

- 2.6 *Councillor Birdi breached Paragraph 3(k) of the Code by virtue of his aggressive and abusive behaviour towards him and abused his position as a councillor.*
- 2.7 On 1 February 2016, The Deputy Monitoring Officer instructed Jeremy Thomas, Head of Law and Governance and Monitoring Officer at Oxford City Council, to conduct an independent investigation into the complaint (“the First Investigating Officer”).
- 2.8 The First Investigating Officer issued his report on 18th March 2016. He concluded that:
- (a) Councillor Birdi was entitled to raise concerns about the amount of litter in an area that was not in his own ward. There was no breach of the Code in this respect.
 - (b) Councillor Birdi was racially abusive to the Complainant and this amounted to a breach of the Code in failing to treat people with respect.
 - (c) Councillor Birdi did make an inappropriate threat to close the Complainant’s shop down but his subsequent actions in asking Trading Standards to check the premises were not inappropriate. In making the threat, Councillor Birdi failed to treat the Complainant with respect and this amounted to a breach of the Code.
 - (d) In relation to the litter allegation, this did not reveal a breach of the Code. While it could be argued that Councillor Birdi ought not to have made the request in the first place, having been told no, he respected the answer and did not follow up the request other than pursuing the wider litter/bins issue which was a matter of public interest.
- 2.9 Councillor Birdi indicated that he did not agree with the Investigating Officer’s report and the matter was set for hearing on 12 September 2016 but had to be cancelled due to unforeseen circumstances.
- 2.10 After the hearing was postponed, officers had discussions with both the Complainant and Councillor Birdi about whether the matter could be settled informally. Although Councillor Birdi was prepared to do so, the Complainant was not. Mr Matt Lewin, a barrister practising from Cornerstone Chambers, 2-3 Gray’s Inn Square, London, was therefore instructed to carry out a second investigation into the complaint.
- 2.11 Mr Lewin issued his draft report on 30 November 2016. He concluded that:
- a) Councillor Birdi’s conduct towards the complainant was aggressive and abusive, specifically racially abusive. This amounted to a breach of paragraphs 3(j) and 3(k) of the Code of Conduct.

- (b) Councillor Birdi did threaten to close down Mr Kuruparan's premises and this was also in breach of paragraphs 3(j) and 3(k) of the Code.
- (c) There was nothing improper in Councillor Birdi's referral to Trading Standards and therefore this was not a breach of the Code.
- (d) Councillor Birdi did request litter pickers to clear litter from the front garden of his own private property. However, this was not a breach of the Code. Councillor Birdi was told that the litter pickers could not clear private property and he appears to have accepted what he was told.

2.12 The Subject Member did not agree with Mr Lewin's conclusions and so the matter was set for hearing on 17 March 2017.

E Hearing

3. The Ethics Committee consisted of:

- Councillor Seamus Walsh (Chair)
- Councillor Allan Andrews
- Councillor Linda Bigham
- Councillor Damian Gannon
- Councillor Kieran Mulhall

3.1 The Complainant attended the hearing and was accompanied by Mr W Lynch.

3.2 Councillor Birdi attended the hearing and was accompanied by Councillor John Blundell.

3.3 Mr Matt Lewin, the Investigating Officer (IO), attended the hearing.

3.4 Mr Peter Wiseman, the Council's Co-opted Independent Person, attended the hearing.

F Consultation with Independent Persons

4. The Council's Independent Person at the time of the First Investigation Report, Mr Ken Sloan, stated in an email dated 11 April 2016 that:

4.1 *"I can confirm that I have reviewed the report and supporting document. It is clear that the allegations do relate to and are appropriate for consideration under the Code. The findings seem appropriate and proportionate with regard to the allegations and evidence considered."*

I think the investigation has been conducted comprehensively although it will be important to consider the response of Councillor Birdi to the draft report and to see if there are any issues of fact that are challenged.

I would be grateful if you could keep me posted as it progresses.”

4.2 The Council’s Co-opted Independent Person, Mr Peter Wiseman OBE, LLB, on 2 January 2017 gave his views on the complaint and the second investigation. Among other things he said:

4.3 *“I have excluded from my consideration those complaints arising directly out of Councillor Birdi’s decision to voice concerns regarding the litter problem. Manifestly it was a perfectly proper matter for him to investigate. It is the manner in which he became involved and his overall conduct which raise issues around whether or not he is in breach of the Code.*

The Monitoring Officer has described the allegations as “serious and significant”. I agree. Both of the Independent Investigators have met the parties and found that Councillor Birdi is in breach of the code in that he abused Mr Kuruparan and threatened closure of his business. It is always an invidious position where one is called upon to decide who is telling the truth when faced with diametrically opposed accounts such as we have here. As I have indicated, I have not met either of the parties but I am persuaded by the detailed analysis of the evidence that Mr Kuruparan’s account, supported as it is by eye witnesses, is a more likely match for the events as they unfolded.

