

PRIVATE AND CONFIDENTIAL

**Case Reference CoC 126486 (Nutting) and CoC 126543 (Taylor)
Submissions to Hearing Committee on behalf of Cllr Mary Douglas**

07 October 2020

Introduction

1. In the instant matter, an elected official representing her constituency, is being brought to task for comments she made during the Area Board meeting of 04 November 2019 in explaining her reasons for voting against a grant proposal submitted by Salisbury Pride, and indeed for casting a vote against the grant proposal. The facts and allegations have already been set out in detail by the representative for the Investigating Officer and need not be repeated here.
2. Cllr Douglas contests that the factual findings are as straight forward as the Investigating Officer suggests. While the events of that day are clear and, as evidenced by her own notes, the impugned statement made by the Subject Member undisputed, the question of what was meant by her statement is far from agreed upon and a central issue in these proceedings.
3. To assist the Standards Committee in their deliberations, the Subject Member has adopted the general structure used by the Representative for the Investigating Officer in his written submissions.

Initial Tests

4. The Subject Member attests to the fact that she is an Elected Member and was serving in her public post for the duration of the meeting. Cllr Douglas further stipulates that the Code of Conduct applies to all Unitary Members and was in effect during the course of the 04 November 2019 Area Board meeting.

The Law

Public Sector Equality Duty

5. The Subject Member does not contest that Section 149 of the Equality Act 2010 sets out the Public Sector Equality Duty owed by public authorities or that pursuant to Schedule 19 of the 2010 Act, section 149 applies to all Local Authorities including to Wiltshire Council. It is accepted that the public sector equality duty extended to Cllr Douglas on 04 November 2019 and to her decision making.

6. Cllr Douglas, however, contests that (a) the equality duty applies as rigidly as set out by the Investigating Officer, and (b) that she acted in a manner inconsistent with the public sector equality duty in exercising her public functions on 04 November 2019.
7. The Court of Appeal in *Stuart Bracking and Ors v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, particularly at paragraph 26, set out detailed judicial guidance on assessing whether the equality duty was properly engaged in the exercise of a public function. Of particular relevance to the instant matter are the quoted paragraphs of Elias LJ, from *R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin) (Divisional Court), where it is held that it is not for a court, or in this case a standards committee, to determine whether appropriate weight was given to the duty. A respondent must merely demonstrate that they have given rigorous consideration to the duty and shown proper appreciation of the potential impact of their decision on equality objectives. *Stuart Bracking and Ors* at para. 26(8)(i). If the respondent can evidence that they gave ‘due regard’ to the statutory criteria, the supervisory body in question cannot thereafter interfere simply because it would have given greater weight to the equality considerations at play. Such a situation would allow third parties to have a right of review on substantive merits grounds for almost all aspects of public decision making. *Id.*
8. In *Dunnachie v Kingston upon Hull City Council* [2004] UKHL 36, pars. 4, 23-25, the Lords held that the requirement to have ‘regard’ to a specified list of factors means that the authority subject to the requirement must consider each factor separately. However, it does not prevent the authority from going on to consider other factors, even if those other factors combine to outweigh the factors specifically listed.
9. Cllr Douglas does not disavow the fact that she is a Christian who holds strong religious and moral beliefs about sexual practice. The mainstream, Bible-based, ‘traditional’ Christianity she adheres to, which arguably represents both the core of Christianity in the UK and that area of most rapid growth, is in fact held by many of her constituents. These beliefs call for loving one’s neighbour, but nonetheless consider that homosexual behaviour is proscribed by Biblical moral theology. Similar beliefs, albeit underpinned by different considerations, are held by a number of religious faiths, as well as people with no faith.
10. It is within this context that the Committee should define ‘fostering good relations’ among those with protected characteristics. Where there is a departure in worldview and belief, which can be particularly sharp between the protected characteristics of

religion or belief and sexual orientation, fostering good relations means tolerance, respect and an understanding that we live in a pluralistic society where people hold very different views on sensitive issues.

