

**DECISION REPORT OF THE STANDARDS COMMITTEE OF PEMBROKESHIRE
COUNTY COUNCIL**

**ALLEGED FAILURE TO FOLLOW THE CODE OF CONDUCT BY FORMER
COUNCILLOR KRAUS OF PEMBROKE DOCK TOWN COUNCIL**

1. INTRODUCTION

- 1.1 A meeting of the Standards Committee of Pembrokeshire County Council was convened in order to consider the above matter following referral of a Report to it by the Public Services Ombudsman for Wales ('PSOW') pursuant to Section 69 of the Local Government Act 2000.
- 1.2 The Committee determined the matter on the basis of the papers, at a meeting at County Hall, Haverfordwest on 8 September 2021, there being no attendance by former Councillor Kraus, and the Committee having previously resolved on 23rd June 2021 at a preliminary hearing that it did not require the attendance of a representative of the PSOW at the meeting or the attendance of any witnesses.

2. DOCUMENTS

- 2.1 The Committee had received and carefully considered a Report dated 23rd April 2021 from the PSOW and this was accompanied by numerous Appendices including witness statements and character references on behalf of former Councillor Kraus.
- 2.2 The Committee had also received and carefully considered three sets of submissions which were forwarded by former Councillor Kraus, comprising of two e-mail submissions dated 9th June and 25th June 2021 and a letter received on 2nd July 2021.

3. NATURE OF THE ALLEGATIONS

- 3.1 It was alleged that former Councillor Kraus published a Facebook post which could be considered to be racist and could have the potential to damage the reputation of Pembroke Dock Town Council.
- 3.2 The former Councillor said that he had not recognised the racist overtones when he shared the post and said that he was not a racist person.
- 3.3 The PSOW's office forwarded to the Monitoring Officer of Pembrokeshire County Council an Investigation Report dated 23rd April 2021 which concluded that the former Councillor's actions were suggestive of a breach of

Paragraph 4(a) and 4(b) of the Code of Conduct and that it was also likely to have amounted to a breach of Paragraph 6(1)(a).

4. RELEVANT PARAGRAPHS OF THE CODE OF CONDUCT

Paragraph	Details
2(1)(b)	...You must observe this code of conduct – whenever you act, claim to act or give the impression you are acting in the role of member to which you were elected or appointed.
2(1)(d)	...You must observe this code of conduct – at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.
4(a)	You must – carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion.
4(b)	You must – show respect and consideration for others.
6(1)(a)	You must – not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

5. FINDINGS OF FACT

5.1 The Standards Committee noted the following **undisputed** material facts:-

- 5.1.1 Former Councillor Kraus signed an undertaking to observe the Code of Conduct for Members of Pembroke Dock Town Council on 12th May 2017.
- 5.1.2 Former Councillor Kraus accepted that he had not attended Code of Conduct training.
- 5.1.3 Former Councillor Kraus had, at the time of these events, a “page” (or personal account) on the social media platform “Facebook”.

- 5.1.4 The description of himself that former Councillor Kraus published on his Facebook page described him as a Town Councillor and Past Mayor of Pembroke Dock.
- 5.1.5 On 14th June 2020, the image in question was published and shared on former Councillor Kraus' Facebook page.
- 5.1.6 Former Councillor Kraus did not take the image down until the day after he was asked to do so by the Clerk of Pembroke Dock Town Council.
- 5.1.7 On 16th June 2020 former Councillor Kraus resigned from his role as Member of Pembroke Dock Town Council shortly after he met the Clerk and Mayor.
- 5.1.8 The Western Telegraph and national press outlets reported on the events forming the basis of this complaint.
- 5.1.9 Numerous complaints about former Councillor Kraus' actions in sharing the Facebook post were received by Pembroke Dock Council, by Pembrokeshire County Council and by the Ombudsman's office.
- 5.1.10 Former Councillor Kraus has apologised for any offence caused by him sharing the image of Facebook.

5.2 The Committee found the following additional relevant **undisputed** material fact:-

- 5.2.1 That former Councillor Kraus told the press that he had been 'hacked' when this was not the case.

5.3 The Standards Committee found the following in relation to the one **disputed** material fact:-

- 5.3.2 That any reasonable person would have been aware that the image published on Facebook by former Councillor Kraus was likely to be interpreted as racist and/or derogatory towards black people and that on the balance of probabilities, he was aware of this fact.

5.4 REASONS

- 5.4.2 The Committee noted that interpretation of the Facebook post was a subjective matter, nevertheless, they considered that due to the content and juxtaposition of the photographs, any reasonable person would realise that the post could cause offence and did indeed cause offence.
- 5.4.3 As a Councillor and former Mayor of a Town Council, the Committee considered that, even though former Councillor Kraus had not attended the relevant training provided by Pembroke Dock Town Council, it should

have been even more apparent to him that he should take care in his use of social media. The Committee did not consider that this was a generational issue and that individuals of all generations would appreciate the offensive nature of the post.

- 5.4.4 The Committee noted that it was not simply an issue of viewing a post, former Councillor Kraus had also actively liked and shared the content. They considered that he had not immediately taken the post down after being warned of the offensive nature of the post by the Clerk to the Council and indeed following an indication by a Facebook friend that the post would cause offence.
- 5.4.5 As there had been a recent media reports regarding public demonstrations and racism, the Committee considered that there would have been heightened knowledge of the issues. It therefore considered that on the balance of probabilities, former Councillor Kraus was aware that his post was racist and offensive and that it would cause offence. It considered that it was unlikely that he would have misunderstood the connotations.
- 5.4.6 The Committee considered former Councillor Kraus's submissions and those of witnesses who stated that they did not consider him to be racist. Nevertheless, the Committee also noted witness comments that the actions had been naive and stupid. The Committee concluded that, at best, the liking and sharing of the post by the former Councillor had been naive.

