

**ON APPEAL FROM A COMPLAINTS PANEL**

**Case No. 1033**

**BETWEEN:**

SANDRA HOLLIDAY

Appellant

-and-

(1) COMPLAINTS PANEL

(2) WENDY FLYNN

Respondents

---

FINAL RULING OF THE FEDERAL APPEALS PANEL  
18 September 2023

---

**DAVID GRAHAM, HARRY SAMUELS, AND ANTHONY FAIRCLOUGH:**

1. At the annual general meeting of Cheltenham Borough Council on 17 May 2021, the Second Respondent, Cllr. Wendy Flynn, spoke in uncompromising terms opposing the election of the Appellant, Cllr. Sandra Holliday, as Deputy Mayor of Cheltenham. The previous custom and practice had been that the election was made on the basis of seniority.
2. Cllr. Flynn alleged that Cllr. Holliday had, in an e-mail to Lib Dem colleagues, minimised the seriousness of the use by a colleague in a speech of a historic term today generally understood to be racist. Cllr. Flynn alleged that Cllr. Holliday's defence of this colleague had "*had a racist impact*". Cllr. Flynn went on to say that to vote for

Cllr. Holliday to be Deputy Mayor of Cheltenham would itself *“have a racist impact”*. This speech continued along the same theme. Importantly, Cllr. Flynn highlighted a prior investigation by the Liberal Democrats into Cllr. Holliday’s conduct which had resulted in disciplinary sanction.

3. Later in the meeting, Cllr. Holliday responded to Cllr. Flynn’s speech and the speeches of various other councillors who had made similar points to Cllr. Flynn. It is this response by Cllr. Holliday (**“the Speech”**) which was the subject of a further complaint, and which is now the subject of this appeal. It will therefore be helpful to set out some of its aspects in detail. In the Speech, Cllr. Holliday stated:
  - a. That she had indeed previously been investigated by the Liberal Democrats, and had accepted the results of that process;
  - b. That it was *“disappointing that Cllr. Wendy Flynn has chosen not to accept [the outcome of the earlier disciplinary process] also”*.
  - c. That Cllr. Flynn had tried to make the issue of the prior investigation *“greater than it is”* and *“cause a rift”* in the local party, allegedly because Cllr. Flynn did not accept the outcome of the prior investigation.
  - d. That Cllr. Flynn’s alleged attitude was *“illiberal”* and against the values of the Liberal Democrats.
  - e. That she (Cllr. Holliday) had not been excluded or expelled from the Liberal Democrats.
  - f. That she (Cllr. Holliday) had *“apologised unreservedly”* for her prior comments.
  - g. That she (Cllr. Holliday) had sufficient experience and qualifications to be elected as Deputy Mayor.



*her, undermined and humiliated me. Her behaviour amounts to bullying and, in my opinion, is a clear breach of the Members Code of Conduct. I also believe there may be a case for a breach of the Equality Act – victimisation, as I was treated badly because of standing up to and speaking out against racist behaviour.”*

6. A complaints panel upheld the Complaint. It found that the Speech was, variously, “abusive”, “insulting, humiliating and malicious in intent”, “planned, intentionally malicious and amount[ing] to bullying and intimidation”, and “amounting to defamation”. It suspended Cllr. Holliday from the party for one year from 20 September 2022.
7. Cllr. Holliday now appeals to the Federal Appeals Panel.
8. At the outset, we note our regret for the length of time it has taken to produce this report, which has been caused by (i) a shortage of members on the Federal Appeals Panel and (ii) personal issues with the eventually assigned members of the Federal Appeals Panel causing delays in producing this decision notice. By the time it is circulated to the parties, there will be less than one week left of Cllr. Holliday’s suspension, and we apologise for this delay.