11. One of the chief problems that exists in defining what legal protections should be afforded to sexual orientation is a hermeneutical one. This difficulty is exacerbated when trying to define to whom and what the public sector equality duty is owed in relation to sexual orientation. Put succinctly, the problem began because of the lack of legal clarity in how sexual orientation is defined. When the Equality Framework Directive 2000 was being drafted, which would later create a legal obligation upon all EU Member States to adopt their own in-kind anti-discrimination legislation, it originally stated that: *“With regard to sexual orientation, a clear dividing line should be drawn between sexual orientation, which is covered by this proposal, and sexual behaviour, which is not.” Proposal for a Council Directive Establishing a General Framework for Equal Treatment in Employment and Occupation, Explanatory Memorandum, Official Journal C 177 E, 27/06/2000 P. 0042 – 0046, Section 5.* The provision never made it into the final binding Directive, and the confusion of whether sexual practice was included in sexual orientation was inherited by the Member States.
12. Parliament has failed to cure this lack of legal certainty. When defining sexual orientation in Section 2 of the Employment Equality (Sexual Orientation Regulations) 2003, it simply used the circular definition that “sexual orientation” means one’s sexual orientation towards persons of the same-sex, persons of the opposite sex or persons of the same sex or opposite sex. When Parliament further extended the scope of sexual orientation anti-discrimination legislation with the Equality Act (Sexual Orientation) Regulations 2007, those regulations provided no definition whatsoever for sexual orientation. Then again, in 2010, with the adoption of the Equality Act 2010, Section 12, Parliament adopted a nearly identical definition to the 2003 Act. Precisely stated, the lack of legal clarity as to what sexual orientation entails remains quite acute.

Sexual Orientation and LGBT Campaigning are not Synonymous

13. Perhaps the most fundamental principle the respondent relies on in this matter is this: Being gay and LGBT campaigning are not synonymous. The former is about sexual attraction and the latter about political activism and worldview. Not all people who are gay are LGBT campaigners, and not all LGBT activists are gay. The Investigating Officer was therefore in manifest error in dismissing the Subject Member’s defence

that LGBT ideology is of no relevance today, suggesting the Gay Manifesto is but one example of worldview.

14. Presently, universities across the country offer courses in Gay and Lesbian Studies, where things such as ethics, queer philosophy, political science, sexology and the ‘social construction’ of sexual identity are discussed. The outworking of these ideological positions has been mainstreamed into both education and culture. The entire premise, for example, behind the controversial ‘No Outsiders’ PSHE programme is that it seeks to deconstruct heteronormativity. This has led some LGBTQ academics to call for the queering up of the primary school classroom. *See e.g.:* Renee DePalma, *The No Outsiders Project: In Search of Queer Primary Pedagogies*, *Transformations: The Journal of Inclusive Scholarship and Pedagogy*, Vol. 21, No. 2, Teaching Sex (Fall 2010/Winter 2011), pp. 47-58, Penn State University Press.
15. Popular LGBT campaigner Peter Tatchell has also credited the Gay Manifesto for shaping him and forming his campaigning goals to, as he himself says, radically critique heterosexualism and male privilege. *See:* <https://www.petertatchellfoundation.org/gay-liberation-front-manifesto/>. Tatchell, one of the most prominent LGBT campaigners and spokespeople in the UK today, was a Gay Liberation Front activist at the time that the manifesto was adopted and took part in the discussions surrounding its drafting. *Id.*
16. To imply that there is no LGBTQ ideology, as the Investigating Officer seems to suggest, would in fact be wholly upsetting to any number of LGBTQ academics and activists who have spent their careers studying and publishing in support of the aforementioned desire to recast society where heteronormativity is no longer seen as the status quo. Many of these same campaigners have championed the use of Pride events for these very purposes.
17. For example, in 2018, pro-LGBT Swedish researchers published a research book on the political and campaigning elements of Pride events entitled, “*Pride Parades and LGBT Movements: Political Participation in an International Comparative Perspective.*” The book is advertised as being of interest to political scientists and those who are interested in social movements, comparative politics, political behaviour and political participation. The book compares the political actions and motivation behind parades across Europe, including within the United Kingdom. The book is generous with terms such as LGBT activism, political mobilisation and protest dynamics.

