

**AN INVESTIGATION INTO
COMPLAINTS MADE UNDER THE
CODE OF CONDUCT BY CLLR
COLIN WILEMAN AGAINST CLLR
FLORENCE-JUKES; and BY CLLR
FLORENCE-JUKES AGAINST
CLLR FLETCHER AND CLLR
CLARKE**

EAST STAFFORDSHIRE BOROUGH
COUNCIL

STRICTLY CONFIDENTIAL

This is a complaint made by Cllr Colin Wileman against Cllr Deneice Florence-Jukes, both of whom are councillors with East Staffordshire Borough Council; and complaints made by Cllr Florence-Jukes against Cllr Fletcher and Cllr Clarke, also of East Staffordshire Borough Council.

1. I was instructed to carry out the investigation by the then Monitoring Officer of East Staffordshire BC. I am a solicitor of the Senior Court of England and Wales and a consultant with the firm of Anthony Collins Solicitors LLP where I was Head of Local Government until my retirement from the Partnership at the end of April 2021. I qualified as a solicitor in 1985 and have had a career in the public sector, mainly in local authorities from then until 2010. During that time, I held positions such as Monitoring Officer, Head of Legal Services, Corporate Director and Chief Executive. In 2011 I returned to private practice where I specialise in local government law. During my career I have carried out many investigations into Code of Conduct and other matters for local authorities.
2. The complaint made by Cllr Wileman is in two parts, the first about potential breaches of the Code of Conduct and the second in relation to an alleged breach of s106 of The Representation of the People Act 1983. Cllr Florence-Jukes initially made complaints under the Code of Conduct against Cllrs Clarke and Fletcher and made subsequent allegations of breaches of The Representation of the People Act 1983.
3. This report only deals with the complaints made under the Code of Conduct. I am unable to investigate allegations of breaches of the Representation for the People Act, as this is a matter for the police. Accordingly, I have made no findings nor pass any comment in regard to this issue.
4. All of the complaints relate to events at the East Staffordshire Borough Council Annual Meeting held by remote means on 26th April 2021.¹ The meeting was open to the public to attend, again by remote means only, and it is believed that some members of the public were present to view the proceedings.
5. At the meeting, Cllr Wileman, who had served as the Mayor of East Staffordshire BC for the previous two years, his term having been extended by a year due to the Covid 19 Pandemic, stood down as Mayor as it was the end of his term. As is usual in such circumstances, one member raised a motion of a vote of thanks to Cllr Wileman for his service as Mayor. After the motion was proposed and seconded Cllr Florence-

¹ The recording of the meeting can be found at https://www.dropbox.com/s/br12zfv1nyt2pc2/GMT20210426-173023_Recording_gallery_1280x720.mp4?dl=0

Jukes indicated she wished to speak and was called upon by the new Mayor to do so.²

6. The remarks she made about Cllr Wileman were entirely negative. She said she would not be voting for the motion, that she would be voting against and she urged other members to also vote against or to abstain. She claimed that Cllr Wileman had behaved appallingly, that he had bullied and belittled members, deliberately mispronounced Cllr Grosvenor's name; that he continually interrupted members, was rude and disrespectful; had little understanding of the constitution or of the rules of debate and that he shut down the opposition in many ways. She alleged that Cllr Wileman had used his role as Mayor to promote his garden business.
7. Cllr Florence-Jukes was followed by ten other members; nine of whom spoke very strongly in favour of Cllr Wileman and against what Cllr Florence-Jukes had said. Cllr Grosvenor was the only member who spoke in support of her. Cllrs Clarke³ and Fletcher were amongst those members who spoke against what Cllr Florence-Jukes had said.
8. The motion was passed with all but three members (Cllrs Florence-Jukes, Grosvenor and Shrive) voting in favour.
9. In his complaint Cllr Wileman claims that this speech by Cllr Florence-Jukes had caused him to be deeply hurt, pointing out that the remarks were made in her official capacity as councillor in a public forum. Cllr Wileman says that it is his view that she has breached paragraph 3.1 of the Borough Council's Code of Conduct which is "*Councillors must treat each other with respect*" and that Cllr Florence-Jukes has not upheld the general principles of honesty and leadership set out in Appendix 1 of the Code and that in breaching these paragraphs of the Code Cllr Florence-Jukes has breached paragraph 3.9 of the Code by bringing the Council into disrepute.
10. This report, dealing with the complaint made against Cllr Wileman, was sent in draft to Cllrs Wileman, Florence-Jukes and the Interim Monitoring Officer in order that any comments could be taken into consideration. Cllr Wileman asked for a typographical error to be corrected and for a footnote to be inserted; Cllr Florence-Jukes informed me that on legal advice she would not be commenting and asked for a copy of Cllr Wileman's signed statement⁴; the Interim Monitoring Officer mentioned a typographical error which has been corrected. I was then asked to add to the investigation the complaints made by Cllr Florence-Jukes against Cllrs Clarke and Fletcher. These complaints are included in the Appendix. Given that the complaints

