

Decision of Neath-Port Talbot County Borough Council Standards Committee

Minutes:

RESOLVED: That Councillor S.M. failed to comply with the Authority's Code of Conduct under Paragraph 6(1)(a) (in an official capacity or otherwise, bringing the office of Member or the Authority into disrepute) and should be subject to a four month suspension.

Decision Notice:

Introduction

1. This is the report of the Neath Port Talbot County Borough Council Standards Committee on the outcome of an investigation into the conduct of Town Councillor Sheila Marston, a Town Councillor of Neath Town Council ("Councillor Marston").
2. This report has been produced in accordance with Regulation 13 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001. The investigation follows from a referral by the Public Services Ombudsman for Wales ("the Ombudsman") which alleged that Councillor Marston had acted in breach of the Neath Town Council Members Code of Conduct ("the Code of Conduct").

Allegations

3. In his referral the Ombudsman indicated that his investigations had found that there was evidence to suggest that Councillor Marston had breached the following provisions of the Code of Conduct–

***Paragraph 6(1)(a)** Members must not conduct themselves in a manner which could reasonably be regarded as bring their office or authority into disrepute*

Process

4. Both the Ombudsman and Councillor Marston agreed that this matter was capable of being dealt with by way of written representations and consideration into the matter took place on 9th July 2019 by virtue of consideration of the papers at Civic Centre Port Talbot before the Standards Committee of Neath Port Talbot County Borough Council.

Findings of Fact

5. Councillor Marston is a long standing member of Neath Town Council who was last elected in May 2017, having first been elected in 2004.
6. Councillor Marston and her neighbour, the late Ms Jones lived in the same street. There was an acrimonious relationship between both parties which is believed to have stemmed from an argument between Ms Jones and Councillor Marston over a garden hedge.
7. Sadly in January 2018, Ms Jones, a victim of domestic violence was murdered in her home.
8. During the period after the murder, Councillor Marston was reported to have expressed her opinion to members of the public, including a number of taxi drivers that Ms Jones had “deserved to be murdered”. This caused significant distress to Ms Jones’ familiar and friends.
9. During this period, a complaint was made to the Neath Town Council about Councillor Marston’s comments, upon which the Neath Town Council referred the matter to the Ombudsman.
10. In view of the reactions by the public, the Neath Town Council invited Councillor Marston to a meeting to discuss the comments on the 14th February 2018. Councillor Marston believed that this meeting was to offer her guidance and support and to ensure she was safe and she believed she attended in good faith. During the meeting, Councillor Marston immediately admitted to make comments to the effect that Ms Jones had “deserved to die”. The members and officer present were surprised and distressed to note that Councillor Marston’s only reaction was to express surprise at the manner of Ms Jones death but Councillor Marston refused to withdraw or apologise for her comments. Councillor Marston later added by way that the comments were made because there was uncertainty as to how Ms Jones had sadly passed away.
11. Councillor Marston was of the view that these comments were not made in any Council related meetings. However, in respect of both matters (the discussions with taxi drivers and at the aforementioned meeting), the principles of the Code of Conduct (namely paragraph 6(1)(a)) will still have applied.^[1]

Article 10

12. Article 10 of the European Convention on Human Rights (“ECHR”) was fully considered by the Standards Committee during its deliberations both in relation to the breach and sanction. The Standards Committee adopted the three stage approach used by Wilkie J in the case of *Sanders v Kingston No (1)* [2005] EWHC 1145 in its deliberations as follows:
 - (a) Could the Standards Committee as a matter of fact conclude that Councillor Marston’s conduct amounted to a relevant breach of the Code of Conduct?
 - (b) If so, was the finding of a breach and imposition of a sanction prima facie a breach of Article 10?
 - (c) If so, is the restriction involved one which is justified by reason of the requirement of Article 10(2)?
13. The Standards Committee had determined each allegation against part (a) in the first instance. It was then concluded the nature and content of the questions raised by Councillor Marston did not consist of political expression which attracts enhanced protection under Article 10 ECHR. The content was so egregious and caused such significant upset and disruption that Police involvement was necessary and therefore an interference with Article 10 rights is justified.

Decision of the Standards Committee

14. The Standards Committee determined that Councillor Marston did conduct herself in a manner which could reasonably be regarded as bringing her office or authority into disrepute.
15. In finding against Councillor Marston, the Standards Committee concluded that in light of the particular circumstances of this case (which should evidence from this Report), that it is justified in interfering with Councillor Marston’s Article 10(1) rights of freedom of expression, by making a finding of breach and by imposing a sanction.