18. Unison, a publication of the North West LGBT group in the United Kingdom, has noted that Pride Events are a commemoration of the Stonewall Riots, inherently political, and a remembrance of how the LGBT movement was started. See: <https://www.unison.org.uk/content/uploads/2015/11/Pride-organising-guide.pdf>. Hull Pride described the substance of their Pride event as being one of protest. They are quoted as saying this: “*The purpose of Hull Pride is protest. Pride in Hull marked 50 years since the Stonewall uprising by parading an original Gilbert Baker Pride flag through the streets... marking five decades of LGBT+ protest.*” See: <https://prideinhull.co.uk/about/>. Campaigner Peter Tatchell, mentioned above, has been very overt about what he believes Pride to be. His view of Pride is this: “*Pride is politics with joy. A unique blend of carnival like celebration and political demands.*” See: <https://www.theguardian.com/commentisfree/2018/jul/06/pride-changed-world-lgbt-people-protest>.
19. Mainstream media has also noted the political and protest element of Pride. The Guardian recently praised the London Pride event commenting that: “*Tens of thousands will head to pride...which was in danger of losing its political edge.*” See: <https://www.theguardian.com/commentisfree/2019/jun/12/lgbtq-rights-danger-pride-fight-back-homophobic-attacks>. Like the Guardian, the BBC also praised the political element behind Pride events in the UK, acknowledging that: “*The political element of Pride is still there.*” See: <https://www.bbc.co.uk/bitesize/articles/zfkx8xs>. The UK edition of the Vice Newsletter has also recently spoken to the political proselytism inherent in Pride events, noting that the activists who started UK Pride are demanding a return to its revolutionary roots. See: <https://www.vice.com/en/article/wjvawn/uk-gay-pride-history-gay-liberation-front>.

Relevance to the Instant Matter

20. As an elected official, Cllr Douglas’ constituency represents a diverse group of people with different protected characteristics, worldviews and religious or moral beliefs. Different people have very different beliefs about sexual attraction, sexual identity, sexual practice and LGBT campaigning worldview. Even within academia there are various outlooks as to sexual identity, which include the belief that homosexual attraction is variable at different points in life and among different people. See e.g.: <https://kinseyinstitute.org/research/publications/kinsey-scale.php>. Others hold beliefs that while one might be same-sex attracted, there are valid reasons to abstain from sexual practice outside of the framework of conjugal marriage, as between one man and

one woman. Such reasons may include staying faithful to religious vows, acting in accordance with sincerely held religious beliefs, or keeping an existing marriage and/or family together.

21. While Members of the Standards Committee may find these views foreign to their own, they are nonetheless valid and protected beliefs. So too is the belief that LGBT campaigning can amount to an ideology. The European Court of Human Rights has been clear that philosophical beliefs are included within the meaning of the European Convention on Human Rights. The Court defines ‘convictions’ as being something different from ‘opinions’ and ‘ideas’, denoting views that attain a certain level of cogency, seriousness, cohesion and importance. *Valsamis and Efstratiou v. Greece*, 1996-VI Eur. Ct. H.R. Rep. Judgments & Dec. 2312 and 2347 (1996), § 25. The House of Lords has similarly ruled that in order for religion or belief to be protected under the Equality Act, the beliefs involved must possess an adequate degree of seriousness, importance, and coherence. *R (Williamson and Others) v. Secretary of State for Education and Employment* [2005] UKHL 15, § 23. There is no question that Cllr Douglas’ beliefs meet those standards and there is no reason to doubt her sincerity in believing that such views also represent the beliefs of a number of her constituents.

22. The Court has been liberal in interpreting philosophical convictions as falling within the meaning of Article 9 of the Convention, so long as those convictions were sincerely held and coherent. It has for example extended Article 9 protection to: pacifism, *Arrowsmith v the United Kingdom*, Application No. 7050/75, Comm. Rep. 1978, 19 DR 5, § 69; conscientious objection to military service, *Bayatyan v Armenia* [GC], Application No. 23459/03, judgment of 07 July 2011; veganism and opposition to testing on animals, *W. v The United Kingdom*, Application No. 18187/91, Comm. Dec. of 10 February 1993; a doctor’s opinion on alternative medicines as a medical philosophy, *Nyysönen v. Finland*, Application No. 30406/96, Comm. Dec. of 15 January 1998; opposition to abortion, *Knudsen v. Norway*, Application No. 11045/84, Comm Dec. of 08 March 1985; and the belief that marriage is exclusively between one man and one woman, *Eweida and Others v The United Kingdom*, Application Nos. 48420/10, 59842/10, 51671/10, and 36516/10, judgment of 15 January 2013. The latter two beliefs are particularly of relevance to the instant matter, given that they both elicit significant emotions from both sides of the issue and that conservative views on these subject matters increasingly tend to be viewed as going against the cultural mainstream. Cllr Douglas’ beliefs regarding LGBT campaigning and worldview can be viewed by

some, especially by those who are particularly sensitive to the issue, as being controversial.