² Cllr Florence-Jukes remarks commence at 48.44 of the recording

³ Cllr Clarke's remarks are at 100.28 of the recording; Cllr Fletcher's at 1.07.25

⁴ Due to difficulties about office attendance due to the Covid pandemic it can be difficult for signed copies to be made available. Accordingly, witnesses are asked to certify that they are happy with their statement and Cllr Wileman did so.

arose simply from the short statements made by these members at the meeting, which are available to view on the recording, I did not think it necessary to incur additional public funds in order to carry out interviews with Cllrs Clarke and Fletcher or attempt any interview with Cllr Florence-Jukes, as the evidence is apparent from the recording⁵.

INVESTIGATION

11. As part of my investigation I interviewed Cllr Wileman and I would like to thank him for his cooperation throughout this investigation. A copy of his statement appears in the Appendix⁶.
12. I attempted to interview Cllr Florence-Jukes. On 23rd June I emailed her asking if she was willing to be interviewed. Cllr Florence-Jukes replied on 30th June saying, *"I would like to assure you Olwen that you can rely on my full cooperation with your investigation, this of course includes participation in any remote interviews you may wish to have with me"*.
13. She offered to write a statement detailing all matters relating to the complaint in sequential order and asked me how I would like to receive the evidence saying that she *"Had no guarantee of availability for the month of July owing to pre-planned medical treatment, but I am hoping to have good availability in August"*. I replied the same day to say that I appreciated it may take her a little time to put together the evidence and that *"It would be ideal to able to examine the evidence she relied on before interview as well"*. I said that I would be back from leave on the week beginning 19th July and would be happy to arrange an interview that week if she would be ready.
14. Cllr Florence-Jukes had also mentioned four witnesses and I asked for her to let me have their contact details and the nature of the evidence that she believed they would be able to provide...Cllr Florence-Jukes responded to me on 8th July with some attachments (see below), saying that she had submitted a Subject Access Request to East Staffordshire Borough Council on 11th June for the production of data which had had an extended response time of 11th September and she would not be in a position to provide all relevant information before that date. However, *"There are a number of emails I wish to forward and am currently busy gathering these together...I will provide further documents as and when I receive them"*.
15. I replied on 21st July (I had been away on leave) saying that I was concerned *"about the potential delay you refer to and I cannot understand what the relevance of any"*

⁵ The recording of the meeting can be found at https://www.dropbox.com/s/br12zfv1nyt2pc2/GMT20210426-173023_Recording_gallery_1280x720.mp4?dl=0

⁶ See footnote above

such documents is to my investigation, given that the complaint refers to events of the Council's Annual Meeting in April 2021. I can appreciate, given some of your allegations against Cllr Wileman at the meeting, that you may wish to produce some evidence in support of these but I do not see why this has to await the SRA results"..... I will ask you please for further available dates for interviews over the next few weeks. If in the meantime there is further evidence you wish me to consider please send this to me".

