



## **CODE OF CONDUCT FOR COUNCILLORS DECISION NOTICE**

### **Complaint Reference 2020/JJ/AC**

I have received a complaint from Cllr Jacqui Jones about the alleged conduct of Cllr Adam Clarke. Both Councillors are Members of East Staffordshire Borough Council and the matters complained of occurred during an Extraordinary Meeting of the Council's Scrutiny (Community Regeneration, Environment and Health and Well Being) Committee on Monday 20<sup>th</sup> July 2020.

In her complaint form Cllr Jones has said:

#### **Code of Conduct Section 5 3.1 – Treat others with respect**

Cllr Clarke, while chairing a Scrutiny (Zoom) meeting, with many members, officers and press present, showed total disrespect when I had raised my hand to speak by ignoring me for well over 25 minutes during which time he invited other members to speak several times. When told that I had my hand raised he was dismissive and made inappropriate comments 'I don't believe Cllr Jones can add anything' (listen to meeting recording at time about 9 mins from end). Cllr Clarke twice invited 'members or others present' to speak. I was only allowed to speak after two members intervened and pointed out that I was at the meeting and was an 'other' and that this was a democracy and I should be allowed to speak. Very reluctantly Cllr Clarke allowed me to speak. It was obvious throughout the meeting that Cllr Clarke had a problem with me – he didn't ask me to come back after I received a response to what I said and he did to other non-committee members present (even though he said he was favouring committee members) and he didn't acknowledge that I had my hand up

#### **Code of Conduct Section 5 3.11 – Bringing the office into disrepute**

Cllr Clarke's behaviour at this meeting was such that one had to question whether or not he is a fit and proper person to be chairing a Council meeting. If he is to continue then he needs some training in ways to behave when in such a position and what it means to live in a democracy. Why would anyone want to join a committee chaired by someone with so little respect?

In response, Cllr Clarke has said:

I believe that in the course of the Scrutiny meeting I treated all participants fairly, evenly and with total respect, as I aim to do at all meetings. I also believe that in applying the rules as detailed below, I have acted both openly and honestly during the meeting, as well as in line with the letter and spirit of the constitution.

At all meetings I chair, I always aim to give members fair representation and facilitate those who wish to speak with an adequate chance to do so. At the beginning of the meeting, I stated that I would allow those who initiated the call in to speak at the opening of the item point and contribute during the 'main' debate, in accordance with section 6.4.3 of the call in procedures, but would prioritise committee members. This was to allow committee members adequate time and scope to ask questions in scrutiny of the decision in helping them form their opinion prior to voting. As the recording of the meeting shows, I fully allowed Cllr Jones adequate chance to contribute during the meeting, as I did with all non-committee members present notably Cllr Whittaker, Cllr Jones, Cllr Toon & Cllr Fitzpatrick. I believe that throughout I applied these principles fairly and consistently across all members, and refute the claim that Cllr Jones was subsequently treated any differently.

The only two members I gave further leeway to on this point were Cllr Grosvenor, as the lead motion mover against the EDR (acting in faith of part 3A, section 16.37 of the constitution), and Cllr Allen, as the Cabinet Member and decision taker.

Owing to the amount of participants present and those wishing to speak on the matter at the same time, upwards of 7 individuals at some points, throughout the meeting I chose not to verbally name individual councillors in a running order of speakers. This was applied consistently across all councillors and officers who indicated that they wished to speak, in which Cllr Jones was treated no differently.

I also refute the claim that I treated Cllr Jones with disrespect by stating that I did not believe that she had anything additional to add. At the beginning of the meeting, I urged caution to members around simply repeating exhausted lines of debate and that if they wished to speak they did so in an additive manner so as to further the discussion. Taking into consideration the contributions already made by Cllr Jones herself and other councillors, I did not believe at that point that a further contribution from Cllr Jones would add anything further to the debate that had not already been captured. Certainly, the repetition of points she subsequently made is demonstrated within the recording of the meeting.

I believe in taking this view, I was additionally acting in both the letter and spirit of the constitution and guidance given for such meetings. As set out in Part3la, defining the responsibility for functions of the Scrutiny (CREHW) Committee, under 'Right To Attend', section 3.9 clearly states these powers for the chairman of the committee as quoted below:

"...[Non-committee member councillors] may ask the Chairman for consent to speak (giving reasons). The Chairman may seek the views of the Committee before making a decision. If the Chairman gives such consent, the councillor may take part in the debate when invited to do so by the Chairman (but may not vote)."

This is also a position consistent with Democratic Service guidance issue in relation to virtual meetings that states, "...[Non-Committee Members have] the potential to address the meeting if given permission to do so".

Once members of the committee, Cllr Walker & Cllr Hussain, expressed their wish to hear Cllr Jones speak I subsequently consented, again in accordance with the above. Considering Cllr Jones subsequent contribution was to repeat her initial comments around the call in, I believe that this justifies both my original caution on the night around discouraging members from simply retreading ground already covered by themselves and others, as my decision to initially refuse consent for Cllr Jones to speak an additional time and my comments made in relation to this.

However, throughout the meeting Cllr Jones was afforded the same opportunity of all non-committee members to speak and contribute during the debate. At no point do I believe I treated her differently in approach or with disrespect as is evident within the meetings recording.

I also strongly refute the assertion by Cllr Jones that I had a problem with her throughout the meeting. As both the video of the meeting would show and the audio recording demonstrates, this accusation is completely unfounded with no evidence. I treated all councillors in the same manner and with respect throughout the course of the meeting.

Finally, I do not believe I have brought my position into disrepute, of which the recording of the meeting demonstrates as well as Cllr Jones lack of evidence within the complaint, and find the accusation that I do not know what it means to live within a democracy highly disrespectful.