23. The European Court has also spoken to the importance of protecting speech which goes to the heart of sensitive moral and ethical issues, where a matter of public interest is at stake. *Case of Annen v Germany*, application no. 3690/10, judgment of 26 November 2015, §62. So too has the Court noted the importance of individuals which contribute to a highly controversial debate of public interest. *Id.*
24. It is recognised that the frank but lawful expression of religious or philosophical views may cause upset or offence, even where not intended, particularly to those with deeply held views to the contrary. However, just because an individual subjectively takes offence at someone's legitimate beliefs about a sensitive issue, does not objectively make those views disparaging or contrary to the principles of equality. *Cf. Smith v Trafford Housing Trust* [2012] EWHC 3221, paras. 81-82. In the same vein, the Court of Appeal has been clear that holding and sharing a sincerely held belief is not synonymous with discrimination. *The Queen (on the Application of Ngole) and the University of Sheffield* [2019] EWCA Civ 1127, paras. 5(10), 135-137.

Opposition to Worldview is Different than Discrimination or Prejudice

25. The Supreme Court recently ruled that principled opposition to homosexual worldview because of sincerely held beliefs did not amount to discrimination based on sexual orientation. That case, even though it is a case about the right to refuse services based on deeply held beliefs, is of significant relevance to the instant matter and worthy of detailed analysis.
26. In May 2014, the plaintiff, Gareth Lee, who works with the LGBT organisation QueerSpace in Northern Ireland, sought to purchase a cake with a message marking the International Day Against Homophobia and Transphobia. He placed an order with Ashers Bakery, a Christian business, wishing to have a cake made with depictions of Sesame Street's Bert and Ernie with the slogan "*Support Gay Marriage*". It was not in dispute that Mr. Lee had been served in the past by the bakery without issue while ordering confections which did not have a pro-LGBT message on them. While the shop initially accepted the order, Mr. Lee was later called back by Ashers Bakery co-proprietor Karen McArthur who informed the plaintiff that as a Christian ethos

business, they would not fulfil the order and that it should not have been accepted in the first place.

27. The lower courts found against Ashers Bakery on grounds of direct discrimination based on the sexual orientation of Mr. Lee. *Lee v. Ashers Baking Co Ltd. & Anor.* [2015] NICty 2. While the named defendants in the case rightly claimed that they did not take issue with baking a cake for someone on the basis of their sexual orientation, but only could not in good conscience use their talents to create a message in contradiction to their Biblical views on marriage, it was the Court who linked the message of the cake with Mr. Lee's sexual orientation (i.e. that the message of the cake could not be disassociated with the sexual orientation of the plaintiff Mr. Lee).
28. The Supreme Court however, overturned both the lower court and Court of Appeal in a strongly written opinion. *Lee v. Ashers Bakery Company Ltd and Others*, [2018] UKSC 49. Lady Hale, writing on behalf of the majority, summarised her position thus:

In reaching the conclusion that there was no discrimination on grounds of sexual orientation in this case, I do not seek to minimise or disparage the very real problem of discrimination against gay people. Nor do I ignore the very full and careful consideration which was given to the development of the law in this area, to which Mr Allen QC drew our attention at considerable length. Everyone, as article 1 of the Universal Declaration of Human Rights put it 70 years ago is "born free and equal in dignity and rights". Experience has shown that the providers of employment, education, accommodation, goods, facilities and services do not always treat people with equal dignity and respect, especially if they have certain personal characteristics which are now protected by the law. It is deeply humiliating, and an affront to human dignity, to deny someone a service because of that person's race, gender, disability, sexual orientation or any of the other protected personal characteristics. But that is not what happened in this case and it does the project of equal treatment no favours to seek to extend it beyond its proper scope. Id., para. 35.