6 FINDINGS AS TO ANY FAILURE TO COMPLY WITH THE CODE

6.1 Paragraph 2 of the Code of Conduct for Members

With regard to the capacity in which former Councillor Kraus was acting, the Committee concluded that the Paragraphs of the Code of Conduct applied in their entirety as, in accordance with Paragraph 2(1)(b) of the Code, former Councillor Kraus was, at the time of the posting, claiming to act or giving the impression that he was acting as a representative of his authority.

6.2 REASONS

- 6.2.1 The Committee were of the view that as the former Councillor's Facebook page had a prominent statement; 'I am Town Councillor and Past Mayor of Pembroke Dock and I like to get things done' that he was at least giving the impression that he was endorsing the post in his official as well as his private capacity.
- 6.2.2 The Committee noted that former Councillor was active in the community and in particular in connection with a large amount of charitable work. As the

Facebook page referred to the Councillor status, a post would become inextricably linked to that status and he would no doubt expect credence being given to anything he shared on his Facebook page due to that status.

7. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE

7.1 In the light of all the agreed facts, their finding on the disputed fact and all the evidence, the Standards Committee considered that former Councillor Kraus had breached the Code of Conduct in the following respects:-

7.1.1 Paragraph 4(b): That he did not show respect and consideration for others by posting and sharing a Facebook post which was racist, derogatory and offensive to others.

7.1.2 Paragraph 6(1)(a): That he conducted himself in a manner which could reasonably be regarded as bringing his office and authority into disrepute.

7.2 The Committee did not consider that former Councillor Kraus breached the Code of Conduct in the following respect however:-

7.2.1 Paragraph 4(a): The Committee did not consider that the specific wording of this Paragraph was engaged.

7.3 REASONS

7.3.1 The Committee concluded that liking and sharing photographs which were racist and derogatory in juxtaposition clearly appeared to be promoting racist views and failed to show respect and consideration for others. The fact that the Facebook posting generated a number of complaints (received by the PSOW, the Monitoring Officer and the Clerk to Pembroke Dock Town Council) demonstrated this point.

7.3.2 The fact that the Committee had found the post to be offensive and racist and concluded that any reasonable person would have found it so, meant that the conduct demonstrated a failure to show respect and consideration for others.

7.3.3 The Committee considered that the conduct could reasonably be regarded as bringing both the former Councillor's office as well as the authority into disrepute as the Facebook page referred specifically to the Town Council. The press reported on the matter so that the Mayor and Clerk had to intervene and the

Clerk had to deal with press enquiries. Members of the public would therefore link the conduct to the Town Council.

7.3.4 With regard to Paragraph 4(a) of the Code, the Committee was of the view that, due to the specific wording of the Paragraph together with the relevant PSOW Guidance, the conduct did not fit with the concept of fulfilling duties and responsibilities with due regard to equal opportunity principles. The former Councillor was not actively fulfilling duties and responsibilities of the Council in the context of these principles.

8. ARTICLE 10 OF THE ECHR

8.1 Article 10 of the European Convention on Human Rights states as follows:-

“1. Everyone has the right to freedom of expression. The right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...”

8.2 The Committee agreed that a finding of breach and any sanction would comprise of a prima facie breach of Article 10 in that the findings could be deemed to restrict the former Councillor’s enhanced right to freedom of expression as a politician, however it considered that the Code restrictions would be justified by reason of Article 10(2). The enhanced protection did not extend in their view to gratuitous or offensive Facebook posts, nor to what was akin to ‘hate speech’ directed at denigrating colour, race or nationality.

8.3 The Committee found the post to be so extreme and offensive that, despite the freedom of expression being a fundamental human right, there were necessary limits and the post was well beyond what could be seen as reasonable expression. It was necessary for the public interest in proper standards of conduct by Members of local authorities to safeguard the rights and dignity of others.

9. FINDING IN RELATION TO SANCTION

9.1 The Committee considered all the facts of the case and concluded by unanimous decision that former Councillor Kraus should be **censured** in relation to the above breaches of the Code under Regulation 9(1)(c) of the

Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001.

9.2 REASONS

- 9.2.1 The Committee took into account the two supporting statements made in relation to former Councillor Kraus and the Committee accepted that his charity work in the community was commendable.
- 9.2.2 In relation to the above findings however, despite the evidence of good character, the Committee considered that imposing no sanction at all would not recognise the serious nature of the Code breaches.
- 9.2.3 The Committee had regard to the following mitigating factors: - Previous good record, his resignation, some expression of regret and recognition and co-operation with the PSOW's investigation.
- 9.2.4 The Committee had regard to the following aggravating factors:- Length of service and previous seniority, initially stating that he had been 'hacked', lack of insight that the action was racist and derogatory and finally sharing the Facebook post constituted an expression of views which were 'not worthy of respect in a democratic society, incompatible with human dignity and conflicted with the fundamental rights of others'.

SIGNED C Kershaw

Ms Corinna Kershaw, Chair of the Standards Committee

DATED 4 October 2021

