

HERTFORDSHIRE COUNTY COUNCIL – COUNCILLOR CODE OF CONDUCT

DECISION NOTICE - INITIAL ASSESSMENT OF COMPLAINT

Subject Member: Cllr Morris Bright – Hertfordshire County Council (the Council)

Complainant(s): Cllr Stephen Giles-Medhurst – Hertfordshire County Council

Date of Complaint: 27th March 2019

Background

On 27 March 2019 Councillor Stephen Giles-Medhurst, Leader of the Liberal Democrat Group of the Council, (the Complainant), submitted a complaint to the Chief Legal Officer alleging that Cllr Morris Bright, (Subject Member), had breached the Code of conduct Hertfordshire County Councillors. The Complaint, which was signed by a number of Liberal Democrat Group Councillors, states:

“This is a formal complaint about County Councillor Morris Bright regarding the comments that he made during debate at the Full Council on February 19th which in the view of the Liberal Democrat Group are “sexually and homophobia offensive” and which Cllr Bright despite requests from myself and other councillors to make a public apology he has not done so.”

The comments that gave rise to the Complaint were recorded in the Council’s “webcast” of the budget debate held during the full Council meeting on the 19th February 2019. Councillor Bright made a speech (commencing 2.06.43 on the webcast) during which he said (at 2.09.47 on the webcast):

“...it was the Liberal Democrats who were on board; they were in bed; they were doing whatever they needed to do; they bent over and took it so that they could actually have control and power and they cut funding as well.”

An investigation was conducted in to the circumstances surrounding the alleged breach of the Code and the investigator and the Council’s Independent Person, were in agreement in their conclusion that although the words chosen were, due to their ambiguous nature, ill-judged, there was insufficient evidence to conclude that the Subject Member had breached the Code of Conduct for Hertfordshire Councillors.

Decision of Chief Legal Officer

Under the arrangements for dealing with this type of complaint it falls to the Chief Legal Officer to review the report and consider whether it is sufficient.

Having carefully considered the investigation report and the responses provided by the Complainant and the Subject Member, I am satisfied that the investigation had been thorough and all relevant matters were taken into account.

As for the conclusion of the investigation, whilst it is accepted by all involved that the choice of phrase used by the Subject Member was, due to its ambiguity, ill-judged, the finding of the investigator regarding their intended meaning is supported by the interview and other evidence. I also note that the context was that of the annual council debate on its budget which is commonly one of the most politically charged debates of the year.

As part of the process the Independent Person was invited to consider and comment on the report and they concurred with the finding of the investigator which adds further weight to the conclusion.

Given the above I can confirm that I am satisfied with the investigation, its conclusion that there was no breach and that no further action is warranted.

I set out below at Appendix A an extract from the investigation report which captures the conclusions and their rationale with which I concur.

Quentin Baker
Chief Legal Officer & Monitoring Officer

16-08-19

Appendix A

Extract from Investigation Report - Conclusion of Investigator

7b) Did Councillor Bright breach the Code during the debate on 19 February 2019?
The Code places specific obligations on each Councillor (see paragraph 3 above). I consider that the most relevant to the issues in question are:

paragraph 3.1(a) – a Councillor must carry out their specific duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, sexual orientation, age or religion;

paragraph 3.1(b) – a Councillor must show respect for others, and

paragraph 3.4 - Councillors must not conduct themselves in a manner which could reasonably be regarded as bringing their office or the authority into disrepute.

*I am required to form a view on whether Councillor Bright breached any of these specific obligations at the time he made the **Comments**. If I consider that a breach has occurred then there are two potential outcomes, either informal resolution or a formal referral to the Standards Committee. If, on the other hand I consider that the Code has not been breached then the matter will not need to be considered any further. I am required to form a view on the balance of probabilities.*

After careful consideration I have formed the view that Councillor Bright did not breach the Code for the following reasons.

Were Councillor Bright's comment's pre-prepared or scripted?

*At the time Councillor Bright made the **Comments** he was participating in a debate in the Council chamber. I am satisfied that his comments were somewhat impromptu and that he had not pre-prepared a script of what he wanted to say. Councillor Bright is a trained journalist and clearly a very able communicator who appeared un-phased by the webcast and determined to use its existence to help him make some of the points in his speech.*

What was Councillor Bright's intention in making the comments?