16. On 29th July I received a copy email from Cllr Florence-Jukes to Andrea Davies at ESBC which asked for recordings of the following Council meetings:

17th May 2019

24th June 2019

15th July 2019

17. On 30th July Andrea Davies replied to Cllr Florence-Jukes, copying me in, saying that she was arranging for the Dropbox links to be sent through for those meetings. On 12th August I emailed Cllr Florence-Jukes saying *"I have been sent recordings of three Council meetings, at your request, but have had nothing from you to accompany these. Can you please let me know why these recordings are relevant to my investigation and of the evidence relevant to this complaint which you wish to bring to my attention contained within those recordings. I would also be grateful for a response as soon as possible to my email to you of 21st July and an indication of when you are going to be available for interview".* I received an out of office reply from Cllr Florence-Jukes saying *"I am unavailable until 31st August 2021. Your email is in my inbox and I will reply to you on my return".*
18. On 15th September I wrote to Cllr Florence-Jukes saying *"I refer to my email to you below (the one asking for details of the recordings) to which I have not had any reply. If I do not hear from you with your answers by the end of next week, I will draft my report on the evidence which I have at that point".* I did not receive a reply.
19. Accordingly, I have been unable to interview Cllr Florence-Jukes. So far as the information which she has sent to me is concerned, I did not want to incur public funds in sitting through lengthy recordings of three Council meetings without Cllr Florence-Jukes informing me of the particular issues which she wished me to consider and the times on the recording which she wished me to consider, as I do not think it is reasonable for me to do so. I have received no further evidence from Cllr Florence-Jukes and she has not provided me with any details about the four witnesses she mentioned previously.
20. Cllr Florence-Jukes email of 8th July to me contained a number of attachments, consisting of complaints about Cllrs Clarke and Fletcher, and two complaints about the then Monitoring Officer. I am not instructed to take any action with regard to the

complaints against the then Monitoring Officer; so I have disregarded them. The complaints against Cllrs Fletcher and Clarke are dealt with in this report.

21. The evidence I have considered is contained within the Appendix. I have included the emails and Facebook posts sent to me by Cllr Wileman. I have not included the attachments to Cllr Florence-Jukes' email to me consisting of complaints against the Monitoring Officer as those complaints are not relevant to this investigation.

EVIDENCE OF COLIN WILEMAN

22. In Cllr Wileman's evidence he refers to the deep effect that Cllr Florence-Jukes' statement at the meeting had on him. He said *"Her comments were very hurtful and untrue. I felt that my character was unfairly and wrongly assassinated. The vast majority of the other members simply did not believe what she was saying and did not agree that she should have said it. The Leader of the Opposition said that what Cllr Florence-Jukes had said was totally wrong. My Lady Mayoress was in tears as she and I had put in so much effort to the roles of Mayor and Mayoress during our two years in office...I do not think that I have ever done anything wrong in the way that I have chaired meetings as Mayor"*. Cllr Wileman went on to say that *"When I am chairing a meeting, I have to make decisions there and then and rule on matters at the meetings. I always take advice from the Monitoring Officer and the Chief Executive officer but I make the decisions as I have to as Chair. The Constitution provides for this and provides that my decision as to these matters is final"*.
23. He said *"Despite the difficulties with Covid which meant that for much of my time as Mayor we were in lockdown and public events did not happen face to face, I carried out a large number of engagements – 159 – during 2019/2020 and 2021 as Cllr Goodfellow referred to at the annual meeting. I therefore feel that it is outrageous to make a claim, as Cllr Florence-Jukes did, to say that I did very little during my terms"*.
24. He said *"Whilst I know that her comments were untrue, I am still shocked by them, and it still hurts. It almost made me feel that I could jump off a bridge.⁷ I regarded her comments, given the efforts that I have put in, as very, very hurtful. Furthermore, it was at a public meeting which anyone could access"*.

COMPLAINTS AGAINST CLLRS CLARKE AND FLETCHER

25. The details of Cllr Florence-Jukes complaints are set out in full on the complaints forms, which are included in the Appendix. As stated above, the evidence is apparent on the recording of the meeting. Cllrs Clarke and Fletcher spoke briefly, as some of the ten members who followed her; nine of whom spoke highly of Cllr Wileman and many condemned her remarks.

⁷ Cllr Wileman was keen to stress that he takes the issues of mental health seriously and that his comment as to how Cllr Florence-Jukes comments made him feel should not be taken to minimize any mental health issues others may suffer.