29. The Court held that this could only be a case of associative discrimination or it could be nothing. *Id.*, para. 34. In so ruling, it rejected the lower courts findings that the message of the cake was indissociable from Mr. Lee. The nexus, Lady Hale argued, was too remote to find discrimination based on the plaintiff's sexual orientation. "*In a nutshell,*" she argued, "*the objection was to the message and not to any particular person or persons.*" *Id.*

30. In the instant matter, Cllr Douglas did not make her decision about voting against funding a Pride event because of the applicants' sexual orientation, she did it because of her opposition to the political message being portrayed by the event that was proposed. The Subject Member would have happily voted in favour of a grant to the same individuals on a different project where the propagation of worldview was not central to the grant. In fact, as her statement made clear, Cllr Douglas does not believe that public funds should ever be used to promote the specific worldview of just one segment of the population.

Application of the PSED to the Facts

31. Cllr Douglas submits that she did give due consideration to the public sector equality duty when deliberating on this matter and in making her statements. Whether the Committee agrees or not with her reasoning, she did not believe that funding a Pride Event would further the Council's duty to eliminate unlawful discrimination, victimisation and harassment; nor that it would create equality of opportunity or foster good relations among those with different protected characteristics. The Investigating Officer has not substantiated how a Pride event, which can have a divisive effect among certain members of the community, promotes inclusivity while Cllr Douglas' statement undermines it. Such a finding suggests viewpoint discrimination towards the sincere and coherent views of those who would prefer not to use public funds to support a Pride event. This is precisely why freedom of political expression enjoys such heightened scrutiny. If local government takes a rigidly monistic position on specific issues of public debate, going so far as to punish dissenting voices, the entire fabric of democracy is put at risk. Nowhere is this risk more evident than at paragraphs 51-52 of the Investigating Officer's written submissions where it is implied that a vote against funding a Pride event is in itself a violation of the public sector equality duty. Asking an elected member to abstain from voting in line with both her conscience and her belief that she was representing the views of her constituency is a genuine and existential threat to the democratic process. One by which Cllr Douglas cannot abide.

32. The Subject Member reiterates her position that she did have due regard for the equality duty when making her deliberations, issuing her statement and casting her vote. She was clear that she had no issue with the organisers holding the event, but that she had weighty reasons for believing that public funds should not be used to support the proposed grant application. Furthermore, while Section 149(6) of the Equality Act

2010 may involve treating people more favourably than others, it certainly does not require an elected official to do so if they have reasons to the contrary. Cllr Douglas' disagreement on this issue should not be coloured as disrespect or discrimination.

Standards Regime

33. With regard to the standards regime, Cllr Douglas rigorously rejects the charge that she acted in violation of the code of conduct. To the contrary, she believes she has acted to uphold them. As to the specific standards, she makes the following observations:

***Selflessness:** In publicly explaining a decision based on serious and altruistic deliberation and beliefs, knowing it would not be a popular belief among some, I counted the cost of personal vilification and demotion.*

***Integrity:** I acted accordingly to deeply held beliefs and values and consistent to my belief that the Council should not be funding any event which has political or proselytising elements involved in it. The fact that the complainants hold a different set of beliefs does not constitute a lack of integrity on either my part or theirs (MN App 4:4).*

***Objectivity:** I have made clear that I oppose council promotion of the worldview of any one part of our community, even one with which I personally agree (MN App 4:4).*

***Accountability, Openness, Honesty:** I have given an open and honest account of the reasons for my actions, even though I was aware those reasons would not be universally popular.*

***Leadership:** I have affirmed the freedom of choice of those I serve while challenging those choices.*

Freedom of Expression

34. Article IX of the Bill of Rights 1689 sets out the principle of parliamentary immunity for speech that occurs during political deliberation: “*That the Freedom of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.*” While this immunity does not shield the Member from internal sanction, it does speak to the importance of the freedom of expression in political debate.
35. Indeed, Article 10 enjoys a particularly heightened protection in the context of political debate. As it has been held, “*...the Court recalls that while freedom of expression is important for everybody, it is especially so for an elected representative of the people.*”

He or she represents the electorate, draws attention to its preoccupations and defends its interests. Accordingly, interferences with the freedom of expression of an opposition Member of Parliament, like the applicant, call for the closest scrutiny on the part of the Court.” Jerusalem v. Austria, Application no. 26958/95, ECHR 2001-II, para. 36. The fact that the debate took place in a Council rather than parliament is largely immaterial. The two bodies are comparable. The Court in Jerusalem found that a local council was comparable to Parliament and that the same level of strict scrutiny should apply with regard to political debate. In that case, the Court reasoned that statements made in a local council “were made in a forum which was at least comparable to Parliament as concerns the public interest in protecting the participants' freedom of public expression. In a democracy, Parliament or such comparable bodies are the essential fora for political debate. Very weighty reasons must be advanced to justify interfering with the freedom of expression exercised therein.” Id. at para. 40.