Reasons for Decision

16. The reason for making these conclusions were as follows (adopting the structure set out above):

- (a) Councillor Marston's comments were disrespectful and distasteful and there was no reason for such comments to be made public.
- (b) Councillor Marston made these comments to members of the public outside of the Town Council setting but the principles of the Code of Conduct still applied on this occasion. Paragraph 6(1)(a) must be complied with at all times and the behaviour of Councillor Marston fell short of the appropriate standards required of elected members.
- (c) Although acknowledging Councillor Marston's representations, respectfully it was felt that they did not amount to a defence of any actions but more mitigation and therefore were appropriate for consideration of sanction only.
- (d) The Standards Committee concluded that Neath Town Council was brought into disrepute as a result of the comments made but also concluded that Councillor Marston's comments and her position as Town Councillor brought her office into disrepute. The evidence highlighted that several constituents feel that such comments were not expected from an elected member and therefore Councillor Marston's suitability as an elected member was called into question. The disapproving comments from the general public appear to be directed towards Councillor Marston and not the Neath Town Council but nevertheless given that Neath Town Council came under undue criticism because of their inability to take action directly, Neath Town Council were brought into disrepute as a result of the actions of Councillor Marston.

Sanction

- 17. The Standards Committee were guided by decisions of the Ombudsman in their Code of Conduct Casebook and had due regard to the principles identified in the Adjudication Panel for Wales Sanctions Guidance as part of their determination. The Standards Committee acknowledged that in line with the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 the maximum sanction they can impose is a six month suspension.
- 18. In considering the determination of any sanction which might be applied the Standards Committee determined that due to the seriousness of the incident and the level of public condemnation associated with the comments made by Town Councillor Sheila Marston, no action or informal action was not feasible.
- 19. The Standards Committee concluded that a public censure would not be appropriate as it would be important to send a message to Councillors that such behaviour is not appropriate for an elected official and it would be necessary to ensure that the public had confidence in local democracy and the only way to achieve this would be via a stronger sanction.

20. The Standards Committee concluded that a suspension of some duration was the appropriate course of action here.

21. The Standards Committee, considered that the following were aggravating factors:
 - (a) Town Councillor Marston was a long standing member of Neath Town Council
 - (b) Town Councillor Marston had a lack of acceptance of the misconduct and any consequences and failed to engage with the Ombudsman investigation.
 - (c) The express of views were not worthy in a democratic society and were incompatible with dignity and in conflict with the rights of others
 - (d) The behaviour not only brought herself into disrepute but also the Town Council (as elaborated above).

22. The Standards Committee though, considered by way of mitigation the representations put forward by Councillor Marston, those being:
 - (a) Councillor Marston had now admitted the statements made, though it was acknowledged that there was no involvement with the Ombudsman during the course of their investigation.
 - (b) Councillor Marston now acknowledged that her personal reputation had been sullied.
 - (c) The commentary was made at the time when Councillor Marston was recovering from serious personal injuries sustained in a road traffic accident.
 - (d) Councillor Marston acknowledged that she had been in a defensive mode during the aforementioned meetings as she felt she had been under personal attack but is now prepared to apologise to Ms Jones' family and the community. Though the Standards Committee noted though that no apology had appeared to have been made only an indication that an apology would be given. The Standards Committee recognised that this is something that Councillor Marston would have to pursue by herself as the Standards Committee could not legally insist on it.
 - (e) Councillor Marston has undertaken public service for a number of years leading up to this matter and during this period there had been no previous referrals to the Standards Committee.

and accordingly were prepared to reduce the sanction that would be made accordingly in line with the guidance from the Adjudication Panel for Wales.

23. Pursuant to Regulation 9 of the 2001 Regulations, the Standards Committee made a determination that Town Councillor Sheila Marston should be suspended as a Town Councillor for a period of four (4) calendar months from the date that this notice takes effect. This Decision Notice is dated the 26th July 2019 and Town Councillor Sheila Marston has 21 calendar days in which to make an appeal. In the event that no appeal is made, the suspension will take effect following 21 day period.

[1] Paragraph 2 (1)(d) of the Neath Town Council Member Code of Conduct provides that “save where paragraph 3(a) applies, you [a member] must observe the code of conduct - (d) at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7”