If the Committee finds that Councillor Birdi is indeed in breach of the Code of Conduct then it is, of course, for it to decide what, if any, sanction should be applied. Having due regard for the circumstances here I would respectfully suggest that it would be reasonable and proportionate for a sanction to be imposed because what happened has a number of aggravating features and went beyond what might be described as a minor skirmish or disagreement.

As a final observation, even if I am wrong concerning whose account is to be preferred, it is regrettable that opportunities both on the day and subsequently have been missed by Councillor Birdi to resolve this dispute. This would have been consistent with the objectives of the Council’s equalities policy in meeting its statutory duties to ‘eliminate unlawful discrimination, harassment and fostering good relations through community cohesion.....’. I accept that it would have taken both parties to willingly engage in the process but I would have hoped that common sense could have prevailed and that they would have recognised the opportunity and benefits to be derived from seeking an amicable settlement.”

4.4 In addition Mr Wiseman advised the Committee that he felt that it was very sad that matters had come this point. He reminded the Committee

that the event complained of took place in January 2016. Councillor Birdi would have been aware of the complaint, which was made on 15th January 2016, at an early stage. The lapse of time between the incident and the hearing may have contributed to the polarisation of views about what happened between the Complainant and Councillor Birdi. He had not been aware that there had been a proposal to try to resolve the Complaint by agreement. He felt it was a pity that an attempt to resolve the matter had not been taken earlier.

- 4.5 With regard to sanctions, Mr Wiseman said that if the Committee were minded to find that there had been a breach of the Code of Conduct, he would not 'quibble' with anything in the recommendations of the Investigator at paragraph 55 of his report. He did, however, advise the Committee to consider very carefully the recommendation to recommend censure by full Council.

F Findings

- 5.1 After considering the submissions of the parties to the hearing and the views of the Independent Persons, the Committee reached the following decisions:

- 5.2 ***On the question of whether Councillor Birdi's conduct towards the Complainant was aggressive and abusive, specifically racially abusive and whether this amounted to a breach of paragraphs 3(j) and 3(k) of the Code of Conduct:***

The Committee found that Councillor Birdi's conduct towards the Complainant was aggressive and abusive, specifically racially abusive, and this amounted to a breach of paragraphs 3(j) and 3(k) of the Code of Conduct.

- 5.3 ***On the question of whether Councillor Birdi threatened to close down Mr Kuruparan's premises and whether this was also in breach of paragraphs 3(j) and 3(k) of the Code:***

- 5.4 The Committee found that Councillor Birdi had threatened to close down Mr Kuruparan's premises and that this also amounted to a breach of paragraphs 3(j) and 3(k) of the Code of Conduct.

- 5.5 Paragraph 3(j) of the Code of Conduct states that councillors must "*always treat people with respect, including the organisations and public I engage with and those I work alongside.*"

- 5.6 Paragraph 3 (k) of the Code of Conduct states that councillors must "*provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Council.*"

G Reasons

6. The Committee's reasons for reaching its decision are as follows:

6.1 *The finding that Councillor Birdi's conduct towards the Complainant was aggressive and abusive, specifically racially abusive, and amounted to a breach of paragraphs 3(j) and 3(k) of the Code of Conduct*

6.1.1 The accounts of Councillor Birdi and of the Complainant vary considerably in their recollection of what was said in the shop on 4th January 2016. The Committee has compared these accounts and has come to the conclusion that, on the balance of probabilities, the Complainant's account is the more likely. It also took note of the fact that two investigating officers had, independently of each other, come to the same conclusion.

6.1.2 The factors that have persuaded the Committee to prefer the Complainant's account over that of Councillor Birdi are set out in the Investigating Officer's report at paragraph 44. In particular the Committee considered that:

- (a) Councillor Birdi's account was inherently implausible. It did not make sense that Mr Kuruparan would immediately launch into a racist diatribe in the manner alleged by Councillor Birdi or that he would demand to see Councillor Birdi's passport. His account was inconsistent with the evidence obtained from the police in that: PC Francis described Councillor Birdi's manner as "*agitated*" whereas Councillor Birdi's account is that he remained calm; and there is no reference in the CAD report or from the police officers that Mr Kuruparan had said that Councillor Birdi was throwing goods around the Quickshop.
- (b) The Complainant's account was more balanced and he accepted that he was upset. The Committee accepted the Investigator's view that the Complainant appeared to be sincere in what he was saying and to have a real sense of grievance about Councillor Birdi's behaviour.
- (c) The Complainant's account was corroborated by both the shop assistant and the customer. In particular, the shop assistant confirmed both that Councillor Birdi refused to leave the shop and the account of the conversation given by the Complainant. He disagreed with the account of the conversation given by Councillor Birdi. The customer was an independent third party and felt that Councillor Birdi was being abusive towards the Complainant and not the other way round. He denied that the Complainant had been abusive towards Councillor Birdi.