36. The Representative for the Investigating Officer engages the issue of freedom of expression with considerable substance in paragraphs 60-72 of his submissions. Fundamentally however, his submissions are in manifest error as to the nature of permissible limitations on freedom of expression. In the context of *Vajnai v. Hungary*, cited by my learned friend at paragraph 71 of his submissions, he posits that a pressing social need can justify interference with freedom of expression, and that promoting the public sector equality duty is just such a need. However, this is not an accurate reading of either the Convention or its corresponding caselaw. Article 10(2) of the Convention enumerates specific legitimate aims, pursuant to which a public authority can limit freedom of expression where necessity is present. Those aims are: “*in the interests of national security, territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*” This list is exhaustive, meaning general equality considerations are not considered a legitimate aim within the meaning of the Convention even if they otherwise serve a pressing social need. In the *Vajnai* case, the legitimate aim being argued by the High Contracting Party of Hungary is the prevention of territorial disorder and crime. *See*: para. 55. Precisely stated, when the Court refers to serving a pressing social need, they are in fact speaking to the prevention of disorder as a legitimate aim and not speaking of serving a social need as a legitimate aim in and of itself.

37. The Subject Member would also submit that the charge of encouraging prejudice and discouraging understanding between different groups is nebulous and far from concrete. The Court has addressed such pre-emptive discipline as being disproportionate to serving a pressing social need: *“In the Court’s view, the containment of a mere speculative danger, as a preventive measure for the protection of democracy, cannot be seen as a “pressing social need”.*” Para. 55. It further held that: *“In the Court’s view, a legal system which applies restrictions on human rights in order to satisfy the dictates of public feeling – real or imaginary – cannot be regarded as meeting the pressing social needs recognised in a democratic society, since that society must remain reasonable in its judgement. To hold otherwise would mean that freedom of speech and opinion is subjected to the heckler’s veto.”* Para. 57. Thus, even had the Representative for the Investigating Officer argued that the legitimate aim being served by this hearing was the protection of the reputation or rights of others, which he did not argue as a point of law, the case-law on this matter is clear as to the importance of protecting political speech.
38. The court also has been explicit and consistent that freedom of expression protects not only *“ ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also [protects] those that offend, shock or disturb Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society.’ ”* *Handyside v. United Kingdom*, 24 Eur. Ct. H.R. (ser. A) at 23 (1976); accord *Dichand*, App. No. 29271/95 § 37; *Marônek*, 2001-III Eur. Ct. H.R. at 349; *Thoma*, 2001-III Eur. Ct. H.R. at 84; *Jerusalem v. Austria*, 2001-II Eur. Ct. H.R. 69, 81. While freedom of expression is subject to exceptions in Paragraph 2 of Article 10, these exceptions *“must, however, be construed strictly, and the need for any restrictions must be established convincingly.”* *Observer & Guardian v. United Kingdom*, 216 Eur. Ct. H.R. (ser. A) at 30 (1991). In relation to this matter, not only has the Investigating Officer failed to identify an enumerated legitimate aim, even if they had, the need to sanction Cllr Douglas has not been established convincingly.
39. Leaving aside for a moment that an enumerated legitimate aim has not been identified to substantiate the Committee’s interference with Cllr Douglas’ right to free speech, the manner of the interference in question cannot be said to be necessary in a democratic society. As the Investigating Officer has noted in their written submissions, for an interference with freedom of speech to be a legitimate exercise of discipline by a public authority, that interference must be necessary in a democratic society. The European

Court of Human Rights has stated that the typical features of a democratic society are pluralism, tolerance, and broadmindedness. *Handyside v. United Kingdom*, 24 ECHR (ser. A) at 23 (1976). Pluralism, tolerance and broadmindedness require that competing voices on sensitive issues be allowed the same rights to express their beliefs and opinions as everyone else. Stifling debate by labelling Cllr Douglas's views as inadvertently promoting prejudice and discouraging understanding evidences at best an illiteracy to the beliefs of many of Cllr Douglas's constituents, and at worst an intolerance towards them.