FINDINGS

26. The appropriate evidential test for a Code of Conduct complaint is the civil evidence test, known as the “*balance of probabilities*” or “*is it more likely than not*”. This is the evidential test which I have applied in making these findings.
27. Under s27 (2) of the Localism Act 2011 the code of conduct applies to members when they are acting in that capacity. This is therefore the first question which needs to be addressed. Given that the events complained which gave rise to the complaint took place at the Annual Meeting of East Staffordshire BC, which Cllr Florence-Jukes, Cllr Clarke and Cllr Wileman attended and spoke at in their capacity as elected members, it seems to me that it is beyond any doubt that there is evidence that the Code of Conduct applies.
28. Given that the Code of Conduct applies the next matter to consider is whether the comments made by Cllr Florence-Jukes at the meeting were such that enable a finding to be made that there is evidence which is capable of supporting a finding that a breach has occurred.
29. In his complaint, Cllr Wileman states that he believes that Cllr Florence-Jukes has breached paragraph 3.1 of the Council’s Code of Conduct “*councillors must treat each other with respect*” and he complains also that Cllr Florence-Jukes has not upheld the general principles of honesty and leadership set out in Appendix 1 of the Code and that Cllr Florence-Jukes has also breached paragraph 3.9 of the Code by bringing the Council into disrepute. His complaint is included in the Appendix.
30. As Cllr Florence-Jukes has not made herself available for interview and has not provided me with evidence (other than that referred to above), I have to go upon what I observed from the recording of the meeting, the evidence of Cllr Wileman and the various relevant documents I have seen.
31. It is clear from the evidence provided by Cllr Wileman that in conducting meetings in his role as the Mayor and Chairman of the Council, he took advice from officers about decisions which he needed to make about the conduct of the meeting. Evidence of this is also provided in the emails he has supplied. I do not think that Cllr Wileman can be criticised for seeking and then following the advice of professional officers such as the Chief Executive and the Monitoring Officer.
32. Whilst Cllr Florence-Jukes complained of bullying and other issues in her comments; I have no evidence of this. Furthermore, the comments made by many of the members who spoke to the motion suggested that they did not agree with her comments.
33. The role of Mayor is a demanding one and despite the difficulties of the pandemic, I believe it is to his credit that Cllr Wileman agreed to serve an extra term meaning that he was Mayor for two years rather than the usual one-year term. It is normal, at the annual meeting when the role of Mayor is normally transferred, that members do pay

thanks to the efforts of the outgoing Mayor and their consort. It is my view extremely unfortunate that Cllr Florence-Jukes took this opportunity of the thanks to the Mayor to make the statement that she did.

34. As I have not been able to interview Cllr Florence-Jukes I do not know what was behind her comments, but it seems to me very petty and smallminded for a councillor to use such an occasion in the way that she did. It is clear from both the comments made by the other members who spoke, with the exception of Cllr Grosvenor, that they felt that her comments were unfounded and should not have been made. This is not to say that members who are unhappy about the way in which a Mayor has conducted meetings cannot raise this, but there is a time and place for doing so. In my view, the annual meeting of the council is unlikely to be the correct place.
35. Turning to whether or not this was a breach, I think that it is highly relevant to consider the role of the Mayor. The Mayor is the senior public facing member of the council and when conducting council meetings and more generally, it is important that their role is recognised, supported and respected by the members of the authority; if they do not respect and support the Mayor, what example does that set to the community of the regard in which they should hold the local authority members and the council itself. In order for good local governance to take place, it is to my mind important that members behave in a way that shows respect to the office of Mayor, whatever their private feelings about the individual office holder are concerned, and indeed this is reflected in the Constitution so far as the finality of the Mayor's rulings are concerned and also other rules in the councils standing orders which demonstrate the regard for the office and the respect it should receive.
36. Although by the time that Cllr Florence-Jukes made her statement the role of Mayor had a few minutes earlier passed on to Cllr Ackroyd, the motion was to thank Cllr Wileman for his service in the role of Mayor to the Council and the communities it serves. It seems to me a reasonable assumption to make, that by her comments, Cllr Florence-Jukes was demeaning and disrespecting the office of Mayor. To my mind as far as the public are concerned, it sends a very difficult message about the way in which members of the council respect and uphold the role of Mayor. The comments she made would have been questionable in relation to the respect any member should pay to another; but given the particular position of Cllr Wileman as Mayor this seems to me to bring a stronger focus upon the requirement for respect amongst members; and to the evidence pointing to a breach by Cllr Florence-Jukes.
37. It therefore seems to me that Cllr Florence-Jukes behaviour at the meeting was capable of providing evidence sufficient to find a breach of the code in relation to para 3.1.
38. If this is the case, the next step is to consider whether or not a finding of a breach would interfere with Cllr Florence-Jukes right to freedom of expression. All citizens are protected by the European Convention of Human Rights, brought into law by the