## **There are two points at issue:**

1. Did Cllr Clarke fail to treat Cllr Jones with respect? If so and/or in any event
2. Did his conduct bring the office of Chairman into disrepute?

I attended the meeting in question and was present for the entire duration and I therefore have a first-hand insight into the matters raised by the complainant and by the subject member. In reaching my decision I have consulted with the Independent Person as directed by the Council's Standards Committee Complaints Procedure. The Independent Person was provided with a copy of the audio and video recording of the Meeting and he has viewed that in its entirety.

Many of the Council Meeting Rules of Procedure, contained at Part 3A of the Council's Constitution, apply equally to meetings of the Council's Committees (see Part 3A Rule 23.2). Among those generally applicable rules is Part 3A Rule 6.5 "*The decision of the Mayor on the interpretation of the Rules and all questions of order and procedure shall be final.*" Part 3A Rule 23.1.1 states that "*references to the Mayor shall be construed as references to the Chairman of that Meeting.*" In his capacity as Chairman of the Scrutiny (CREHW) Committee, Cllr Clarke is therefore the final arbiter of the application of rules, order and procedure. Notwithstanding this, several of the Members present at the meeting drew Cllr Clarke's attention to the fact that Cllr Jones had her virtual hand raised, as could be seen on the attendees' section of screen; they queried why the Chairman had not invited Cllr Jones to speak once more; and they advocated on Cllr Jones' behalf, asking that she be given leave to address the meeting for a second time. It is within this context therefore that I have had to consider Cllr Clarke's expression of opinion on the likely merit of Cllr Jones' additional contribution. I must also take into account the circumstances of the meeting itself. The incident which has given rise to Cllr Jones' complaint occurred at a point towards the end of a lengthy meeting during the course of which many Councillors had been afforded an opportunity to contribute to the debate. Cllr Clarke had previously given Cllr Jones leave to address the meeting in her capacity as a signatory to the Call-in request. Cllr Clarke had formed the view that Cllr Jones had already made a contribution and that any additional remarks she wished to make would not add anything new to the debate. Cllr Clarke's remarks to the effect that he did not believe Cllr Jones could add anything to the debate are context-specific: he did not say that Cllr Jones would never be capable of adding to the debate, rather he was explaining to those questioning him the rationale for his decision not to call upon Cllr Jones to speak for a second time, at a point in the meeting when many had already participated in the debate; and when the debate might reasonably be thought to have run its course. As explained above, as the Chairman of the meeting Cllr Clarke was entitled to adjudicate on all matter of order, procedure and the application of the rules and he prefaced the meeting by setting out his expectations as to how the debate would be conducted. He would have been entitled to respond along these lines to those questioning his Chairmanship; instead he explained

his decision not to call Cllr Jones once more. I have also taken into account the fact that at the time of the incident complained of, until the end of the meeting, Cllr Grosvenor had his virtual hand up on the attendees' section of the screen and at no point during that time did Cllr Clarke invite him to address the meeting once more.

Cllr Clarke is entitled to his view and he is entitled to express his opinion freely. Article 10 of the European Convention on Human Rights protects freedom of expression, including the "*freedom to hold opinions and to receive and impart information and ideas without interference.*" Any restriction of that freedom must be proportionate to the legitimate aims being pursued by the Code of Conduct for Councillors (which, as far as they apply to this matter, are the maintenance of good administration and reasonable political discourse). In the case of *(Mullaney) v Adjudication Panel for England*, a "...*failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another.*" It is perhaps unfortunate that Cllr Clarke was quite so frank in his views and I can understand Cllr Jones' interpretation of those words as a personal slight, however, for the reasons already explained I do not consider that the words complained of were disrespectful in the context within which they were spoken.

I do not find that Cllr Clarke failed to treat Cllr Jones with respect.

Turning to the question of whether or not Cllr Clarke brought his office into disrepute, I have considered Cllr Clarke's conduct during the meeting as a whole. I do not find that Cllr Clarke's chairmanship of the meeting fell short of the accepted standard and I do not find that the manner of his chairmanship was capable of diminishing public confidence in his ability to discharge the functions as Chairman, thereby bringing the office into disrepute. In the case of *Sanders v Kingston (No 1)* the test suggested was whether the conduct alleged "*was such as would cause the reputation of [the office] to suffer in the mind of a reasonable onlooker.*" I do not consider that the test is met in this case. For the avoidance of doubt, I do not take the view that the situation would be different even if I had found that Cllr Clarke had failed to treat Cllr Jones with respect, since "*misuse of the office can obviously bring disrepute on the office but personal misconduct will be unlikely to do so.*" (as per the *Livingstone case*)

**I find that on this occasion there has been no breach of the Code of Conduct for Councillors.**

### **Notice of decision**

This decision notice will be sent to the Cllr Jones; to Cllr Clarke; and to Cllr Goodfellow in his capacity as Group Leader. The decision will also be reported to the next ordinary meeting of the Standards Committee.

## **Appeal of decision**

There is no right of appeal for the Complainant or for the Councillor against a decision of the Monitoring Officer.

If someone feels that the Council has failed to deal with a Complaint properly, they may make a complaint through the Council's ordinary complaints process. This process would not re-consider the original complaint but would consider the way in which the complaint had been handled.

## **Terms of reference and Complaints Procedures**

The Terms of Reference of the Standards Committee and its Complaints Procedures are available on the Council's website ([www.eaststaffsbc.gov.uk](http://www.eaststaffsbc.gov.uk)) and from the Monitoring Officer.

## **Additional Help**

If you need additional support in relation to this decision notice or future contact with us, please let us know as soon as possible. If you have difficulty reading this decision notice we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010.

We can also help if English is not your first language.

Date: 17<sup>th</sup> August 2020

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