### *Decision*

9. We unanimously allow the appeal, and we set aside the decision to suspend Cllr. Holliday from the Liberal Democrats.
10. In our opinion, the conclusion reached by the complaints panel was unreasonable and wrong, being unsupported by the evidence. We consider it necessary to set out the operative part of the panel’s decision in full:

*“30. The Complainant highlights several comments in the Respondent’s AGM speech which she considers to be ‘dishonest, offensive, possibly malicious,*

*definitely insulting'. She adds that these comments 'undermined and humiliated her'. One such comment from the Respondent states 'it's disappointing that Councillor Wendy Flynn has chosen not to accept [the outcome of Case 368]'. At the hearing the Respondent explained that the Complainant 'would have let the matter rest if she had accepted the outcome but she chose to speak again on it at the AGM'. This does not adequately explain or justify her comment at the AGM. She may have expressed herself poorly but the outcome of Case 368 found in the Complainant's favour which makes the Respondent's assertion at the AGM illogical, misleading and untrue.*

31. *The Complainant draws attention to the following comment made by the Respondent in her AGM speech, once again in reference to the outcome of Case 368: 'This was an internal matter ... which Councillor Flynn tried to make greater than it is and cause a rift due to her as the Complainant not seeing to accept the ruling' [sic]. At the hearing the Respondent stated that by referring to Case 368 at the AGM the Complainant made the issue public which divided opinion amongst Lib Dem Councillors. The statement is however ambiguous and could be taken to mean that the Complainant did not accept or was exaggerating the outcome of Case 368 which is untrue as explained in the last paragraph. The Panel found no evidence to support the latter interpretation and concluded that the assertion was ambiguous and misleading but also offensive and undermining because both interpretations blame the Complainant, without any evidence, for causing a 'rift' amongst Lib Dem Councillors.*

32. *Referring to the Complainant, the Respondent stated in her AGM speech 'this illiberal attitude is against our Party values'. In response to a question on this the Respondent emphasised the need to 'live together in peace'. The Complainant may have raised uncomfortable ethical issues at the AGM but she has a strong track record of espousing liberal values which are revealed in her written submissions and orally at the hearing. The Respondent was unable to provide a satisfactory explanation for making her assertion and the Panel*

*concluded that there was no evidence, it was untrue and the comment was offensive, insulting and undermining in nature, particularly since it was in the public domain.*

33. *The Respondent in her AGM speech accuses the Complainant of making the mayor and deputy mayor roles 'political'. She states in her speech 'the appointment of mayor and deputy mayor are not political appointments but are based on length of service'. The Complainant makes the legitimate point that 'holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this'. The Panel took the view that whatever the Respondent meant in her comment the intention was to further undermine the Complainant publicly.*

34. *In her AGM speech the Respondent stated 'Councillor Flynn had issued an ultimatum that she intended to make a statement unless I withdrew my nomination. I felt that this was intimidation, blackmail and is bullying. And I feel it's important to stand up to bullies'. In effect this accuses the Complainant of blackmail, that is, of threatening the Respondent in advance of the AGM in an effort to force the Respondent to withdraw her Council nomination. In her written evidence and at the hearing the Complainant denies having issued any sort of ultimatum stating the allegation is 'completely false'. At the hearing the Respondent stated that she had received a phone call from the monitoring officer indicating that 'Wendy is going to speak against her unless she withdraws her nomination'. The Complainant explained that she had informed the monitoring officer of her intentions before the AGM and the monitoring officer asked her for permission to inform the Respondent to which she agreed 'in the interests of fairness'. When asked if she had spoken directly to the Complainant on this matter the Respondent said she had spoken only to the monitoring officer. The Panel concluded that whatever the monitoring officer did or did not say to the Respondent, it was not the Complainant who said it. On balance the Panel considered this public accusation to be serious,*

*unsubstantiated and malicious in intent, amounting to defamation of the Complainant's character.*

35. *The Respondent ends her AGM speech with the following words: 'I would urge tolerance and understanding when dealing with others who have a different opinion to you. Sometimes there is no right or wrong. Sometimes the meaning isn't clearly articulated. Be kind to each other, you'll gain a lot more'. Given the abusive nature of the Respondent's earlier AGM comments, these statements are hypocritical. The Respondent has not treated the Complainant with respect. The Panel found these final words to be insulting, humiliating and malicious in intent.*

36. *The Panel took into consideration the public nature of the several adverse comments made by the Respondent in her speech, that she had time to consider and prepare it as the monitoring officer had forewarned her of the Complainant's intentions, and concluded that the Respondent's assertions were planned, intentionally malicious and amounted to bullying and intimidation.*