Human Rights Act 1998. Politicians, of whatever level of politics, are entitled to enhanced protection under those provisions, and so this enhanced protection would apply to Cllr Florence-Jukes. The latest case on this point of which I am aware is the case of R (Robinson) v Bucks Councils and Another [2021] EWHC 2014 (Admin).

39. This case makes it clear that members, in this case Cllr Florence-Jukes, Cllr Clark and Cllr Fletcher were all entitled to express their political opinion on matters of public interest and benefit from the enhanced protection under Article 10. Any interference with these rights must fulfil a pressing social need and also be proportionate, in the sense that it strikes a balance between the general interests of the community and the protection of those rights of an individual.
40. However, whilst this protection applies and gives a wide variety of protection, especially between elected members, it is not absolute. The Code of Conduct is intended to protect the reputation of local government and, as well as the right to freedom of speech, the right for people not to be the subject of offensive, abusive and defamatory remarks. Given this enhanced protection of political matters, where comments are made by an elected politician against another elected politician, they should be extreme for a finding of breach to be made; and politicians are expected to have “thick skins” and to accept that their position may attract adverse comment. It is only in extreme cases that the interference is warranted; even when what is complained of is a personal attack.
41. There is case law⁸ which provides that when the words complained of are no more than expressions of political anger and abuse and do not constitute political expression, that they do not attract the higher level of protection under Article 10.
42. Against this criterion and considering what was said by Cllr Florence-Jukes, whilst it is a finely balanced situation, I cannot accept that the enhanced protection protects her remarks and provides that for this reason they do not constitute a breach. I find, as explained above, that her lengthy and apparently fully prepared statement about Cllr Wileman’s behaviour is extreme and amount to a personal attack, rather than be considered to be an expression of her political opinions and so are capable of providing evidence which justifies a finding of a breach. From the evidence I have seen it appears to me that these are not comments of a political nature, (despite being made by a politician in the council chamber) but are remarks which amount to a personal and, from the evidence I have seen, completely unjustified attack upon Cllr Wileman, containing several statements which Cllr Florence-Jukes knew not to be true.
43. Furthermore, the statement was, as I deal with above, reflecting upon the important position of Mayor. It seems to me that it is in the public interest that the role of Mayor is respected, not least by the other elected members of his Council. This is not to say

⁸ Sanders v Kingston [2005] EWHC 1145 (Admin)

that the Mayor should be beyond criticism, but to do so when the purpose is to thank the “*first Citizen*” for their contribution and work over the year seems to me to go beyond the purpose of the enhanced protection in this case.

So far as the actions of Cllrs Clarke and Fletcher are concerned, I think that their brief comments fall into another category. They were simply responding to what Cllr Florence-Jukes was saying and showing their view. It seems to me that whilst it would be possible to say in some situations that their comments were capable of breaching the Code; in these circumstances they were entitled to respond to her and I think that it would be stretching the Code too far to say that they were breaching the code by these comments.

44. In the circumstances I make the following findings:
- a) There is sufficient evidence to make a finding that the Code of Conduct applies to Cllr Florence-Jukes actions at the Annual Meeting in April 2021;
 - b) There is sufficient evidence to make a finding that by her actions as complained of by Cllr Wileman, Cllr Florence-Jukes was in breach of the Code of Conduct; in particular of paragraph 3.1 and the Nolan principles of honesty and leadership.
 - c) There is sufficient evidence to make a finding that the Code of Conduct applies to Cllr Clarkes actions at the Annual Meeting in April 2021;
 - d) There is not sufficient evidence to make a finding that by his actions Cllr Clarke committed a breach of the Code;
 - e) There is sufficient evidence to make a finding that the Code of Conduct applies to Cllr Fletchers actions at the Annual meeting in April 2021;
 - f) There is not sufficient evidence to make a finding that by his actions Cllr Fletcher committed a breach of the Code.

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For Anthony Collins Solicitors LLP