40. For any interference with a Convention right to be considered a lawful exercise of authority, it must serve a legitimate aim in a manner which is proportionate to ensuring that the right in question is not unduly or overly restricted. ECHR. *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], Application Nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 86–89, ECHR 2003-II. The Court defines proportionality as being the achievement of a fair balance between various conflicting interests. *Sunday Times*, 30 ECHR (ser. A) at 38. These competing interests must include factoring in the sincerely held beliefs of those in Cllr Douglas' constituency who profess beliefs about sexual behaviour and worldview contrary to those being espoused by the political message of Pride. This need must of course be concrete. *Zana v. Turkey*, 1997-VII ECHR 2533, 2548.

41. The ECHR summarised its definition of how to determine whether a pressing social need has been met in *Zana v. Turkey*, noting that it must:

Look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which he made them. In particular, it must determine whether the interference in issue was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient." In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts. Id., at 2548.

42. Any interference with freedom of expression must be based on reasons that are pertinent and sufficing. *Zana v. Turkey*, 1997-VII ECHR 2533, 2548; *see also: Dudgeon v the United Kingdom*, 45 ECHR (ser. A) at 22 (addressing the requirement of relevancy and sufficiency in Article 8). The Council has a duty to remain impartial and neutral with

regard to the content of speech, since what is at stake is the preservation of pluralism and the proper functioning of democratic society, even if the Council may find some of those views irksome. *United Communist Party of Turkey v. Turkey*, 1998-I ECHR 1, 27. If public authorities are allowed to dictate what is and what is not offensive and to punish speech it deems offensive, even where that discretion is couched in terms of an equality duty, a *de facto* case of viewpoint discrimination is established. For these reasons, as the European Court has held time and again, that “*the notion ‘necessary’ does not have the flexibility of such expressions as ‘useful’ or ‘desirable.’*” *Svyato-Mykhaylivska Parafiya v. Ukraine*, Application No. 77703/01, judgment of 14 June 2007, para. 116.

Other issues raised

Complaint lodged based on inaccurate media report

43. The Subject Member continues to express concern regarding the inaccurate media report and how it has coloured the instant proceedings. Cllr Douglas acknowledges the Investigating Officer’s willingness to make this hearing about only her actual statements at the Area Board meeting of 04 November 2019. At the same time, it is highly relevant that the neither Complainant was at that meeting to hear her words directly and a genuine and highly pertinent question exists as to whether but for the inaccurate media reporting about Cllr Douglas’ views on LGBT issues, complaints would have been forthcoming or not. While the Investigating Officer argues that the statutory regime focuses on high standards of behaviour and not an individual wrong, these complaints nonetheless do focus on an alleged individual wrong and the Investigating Officer has made no indication that they would have pursued code of conduct hearings if not for the complaints that were made. Therefore, the impetus behind the complaint is not only of relevance, but should have been made a threshold issue when the complaints were first being deliberated.

44. Cllr Douglas is further concerned about the pervasive nature of how the media report in question has become part of both of the Investigating Officer’s Code of Conduct reports and the prejudicial effect it has on these proceedings. Given the inflammatory nature of the article, headlined *‘Disgraceful’ Views: Transgender People are Mentally Ill*, Cllr Douglas should have at least been given the opportunity to refute the accuracy of the reporting before that material became part of the substantive case file.

