

DECISION

Appeal Panel Hearing - 5 April 2022

GRIEVANCE UPHELD

The Panel believes that it is important that Councillors should feel able to approach and work with their fellow Councillors. The Panel, however, is sad to learn of the adverse pressure brought on Councillors through negative campaigning, particularly on social media. In the Panel's view this is unacceptable and damages our democracy.

The Panel accepts that robust and lively debate is a crucial part of the democratic process. Differences of opinion and the defence of those opinions through Councillors' arguments and public debate are an essential part of the cut and thrust of political life. This is reflected in both the Members Code of Conduct (Code) and the Grievance Policy. But as the Code itself says, it must be done in a civil manner and individuals must not be subject to unreasonable or excessive personal attack. While it is recognised that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally.

Underpinning all of this is the principle of fairness. Healthy debate is acceptable provided people are not treated unfairly. Unfairness in the case of the grievance policy includes not having been given a proper and reasonable right of reply or right of correction to defend oneself against unreasonable public criticism.

The Panel believe that Councillor Kinnell was aware before the meeting that her Portfolio Announcement was likely to elicit a reaction from other Councillors. The Panel also recognise the announcement was pre-prepared and a transcript was published on social media very soon after the meeting, along with an extract of the YouTube recording of the meeting. The Panel therefore considers that rather than being spontaneous, the announcement had a degree of advance preparation and hence calculation.

The Panel accepts that Councillor Kinnell had the right to express her opinion and that in principle she had the right to express her views through the Portfolio Holder Announcements. The issue in this instance, is not the message itself, but that the announcement specifically named two Councillors (Councillors Butcher and Forster) in a manner the Panel agrees could reasonably be seen as being highly critical.

Considering the above, the Panel has decided that Councillor Kinnell treated the two named Councillors unfairly. This is because in the Panel's view Portfolio Announcements are not intended to be a forum for debate and challenge. It is a far more limited and narrower platform that only allows an element of questioning and answers. None of the formal rules of debate apply to it. The wider protection offered by Standing Orders which allow Members a proper opportunity to challenge and correct statements, or to respond to personal criticism made in debate, was not therefore available to Councillors Butcher or Forster. The swift deterioration of the mood of the meeting contributed to a rapid closure of the discussion.

The Panel agreed that in a more tolerant atmosphere it may have been that Councillors Butcher and Forster could have sought the indulgence of the Chairman to say a few words. However, this would have been outside the Constitution. Further, given the atmosphere within the Chamber at the time the Panel recognises that the Chairman felt the need to close down the potential for further comment and further questions were not invited.

The position of being unable to seek the right of reply is further compounded by the issue of the Council minutes. Minutes of a meeting are simply to comprise a summary record of the matters discussed and to confirm decisions made. They are not a word for word record of all discussion. While Councillors can ask under the Constitution for their individual vote to be recorded, such a right does not extend to having their individual comments recorded. Besides, at a following meeting of Council the only issue for debate on the minutes is their accuracy. Therefore, while Councillor Kinnell's Portfolio Holder Announcement remains published in full, Councillors Butcher and Forster again, have no right of correction or alteration unless it is held that the minutes of the meeting are factually incorrect. Neither could they have requested specific text be placed within the Minutes.

In conclusion the Panel believes that Councillors Butcher and Forster were treated unfairly. They were not given a proper and reasonable right of reply or right of correction to defend themselves against what they perceive to be unreasonable public criticism. The Panel's decision, therefore, is that Councillor Kinnell should offer both a written apology.

Finally, as we approach the May local elections, the Panel urges all Councillors to engage in positive, constructive conversations and debates, to help make local democracy a welcoming and effective environment for all.

Peter Moore, MBE, OBE
Independent Person
Appointed by Hart District Council