Councillor Bright chose to take part in a debate that had already had a degree of national party political comment made by Councillors from each political group and the broad thrust of his statement was of a political nature and in keeping with the issues in question (what the spending priorities of the Council should be).

*I am satisfied that, at the time he made the **Comments** Councillor Bright had not intended them to have any form of violent sexual, misogynistic or homophobic overtones, I believe on the balance of probabilities that he had intended the reference to be one of a form of corporal punishment in a boarding school or similar institution.*

*However, his words were clearly ill-judged, in-delicate and capable of more than one interpretation. I accept that the **Comments** can have the meaning that have been ascribed to them by Councillor Gibson and that it would have been better for Councillor Bright to have chosen an alternative metaphor to illustrate his point.*

Did Councillor Bright attempt to apologise for the offense that he had caused Councillor Gibson?

The short answer to this is yes; Councillor Bright expressed his regret for upsetting Councillor Gibson during debate on the afternoon of the 19 February 2019 and this was expressed in public and is available to be viewed. Councillor Bright also wrote to Councillor Gibson by email on 20 February 2019 and explained the he was sorry if he had caused any offense. I accept that the apology was not a full and unreserved apology to Councillor Gibson.

Are offensive comments capable, in and of themselves, of amounting to a breach of the Code? The right to freedom of expression is enshrined in United Kingdom Law in the Human Rights Act 1998 which incorporates the European Convention on Human Rights. Article 10 of the Convention sets out every individual has the right to freedom of expression, without interference of a public authority, subject only to restrictions and penalties prescribed in law which are necessary in a democratic society.

*The issue of freedom of political expression was considered by the High Court in the case of *Livingstone v The Adjudication Panel for England* [2006] EWHC 2533 (Admin). This case looked at the conduct of the then Mayor of London and the words he used to describe a journalist who was seeking to interview the Mayor in an impromptu fashion whilst not on formal mayoral duties.*

Mr Justice Collins noted that freedom of expression, particularly when considering political views, is fully protected in law and that the Courts will only intervene at a point when the conduct becomes unlawful. At paragraph 34 of his judgment he notes:

“...Interference with the right to free speech which impedes political debate must be subject to particularly close scrutiny...”

And further at paragraph 35:

“...Anyone is entitled to say what he likes of another provided he does not act unlawfully and so commits an offence...Surprising as it may appear to some, the right of freedom of speech does extend to abuse. Observations, however offensive, are covered.”

I consider that, based on the above case, words which cause offense are permitted within a formal political debate.

The only limit to this freedom of political expression is when the words used form part of a criminal offence – for which the person using the words would have had to form the necessary criminal intent.

I think that it would cause very significant difficulties for all Councillors at the County Council if they were required to consider whether or not they were causing offense by their remarks.

Did Councillor Bright fail to carry out his duties and responsibilities with due regard for the principle of equality of opportunity?

Councillor Bright was taking part in a budget debate, whilst debating in Council is clearly one of his duties I do not think that it can be said that he was advocating the advancement of any form of inequality – he was making a political comment about how he saw the conduct of the Liberal Democrats whilst they were part of the Coalition Government. His remarks were pointed and likely to cause political embarrassment. In my view he was expressing a political view and not seeking to advance an agenda of inequality.

Did Councillor Bright fail to show respect for others?

As noted above Councillor Bright’s Comments were ill-judged and, as he has accepted in hindsight, unsuitable. However, I think that they must be viewed within the context that they were meant. I do not consider that Councillor Bright had the intention that has been subsequently ascribed to his comments and the only like of respect that he was intending to show was for his political opponents.

Did Councillor Bright conduct himself in such a manner as could be reasonably regarded as bringing his office or the authority into disrepute?

On balance I consider that the answer to this is no. Councillor Bright made his comments during a political debate. During that debate, a number of Councillors made party political points and some of the metaphors used were less appropriate than others.

Councillor Bright uses humour to communicate his points and on this occasion the comments he made became somewhat ill-judged in the heat of the moment. Although Councillor Gibson was upset by the comments he made (and looking objectively at the comments I understand why that is the case) no other member of the Council rose to make a comment at the time or in the afternoon’s debates. I do not think that Councillor Bright’s conduct was so low that it could reasonably considered as bringing his office or the County Council into disrepute.