Involvement of the Complainants Within the Hearing Process

45. While Cllr Douglas acknowledges the process used in the Code of Conduct procedure and the role played by the Investigating Officer, she nonetheless vigorously challenges the position that no negative inferences can be drawn from the complainants' decision not to attend proceedings. While the representative notes at paragraph 81 of his submissions that the Investigating Officer reserves the right to call the complainants as witnesses, this only tells half of the story. It is of relevance that the complainants were asked to attend the hearing but declined. It is of further relevance that neither were in attendance when the actual statements were made by Cllr Douglas. Lisa Taylor, for example, even questioned whether her complaint even fit within the code of conduct procedure, explaining: "*your list of code of conduct... doesn't seem to meet the criteria of the complaint I have made.*" LT App. 4. In her email of 13 November 2019 to the 'complaints mailbox', she specifically writes: "*I am not commenting on her opinion over the use of funding for the Pride March next year, as I can see both sides of that argument.*" In Ms Taylor's own words, her complaint has nothing to do with the public sector equality duty and she herself could see how someone could vote against funding.
46. Complainant Maxine Nutting, in her email of 09 November 2019, is quite explicit that her complaint was made in light of the report in the Salisbury Journal and that the reference to mental illness played a role in making her complaint. Her email focusses on direct discrimination rather than the public sector equality duty, and incorrectly states that Cllr Douglas voted against funding a Pride event because of her feelings about LGBT people. Cllr Douglas was clear that in making her decision to vote against the grant proposal, it had nothing to do with LGBT people, whom she in fact loves, but had to do with her opposition to the worldview being promoted by Pride. In so doing, she realised that any worldview, even one with which she agreed, should not be promoted with the use of public funds.
47. Procedural fairness applies to official disciplinary hearings, as much as it does to a traditional court or tribunal hearing. *Case of La Compte, Van Leuven and De Meyere v Belgium*, Application no. 6878/75 and 7238/75, judgment of 23 June 1981. This includes disciplinary hearings before local government. *Kamenos v. Cyprus*, 147/07, judgment of 31 October 2017, §73. The requirement of "equality of arms", in the sense of a "fair balance" between the parties, therefore applies. *Case of Feldbrugge v. the Netherlands*, application no. 8562/79, judgment of 29 May 1986, § 44. Equality of arms implies that each party must be afforded a reasonable opportunity to present their case – including their evidence – under conditions that do not place them at a substantial

disadvantage *vis-à-vis* the other party. *Case of Dombo Beheer B.V. v. the Netherlands*, application no. 14448/88, judgment of 27 October 1993, § 33.

48. In the instant matter, the Subject Member is not able to question the Complainants about whether they still would have complained had they not seen the negative media reporting about Cllr Douglas. They cannot be asked to explain how their grant proposal in fact furthered any of the goals listed in the public sector equality duty or how a parade could make Salisbury a safe and fully inclusive city, how it could help tackle mental illness, or what a LGBT Pride event could do to help inclusivity in relation to the disabled and the BAME communities. While such goals are lofty, it is far from evident how a march could accomplish any of these things.
49. Given the above, the Subject Member argues that the very limited nexus between the Complainants, who neither attended the meeting in person and have chosen not to be part of these proceedings, and the actual events of 04 November 2019, should give rise to adverse implications being drawn.

Councillor Douglas' approach to Applicant after meeting

50. Cllr Douglas here notes only that she feels it is of relevance that she spoke to the person representing Salisbury Pride following the Area Board meeting because it demonstrates that she is not opposed to the individuals making the grant application, but that her disagreement lay with the worldview underpinned by the grant application. Had the Complainants been present at the Area Board meeting that day and had the opportunity to speak with Cllr Douglas, their concerns may have been cleared up regarding what she meant by her statement. Instead, their entire perception about what was said at the meeting and how it was said was shaped by a salacious and inaccurate media report.

Conclusion

51. The matter before the Committee may evoke strong emotions. Members of the Committee may feel adamant that such views do not belong in political discourse. That being said, others, including Cllr Douglas and some members of her constituency, share equally strong beliefs to the contrary. Both sets of beliefs, those which support the LGBT campaigning worldview here represented by the grant proposal in question, and those who hold dissenting philosophical, moral and religious convictions, enjoy equal protection under the law.

52. In the instant matter, Cllr Douglas believes that voting in favour of funding the grant proposal in question as a matter of furthering the equality duty was outweighed by competing and weighty reasons which she expressed in her statement on 04 November 2019. The case-law argues that it is not the duty of a supervisory body to impose its own views as to how those competing interests should be weighed. She further argues that the Investigating Officer has failed to identify a legitimate aim by which interference with her freedom of expression would be legally permissible. Even if it had, she contends, that a pressing social need has not been substantiated within the meaning of the applicable case-law.

53. For these reasons, Cllr Douglas submits that the Committee find no wrongdoing on her part and that no sanction should be attached to her actions of 04 November 2019.

Roger Kiska
Representative for Cllr Mary Douglas