

Summary of Findings

1. The Complaints

Three complaints were received from Councillor Morris, Councillor Stamp and Councillor Mayes following the meeting of full Council on Thursday 12 September 2019.

Complaint 1

The first complaint referred to the action of Councillor Fluker at the meeting of full Council on 12 September 2019 and alleged that Councillor Fluker carried out a cut-throat gesture aimed at 2 councillors; Councillor Siddall and Councillor Fleming, following a vote on which they abstained.

Councillor Stamp

Councillor Stamp stated that she had witnessed a cut-throat gesture aimed at Councillor Fleming and felt that Councillor Fluker's behaviour called in to question the Nolan principles especially "Leadership" and that this action was in breach of the Code of Conduct specifically:

A Councillor must not:

(b) bully any person

(e) conduct yourself in a manner which could reasonably be regarded as bringing your office or Authority into disrepute.

Councillor Stamp stated that the behaviour was shocking and unacceptable.

Councillor Mayes

Councillor Mayes stated that she had initially thought the gesture was being directed towards her. Councillor Mayes stated that the gesture was distressing and offensive. Councillor Mayes stated that Councillor Fluker's behaviour did not follow the Nolan Principles was bullying in nature and as such was in breach of the Code of Conduct specifically:

A Councillor must not:

(b) bully any person

(e) conduct yourself in a manner which could reasonably be regarded as bringing your office or Authority into disrepute.

Councillor Morris

Councillor Morris stated that he had not directly witnessed the gesture. He stated that he had been advised that the gesture had been made and that any gesture of this nature was threatening and was not acceptable to be directed at any party especially a female. He stated that this behaviour was of a bullying nature, was disrespectful and should not be tolerated.

Councillor Morris stated that this action breached the Code of Conduct.

Complaint 2

Councillor Morris also raised a second complaint regarding a comment made by Councillor Fluker directed towards Councillor Siddall of "Hello Sailor"

For ease of reference throughout the report I have separated my comments as 1 and 2 in relation to the 2 complaints above.

2. Evidence

I have interviewed Councillor Siddall and Councillor Fleming by phone.

I have had email correspondence and spoken to Councillor Fluker in person.

I have had email correspondence with Councillor Stamp and Councillor Mayes and I have discussed the complaint with Councillor Morris.

I reviewed the CCTV from the evening but due to the location of the camera no footage of the incident was available.

I am satisfied that a gesture was made at the meeting on the 12 September which involved a drawing of the hand across the throat.

I am also satisfied that Councillor Fluker used the term “Hello Sailor” following a discussion in which Cllr Siddall had confirmed that he sailed.

Councillor Siddall

1. Councillor Siddall confirmed that he had seen the action and that he wished to make no comment or take the matter any further at this stage.
2. Councillor Siddall has confirmed that he felt that the gesture was aimed at him.
3. Councillor Siddall confirmed that he had been offended by the Hello Sailor comment. Councillor Siddall stated that this was a homophobic comment.
4. Councillor Siddall confirmed that Councillor Fluker had apologised to him privately in an email the next day for any unintended offence he may have caused. Cllr Siddall confirmed that following his acceptance of this apology he received additional information in relation to the comments made and formally withdrew his apology as he felt it was insincere.
5. Councillor Siddall did not wish to take the matter any further at this stage.

Councillor Fleming

1. Councillor Fleming confirmed that she had seen the gesture. Councillor Fleming confirmed that she found the gesture offensive and was concerned that Councillor Fluker had not understood that this gesture may cause offence.
2. Councillor Fleming confirmed that she felt that the gesture was aimed at her as she stated she sits in his direct line of sight and that she did think it was directed at her.

Councillor Fluker

1. In both writing and at an interview Councillor Fluker stated that the he meant the gesticulation as a signal to ‘stop and move on’. Councillor Fluker stated that he has used this gesture in the past and that it was a means of communicating to the Conservative Group Members to cease some activity “i.e. to stop pontificating, wind up the debate or move on to the next part of the debate”.

This gesture was used at a time in the meeting where a vote had been taken which had resulted in a close vote. There was also a level of general noise within the chamber.

Councillor Fluker stated that he wished members to cease and move on as the motion had been passed.

Councillor Fluker felt that to preserve good order in the chamber matters should move on and that this gesture was directed to the whole administration.

Councillor Fluker has stated that he was not directing the gesture to any individuals but to the administration.

Councillor Fluker stated that “The gesticulation is commonly used in debates and the Speaker of House of Commons has used it himself. It is also used as a signal to stop a process or progression for example an aircraft or other engine or an unfolding event.”

Councillor Fluker stated that the interpretation of throat slitting is very offensive and has stated that “that was not in my mind”

Councillor Fluker has stated that the gesture is one he has used on previous occasions and that it is a common gesture used to indicate that a behaviour should be ended, usually where communicating verbally is not appropriate or possible **(For further information see Annex 4)**.

2. The comment “Hello Sailor” was made. Councillor Fluker stated that he made this comment without being aware of the connotations it had or that it would cause offence. He added that, on leaving the meeting, he realised the possible homophobic nature of the comment. Councillor Fluker contacted Councillor Siddall the morning after the meeting and apologised for any offence that may have been taken from his comment. Councillor Fluker advised the Head of Paid Service and the Monitoring Officer of his actions by email on the 13 September 2019.

3. Analysis of Evidence

It is not disputed that both incidents occurred at the meeting of 12 September. The first instance took place in a public meeting the second in private confidential sitting of the Council. Both incidents took place in the view of Officers and Members of the Council.