11. There was no reasonable basis for any finding that the speech of Cllr Holiday 'amounted to bullying and intimidation', particularly not when viewed as a whole and in its full context.
12. It is deeply regrettable that the conclusions of the panel have been quoted at length in both local and national news articles.
13. The context of the speech was that Cllr Flynn had made an eleventh-hour objection to Cllr Holliday's election as Deputy Mayor, which usually was a formality based on time served, alleging that this would not be consistent with a 'zero tolerance' approach to racism, nor with 'anti-racism'. The speech did not in any way threaten, degrade, humiliate or demean Cllr Flynn. It was a response to an attack on her character by Cllr Flynn as being not 'fit and proper'. It was unreasonable for

the Complaints Panel to find that it amounted to bullying, harassment or intimidation of Cllr Flynn.

14. The Complaints Panel made findings that Cllr. Holliday's comments about Cllr. Flynn were "misleading, unsubstantiated, untrue, offensive and undermining", as well as being in some cases "malicious in intent" or "hypocritical". Cllr. Flynn had accepted the findings of the complaints process and considered these made Cllr. Holliday unfit for office. The Lib Dem complaints process is not established to censor political speeches nor adjudicate claims made in a political debate. Feeling offended by a comment is not in itself a basis for disciplinary action and the task of a complaints process is to look objectively at whether a comment brings the party into disrepute. Nor is undermining the argument of another councillor, or being hypocritical, a proper basis for disciplinary sanction. If a local authority has rules about 'unparliamentary language' in meetings as a matter of courtesy towards other councillors going beyond ordinary common decency, that will be a matter for them. It is clear that what Cllr. Holliday was getting at was the idea that Cllr. Flynn should have abided by the ruling on sanction of the internal standards decision and drawn a line under the matter, rather than also opposing her candidacy as Deputy Mayor, which she considered as an additional form of punishment. Implying that Cllr. Flynn was intolerant or unkind was not an act of bullying or intimidation, regardless of the rights and wrongs of that subjective characterisation.
15. Cllr. Holliday disagreed with Cllr. Flynn's speech. She defended herself forthrightly. But she came nowhere remotely close to the threshold at which a reasonable disciplinary body could have declared her to have been an abusive, malicious, defamatory, intimidatory bully.
16. The speeches given by both Cllr. Flynn and Cllr. Holliday were political speeches given at a full, public meeting of Cheltenham Borough Council (at the AGM, no less) in their capacities as elected councillors. There was a personal aspect to the issue being debated — whether Cllr. Holliday should be appointed as Deputy Mayor — but there is no doubt in our minds that the speeches given were part of a public debate on



matters of public interest by two councillors. To give an opinion on matters of public debate is precisely what a councillor is elected to do.

17. The complaints panel appears to have failed to consider any of this. They seem to have treated their role as to evaluate the truth or otherwise of Cllr. Holliday's comments, many of which were obvious hyperbole or expressions of opinion such as whether Cllr Flynn's attitude was 'illiberal'. This was a serious error of reasoning, and, with respect, a surprising failure to appreciate the obvious fact that Cllr. Holliday was giving her personal opinion in response to a criticism made of her.
18. As the Federal Appeals Panel has repeatedly emphasised, it is not the function of a disciplinary body of the Liberal Democrats to adjudicate political questions or whether one councillor or another is an unsympathetic character. In a free and democratic society, individuals — particularly elected individuals engaged in their public duties — must be able to disagree with each other, even robustly, or in strong terms, or in terms which others might in turn strongly disagree with. Elected public representatives do not have the right to be immune from criticism, even where that criticism is personal or offensive to them personally. These are foundational liberal principles. There is a higher threshold for disciplinary action such as genuinely bullying or malicious behaviour.
19. Needless to say, we are of the view that this complaint ought to have been dismissed as being totally without merit at the earliest possible stage. Members are to be discouraged from using the disciplinary system to litigate personal and political disagreements with other members. We strongly recommend that complaints panels are given training about issues of this nature in the future, to ensure this sort of regrettable episode does not happen again.

## **Ruling**

20. The decision of the Complaints Panel and consequent suspension of Cllr Holliday are set aside.

21. If parties have any submissions to make about publication of this ruling, they must provide these to Standards within 7 days from the date they receive the decision.