



**Decision issued under paragraph 69(2)
of the Local Government Act 2000
Case Number: 202306169**

Summary of complaint

It was alleged that in a Council meeting, the Member responded to a question asked by Councillor X in a way which was unnecessary, troublesome, abusive and undermined him. It states the Member then belittled Councillor X and showed him disrespect using terms such as “extreme right-wing” and “toxic politics” purposefully damaging Councillor X’s reputation.

The member chose to self-refer the matter to the Ombudsman for consideration instead of proceeding through the Council’s Local Resolution.

How we decide whether to investigate

To decide whether to investigate a breach of the Code, we apply a 2-stage test. First, we consider whether there is evidence to suggest that a breach of the Code may have occurred. Second, we consider whether it is in the public interest to investigate the matters complained about. We take into account a number of public interest factors such as:

- the seriousness of the alleged behaviour
- whether the member misused a position of trust or has sought to gain, for themselves or others, at public expense
- whether an investigation is required to maintain public confidence in elected members

- whether an investigation is proportionate in the circumstances or whether, if proven, a referral to a Standards Committee or the Adjudication Panel for Wales would be appropriate.

My Decision

(1) Whether there is evidence to suggest that there have been breaches of the Code of Conduct.

The matters which complained about are unlikely to amount to a breach of the Code.

When acting as an elected member and expressing political views or conducting political business, a member's freedom of expression is afforded enhanced protection, more so than an ordinary member of the public. Further, as politicians, members are likely to be afforded protection even where the language used by them may be inflammatory, provided the focus of it is political. However, a member's right to freedom of expression is not absolute and must be balanced against the need to protect the rights and interests of others. The legal principles on this issue do not provide clear boundaries for what is, and what is not, acceptable, and each case must be considered on its own merits. Freedom of expression is not limitless and the more offensive the conduct concerned, the more justified it becomes to restrict expression using the provisions of the Code.

The self-referral acknowledges that the comments were made during a meeting of the Council. The Ombudsman generally concludes that during political exchanges, members need a "thicker skin". Article 10 of the European Convention on Human Rights, which affords the Member the right to free speech, means that he can say things which may be shocking or offensive to some people. Whilst I fully appreciate that those present may have been personally offended by the Member's comments, I do not consider on the evidence provided that they are sufficiently egregious, intimidating or insulting to amount to a breach of the Code.

However, I acknowledge that the comments made had the potential to offend the Member concerned, especially if they did not reflect his political ideals. The Member also made comments when self-referring the matter

to this office as to why he did not feel he could engage with the Council's local resolution process. This is concerning because the efficient performance of a council relies on mutual respect and good working relationships between its members, and the local resolution process would have been a suitable forum for discussing these types of concerns. My response to the Member will undertake to remind him of this and his obligations under the Code.

(2) Whether an investigation is required in the public interest

I am not persuaded that the content would be considered so offensive that restriction on making such comments is necessary for the protection of the rights and interests of others. Therefore, I am satisfied that the comments made, form part of a wider political debate and the Member is entitled to hold and share those views, even if others do not agree, or indeed, are offended by them. Therefore, I consider that an investigation into this matter would not be appropriate.

The conduct complained about does not meet the first stage of the test, as set out above, therefore, there is no need to consider the second stage of the test.

Outcome

The complaint should not be investigated.



Matthew Phelps
Swyddog Ymchwilio/Investigation Officer

6 December 2023