- (d) The Committee acknowledges that there is no reference to any racial abuse in the accounts of the two police officers beyond the Complainant having said that Councillor Birdi did not like him because he was a Muslim. However, the Committee accepts that Complainant would never have described himself as Muslim when he was not and that the police officer had misinterpreted what he had actually said.
- (e) It is likely that Councillor Birdi was aware that the Complainant was of Sri Lankan heritage. While the Committee took note of the information that Councillor Birdi put before it of the number of people of Sri Lankan heritage resident in Coventry, and his calculations regarding the number that might be expected to run small shops, the Committee felt that this information missed the point that, taken together with everything else that Councillor Birdi said, he used the adjective “Sri Lankan” in a racially abusive manner, regardless of whether he was aware of the Complainant’s heritage.
- (f) The Committee took note of Councillor Birdi’s assertion that he was “the coolest person ever” during the incident. However, it also noted that that this was contradicted by the recollections not only of the Complainant but also the customer, both police officers and the shop assistant. At the hearing Councillor Birdi accepted that he was “cool in his mind” but that outwardly he may have appeared different.

6.2 ***The finding that Councillor Birdi threatened to close down Mr Kuruparan’s premises and that this was also in breach of paragraphs 3(j) and 3(k) of the Code***

6.2.1 As stated in paragraph 6.1.1 above, the accounts of the Complainant and Councillor Birdi as to what happened on 4th January 2016 could not be more different. The Committee has had to weigh the evidence of all parties and again, on the balance of probabilities, has found that it prefers the account of the Complainant. As with the Committee’s finding that Councillor Birdi had been aggressive and abusive, the Committee took note of the fact that both Investigating Officers had concluded that the Complainant’s account of the threat to close his shop down, was more likely to be true.

6.2.2 The factors that have persuaded the Committee to prefer the Complainant’s account over that of Councillor Birdi are set out in the Investigating Officer’s report at paragraph 45. In particular the Committee considered that:

- (a) As it had accepted the Complainant’s allegation that Councillor Birdi had been aggressive and abusive and specifically racially abusive, the Committee was inclined to accept the accuracy of the Complainant’s account in respect of the allegation that Councillor Birdi threatened to close down his shop.

- (b) The Complainant's account is corroborated by the shop assistant and the customer.
- (c) Councillor Birdi's subsequent action in referring the Quickshop to the attention of Trading Standards on that same morning, although not in itself improper, is consistent with his having made the threat to shut down the shop.

H Sanctions applied

- 7.1 Having found that there had been two breaches of the Code of Conduct by Councillor Birdi, the Committee considered the representations of the Independent Person with regard to sanctions as set out in paragraph 4.5 above. Councillor Birdi was given an opportunity to address the Committee on the question of sanctions but did not wish to do so.
- 7.2 The Committee considered that the two breaches of the Code of Conduct were most serious. The aggression and verbal abuse of the Complainant was racial in nature and it felt that the threat to close down the shop was an abuse of Councillor Birdi's position as an elected member. The Committee considers that all councillors must treat others with respect and demonstrate leadership by behaving in accordance with the principles set out in the Code of Conduct. On this occasion, Councillor Birdi failed to do this.
- 7.3. While the Committee recognised that Councillor Birdi was willing to settle this matter, this was only after the first hearing had to be cancelled. At no point in the time that has elapsed since the incident took place has Councillor Birdi expressed any regret for what happened.
- 7.4 The Committee decided to:
 - (a) publish its findings in respect of Councillor Birdi's conduct;
 - (b) send a formal letter of censure to Councillor Birdi;
 - (c) report its findings to full Council with a recommendation that it censures Councillor Birdi;
 - (d) recommend to Councillor Birdi's Group Leader that he be removed as Shadow Cabinet Member for Policing and Equalities; and
 - (e) recommend to the Acting Monitoring Officer that she arranges appropriate training for Councillor Birdi.

I Appeal

There is no right of appeal against the Committee's decision.

J Notification of decision

This decision notice is sent to:

Mr Nagarajah Kuruparan
Councillor Jaswant Singh Birdi
Councillor John Blundell
Mr Matt Lewin and
Mr Peter Wiseman, OBE, LLB

The decision will also be published on the Council's website.

K Additional help

If you need additional support in relation to this decision notice or future contact with the City Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language.

**Councillor Seamus Walsh
Chair, Ethics Committee**

29 March 2017