breach that was found, as well as the other complaints that were held not to amount to a breach of the Code of Conduct on the particular facts.
6. The reasoning which led us to hear the complaints in private as exempt business (see para.18(b)-(e) of the 5 August decision), is not directly applicable to the Decision itself and in any event, any privacy or other sensitive issues referred to

in the Decision is outweighed by the interests of openness and transparency in the information contained in the decisions being made public. The underlying documents however remain exempt from publication as they contain private and sensitive information which goes wider than that which we considered necessary for our Decision.

Publication Summary

7. It was submitted on behalf of Cllr Gottlieb that, given the length and analytical structure of the 5 August Decision, there was a risk it could be misrepresented. Cllr Gottlieb was particularly concerned that it be made clear, for example by way of a press statement or executive summary, that only one complaint had been found to amount to a breach of the Code. Cllr Gottlieb also drew our attention to a series of press articles in the past which had referred to the investigation into these complaints as a “bullying probe” which he submitted unfairly misrepresented the position.
8. We think that our findings should be clear from the terms of our Decision, but in order to assist the public in understanding the Decision, which had to be lengthy in order to do justice to the submissions, we have produced a two-sided summary. This will be made available on the website as well.

Sanction

9. On behalf of Cllr Gottlieb it was submitted that it was sufficient that the Sub-Committee’s Decision which found of a breach of the Code of Conduct was published. The consequences of such publication for Cllr Gottlieb were significant in that they would have a detrimental effect on his reputation and political standing. Further, and by way of mitigation, it was submitted that the breach occurred over 3 ½ years ago and that at the time it occurred it was not thought sufficiently serious by any person to bring a complaint (the response at the time by the Chief Executive being to remind all councillors in writing of their duties and responsibilities under the Code). It was effectively an isolated incident since the Sub-Committee had concluded that Cllr Gottlieb had remained on the right side of the line respect of the other incidents in respect of which complaint had been made. Further emphasis was put on the circumstances, particularly the

timing, of the statement which was made in a charged atmosphere and on the day that the judgment in favour of Cllr Gottlieb was made public. It was Cllr Gottlieb's position that he had not intended to assert that the conduct of the officers was in some way improper and that calling for resignation (as he did in respect of the Leader and Deputy Leader, who did in fact subsequently resign from their positions as leaders) was simply part of the political currency. Finally it was noted that the investigation of the complaints has taken some 2½ years and that this delay has had a substantial adverse impact upon him and his family. It was submitted that in all the circumstances, publication was a wholly sufficient and proportionate sanction.

10. There was no dispute about our powers on sanction or that any sanction must be proportionate. The available powers include a formal finding of breach, censure (by way of a recommendation from the Sub-Committee of a motion for censure at a full Council meeting) and training.
11. In our view, although the breach was serious, the Sub-Committee does not consider that a motion for censure would be appropriate in this case.
12. A formal finding of breach will flow from the publication of the Sub-Committee's Decision. The real issue was whether the Sub-Committee should also impose a training requirement.
13. Cllr Gottlieb opposed any training requirement on the additional basis that it would serve no useful purpose because the Sub-Committee had only found one breach of the Code (i.e. in relation to the February 2015 statement, which was now 3½ years ago) and that the Sub-Committee had effectively found that in respect of the subsequent statements Cllr Gottlieb had stayed on the right side of the line.
14. In our view that takes an unduly narrow view of the context. It is accepted that the Sub-Committee only found one breach of the Code, namely in relation to the February 2015 statement and that this statement was issued some 3½ years ago and in the context of him having just succeeded in his application for judicial review against the Council. We accept that the subsequent statements did not amount to a breach of the Code of Conduct and we so held in our Decision of 5

August. In respect of the March and April 2016 statements, this was by reason of the fact that the internal processes were not in fact available in the particular circumstances of this case. However, there appeared to be no recognition or insight by Cllr Gottlieb as to the actual or potential impact of his public criticisms on officers who do not have public platform in which to respond, notwithstanding the fact that the later criticisms in this case did not amount to a breach of the Code. We think it unlikely that Cllr Gottlieb did not appreciate the effect of what he was saying in respect of officers (regarding their positions having become 'clearly untenable' and that they should 'immediately resign') but even if he didn't, this in itself shows a lack of understanding of the different positions of officers compared to Members. Resignation from a leadership position as an elected person is one thing. Resignation by an employee from his employment is another. These matters in our view mean that future breaches of the Code remain a real risk and accordingly training is an appropriate and proportionate requirement in this instance, and is further a proportionate method by which the authority can fulfil its own statutory obligations to maintain standards.

15. Accordingly we decide:

- 1) The Decision (consisting of decisions dated 5 and 8 August, and 8 October 2018) should be published on the Council's website, along with the summary prepared by this Sub-Committee.
- 2) Cllr Gottlieb should attend a training session on the Code and member/officer relations, to be completed by the end of February 2019.

Councillor Fiona Mather (chair)

Councillor Margot Power

Councillor Patrick Cunningham

8 October 2018