1. The complainants have all stated that their view was that the hand gesture was of a threatening nature and was not appropriate for the leader of the Council to be making. Councillor Fluker has stated that this was not the intention of the gesture, but that it was an indication to the Councillors to cease talking.
2. Councillor Siddall has confirmed that he found the comment offensive and was disgusted by it.

In relation to the 1st complaint all complainants found the gesture offensive.

In relation to the 2nd complaint Cllr Siddall has stated quite clearly that he found the incident offensive.

Councillor Fluker has stated his view of the intention and meaning of his actions. I am unable to provide a definite answer in relation to the thoughts in Councillor Fluker’s mind at the time of the gesture. His explanation is a plausible one and is backed up by the circumstances in the chamber of the time at the incident.

Councillor Fluker has been willing to apologise to those members who were offended by the incident and to set out his position in relation to his intentions.

While Councillor Fluker's intention may not have been to offend, both actions have been perceived as offensive by Councillor Siddall and Councillor Fleming and the complainants in this case.

Code of Conduct

The relevant terms of the code of conduct are as follows:

3.2 You must treat others with respect

3.5b You must not bully any person

3.5e You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the authority into disrepute.

Treating Others with Respect

All members must treat others with respect.

My view is that the incident on the 12 September was disrespectful on 2 counts. One count was made in public and the second was of a homophobic nature both of which should be taken seriously.

1. The gesture has been interpreted as offensive and as such is not respectful of the fellow Members within the chamber. A member of the public could have come to the same view as that of the complainants. A member of the public observing this action would not be aware of any previous history or the previous practice of the party. They would judge such an action only on its visible action. I am of the view that the gesture could be viewed as disrespectful.
2. In relation to the Hello Sailor comment this comment has been viewed by Cllr Siddall as homophobic and therefore is clearly disrespectful.

Bullying

Bullying may occur in a single incident or as a course of conduct.

In order for a claim of bullying to stand it is for the alleged victim to confirm whether they felt bullied by the actions of the individual. While a third party may infer an action was an act of bullying it is the interpretation of the victim in each case which is central to the decision.

1. Councillor Fluker has stated that the gesture made was at the whole party and was not intended to bully any individual but was to bring the matter to a close.

In this instance the 2 alleged victims have not wished to take the matter and have not stated that they felt these individual actions were bullying in nature.

2. In relation to the Hello Sailor comment, Councillor Fluker confirmed that he issued an email apology via email on the 13 September to Councillor Siddall. Councillor Siddall confirmed that he did not wish to take the matter any further at this stage.

Bring Office into disrepute

This element of the Code is often associated with a breach of another element of the Code and its impact on the public confidence in the Council and the Councillor. In the opinion of the Investigating Officer, making gestures or speaking in a manner which could reasonably be considered disrespectful could be considered to pose a reasonable risk of bringing the Council into disrepute by reducing public confidence in the Office of Leader of the Council.

4. Conclusion

On considering the code of conduct I have considered the three possible grounds:

Disrespectful

1. In relation to the first complaint while Councillor Fluker's actions may not have been intended to be disrespectful, but they have been interpreted by the complainants and Councillors Fleming and Councillor Siddall as such.
2. In relation to the second complaint while Councillor Fluker may have meant no offence by his comment the comment was offensive to Councillor Siddall and was disrespectful.

The committee may wish to consider in determining any sanctions the intention of Councillor Fluker in both incidents and in relation to the second complaint his subsequent apology.

Bullying

In relation to the allegation of bullying I do not believe there is evidence to support an allegation of bullying.

Bringing the Office into disrepute

In relation to the possibility of bringing the office into disrepute this will be a matter for the Committee to decide based upon the weight that they place on the disrespectful comments made and whether they are serious enough in nature to bring the Council or the Office of Leader into disrepute

5. Full Council Apology

At the meeting of full Council on 21 November 2019 Cllr Fluker made reference to the 2 incidents contained within this report.

In relation to the cut throat gesture he gave an apology to anyone who had been offended by his gesture at a previous meeting. Cllr Fluker stated that the gesture was not intended to be offensive but that he apologised if it had caused offence. This apology was made generally to the whole Council, no specific individual Councillors were named.

In relation to the "Hello Sailor" comment again Cllr Fluker apologised for any offense that this comment had caused and that this had not been his intention. The apology was again directed to the whole Council.

Cllr Fluker also confirmed that he was prepared to undertake diversity training and had asked the HoPS to arrange this

6. Sanctions

If the Joint Standards Committee agrees with me on one or both issues that there have been breaches of the Code, then the following options are available or a combination of them:

1. Issue a formal censure in the form of a letter which is published on the Council's website;
2. Require Councillor Fluker to attend a training course to better understand the nature of offensive comments on individuals, protected characteristics and rights under the Equalities Act
3. Require that Councillor Fluker write a letter of apology to the Councillors who were offended and/or the Council as a whole;
4. Recommend to the Council that Councillor Fluker should be removed from one or more committees for a set time.
5. Recommend to the Council that Councillor Fluker is removed as Leader of the Council

I make no recommendation as to the appropriate sanctions if any are to be made. All options are listed above for completeness only.

Emma Holmes (Deputy Monitoring Officer)

December 2019

Documents

Annex 1 Letter of Complaint Cllr Mayes

Annex 2 Letter of Complaint Cllr Stamp

Annex 3 Email of Apology to Cllr Siddall

Annex 4 Email from Cllr Fluker