

Summary

*This summary is provided by the Standards (Determination) Sub-Committee to assist in understanding its Decision which occurred in three parts and is dated [5 August](#), [30 August](#) and [8 October 2018](#). It does not form part of the reasons for the Decision. **The full Decision of the Sub-Committee is the only authoritative document.** The full Decision and a copy of this summary are available on the Winchester City Council website at winchester.gov.uk/conduct*

References in square brackets are to paragraphs in the Decision dated 5 August 2018.

1. On 8 and 19 April 2016 Cllr Godfrey who was the Leader of the Council at the time, made complaints to the Monitoring Officer that the conduct of Cllr Gottlieb was in breach of Winchester Council's Code of Conduct. On 4 August 2016 the then Chief Executive of the Council, Simon Eden, also made a complaint to the Monitoring Officer about the conduct of Cllr Gottlieb ([3]). The complaints arose in the context of the Silver Hill re-development scheme and in broad terms were said to amount to public criticism of council officers contrary to various provisions of [Winchester's Code of Conduct](#) as read with the [Member/Officers Protocol](#) and [Rule 38 of the Council Procedure Rules](#).
2. The matters were referred for investigation through the Council's processes ([4]). A hearing on the substantive question of breach was held on 26 July 2018.
3. Five complaints were pursued by the Monitoring Officer at the hearing ([34]). The Standards Sub-Committee set out the Code of Conduct framework ([21]-[32]) and the relevant background and context ([36]-[84]).
4. The Standards Sub-Committee decided that one of the five complaints amounted to a breach of the Code of Conduct, but that the remainder did not. In summary and taking each complaint in chronological order, the Standards Sub-Committee found:

The statement made in the Southern Daily Echo dated 11 February 2015

5. The Sub-Committee held that this statement would, by reason of the words used, be read as containing serious criticism of senior officers and should first have been raised through the Rule 38 Council procedure. The failure to even attempt to do so was a breach of paragraph 3.9 of the Code of Conduct ([90]-[93]). Further, the statement amounted to a breach of paragraphs 3.13 and 3.14 of the Code of Conduct because issuing press statements imputing the conduct of individual officers by calling for their resignation was not 'valuing your colleagues and Officers and engaging with them in an appropriate manner' because the officers were not able to respond publicly to criticism. Furthermore and for the same reason it constituted a failure to treat all people with respect and propriety ([94]). This restriction on freedom of speech met a number of legitimate aims and was proportionate in this instance ([96]-[103]). Accordingly there was a breach of paragraphs 3.9, 3.13 and 3.14 of the Code.

The report from Cllr Gottlieb sent to all Members of the Council on 28 August 2015 and produced to Clear Lloyd Jones

6. The Sub-Committee concluded that the drafting of the report and sending it to Ms Lloyd Jones was not a breach of the Code in light of her terms of reference and the fact that Cllr Gottlieb was specifically told to make his submissions directly to her ([106]). The Sub-Committee further concluded that sending it to Members was not a breach of the Code either. Whilst the submissions contained criticism of officers, it was accepted on behalf of the Monitoring Officer that these were genuinely held views and it was not alleged that anything in the report was made in bad faith or, for example, gratuitously offensive and were matters which could have been raised in internal discussions between Members ([107]-[110]).

The apology email of 8 December 2015

7. The Sub-Committee concluded that the matters surrounding this incident had already been the subject of a prior complaint and consideration by a Standards (Assessment) Sub-Committee who had resolved not to refer the complaint for investigation. In light of that fact and the action taken at the time, the Sub-Committee concluded that it would not be appropriate to revisit that complaint ([111]-[117]).

The 17 March 2016 letter to the Hampshire Chronicle

8. The Sub-Committee resolved that whilst part of the contents of Cllr Gottlieb's letter amounted to publicly accusing Council officers of improper conduct and so would normally potentially be contrary to paragraphs 3.9, 3.13 and 3.14 of the Code of Conduct ([118]-[121]), it was not a breach of the Code in this instance. This was because the Sub-Committee found that the then Leader of the Council, Cllr Godfrey, had, by reason of his email of 13 September 2015 sent to all Members in his capacity as Leader, expressed himself in support of officers in a manner that meant that the reasonable and fair minded observer would conclude that there was a real possibility of bias were he to be asked to adjudicate on Cllr Gottlieb's complaints regarding the conduct of officers. This meant that there was no internal redress mechanism reasonably open to Cllr Gottlieb in this instance and that therefore he was not in breach of paragraph 3.9 for failing to use it ([122]-[130]). As to paragraphs 3.13 and 3.14 of the Code, in the highly unusual circumstances of this case and on fine balance, the Sub-Committee concluded that to find a breach of these provisions of the Code would be a disproportionate interference with Cllr Gottlieb's freedom of expression under Article 10. Accordingly, there was no breach of paragraphs 3.13 or 3.14 of the Code either ([132]-[133]).

The press release to the BBC dated 12 April 2016

9. The Sub-Committee decided that whilst parts of the statement would normally potentially give rise to a breach of paragraphs 3.9, 3.14 and 3.15 of the Code, for reasons very similar to those in relation to the item immediately above, there was no breach of the Code in respect of this statement in this instance either ([134]-[142]).

SANCTION

10. The Sub-Committee concluded, following written submissions and an oral hearing on 8 October 2018 that:

- 1) The Decision dated 5 and 30 August, and 8 October 2018 should be published in full on the Council's website along with this summary;
- 2) Cllr Gottlieb is required to attend a training session on the Code of Conduct and Member / officer relations, such training to be completed by the end of February 2019.