

**Devon & Somerset Fire & Rescue Authority – Decision Notice of the Hearing Panel  
(Standards Committee) on Friday, 22 November 2019**

**Decision**

**DECISION NOTICE**

**BREACHES OF THE CODE OF CONDUCT HAVE BEEN FOUND**

**ACTION REQUIRED**

**Reference:** DN/19/1

**Complainants:** Sarah Allen  
Michelle Smitham

**Subject Member:** Cllr. Terry Napper

**Summary of Complaint**

Complaints were received from Sarah Allen and Michelle Smitham that the Subject Member had breached the Authority's Code of Conduct by referring, at a public Authority meeting on 28 June 2019, to firefighters as "firemen" and giving the listener the impression that female firefighters were not able to be fluid or flexible in the way they worked.

**Decision and Action**

That, for the reasons a set out in this Notice, the Subject Member has breached the approved Code of Conduct for the Devon & Somerset Fire & Rescue Authority.

That, by way of sanctions:

1. the Subject Member is required to draft a letter of apology to the Authority addressing the issues that were the subject of the complaint. The form of words for the apology to be agreed with the Monitoring Officer and to be appended to this Decision Notice;
2. The Subject Member is required to draft letters of apology to each of the complainants, addressing the issues that were the subject of the complaint. The form of words for the apology to be agreed with the Monitoring Officer;
3. that the Subject Member be required to undertake diversity and inclusion training (to be arranged by the Monitoring Officer) to assist the Subject Member in maintaining the high standards of behaviour required by the Authority.

**Breaches of the Code found**

The Subject Member:

1. failed to conduct himself in a manner consistent with the Authority's duty to promote and maintain high standards of conduct by its Members, contrary to paragraph 4.1(1) of the Code;
2. failed to treat others with courtesy or respect, contrary to paragraph 4.1(2) of the Code;
3. treated others in a way that amounted to, or may reasonably have been construed as, unlawful discrimination, contrary to paragraph 4.2(3) of the Code; and
4. conducted himself in a manner so as to give a reasonable person the impression of bringing his office (but not the Authority) into disrepute, contrary to paragraph 4.2(11) of the Code.

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**Matters Considered**

In deciding the complaint, the Hearings Panel had regard to:

- the report of the independent Investigating Officer;
- submissions made at the hearing by both the Subject Member and his supporter;
- views of the Authority's Independent Person.

**Findings of Fact**

The Hearing Panel applied the civil test of the balance of probabilities when determining whether the Code of Conduct had been breached i.e. would a reasonable person, in possession of all of the facts and looking at those facts objectively, consider it more likely than not that the Code had been breached.

The basis for the complaints was that, at the Authority meeting on Friday 28 June 2019, whilst discussing options for consultation the Subject Member began his contribution by saying "At Glastonbury I was talking, and I will say this, firemen". The Subject Member is then said to have continued to justify this by saying that there were no women present in those to whom he was talking at Glastonbury. The Subject Member then seemed to suggest that women were not able to be fluid or flexible in the way they worked.

The Subject Member's comments at the Authority meeting were reported in the Midweek Herald on 1 July 2019. The report set out that that the Subject Member addressed the meeting as indicated above and went on to say that 'women have a different aspect to fluid working than the firemen'.

The Subject Member did not respond directly to the Investigating Officer but in a response to the Monitoring Officer submitted on 20 August 2019 set out that:

"At my face to face meeting with firefighters at the Glastonbury Festival there we no female firefighters present. This is my reasoning to address those present as firemen, as I tried to explain they were concerned about their fellow female firefighters (as some of the email I have received) were about the flexibility of childcare and this arrangements".

The Subject Member also included in the response to the Monitoring Officer that 'Clearly I never intended to offend anyone...'

At the hearing the Subject Member reiterated that there were no women present at the meeting in Glastonbury and that his intention at the Authority meeting had been solely to convey concerns expressed to him by those he met at Glastonbury.

The Hearing Panel also noted that the Subject Member did not dispute the terms used and nor had he sought to raise as inaccurate the contents of the media article.

The Subject Member's statement that he was not given the chance to further explain his comments as he was stopped from talking at the meeting on 28 June 2019 by the Chair of the Authority was also noted.

**Application of the Code**

The key findings of fact behind the complaints, which were not refuted either during the investigation process or at the hearing, were that the Subject Member deliberately used the term "firemen" and also referred to aspects of fluid working when viewed, allegedly, from a female firefighter perspective. The Hearing Panel considered these in the context of the provisions and application of the Code.

*Code Paragraph 4.2(3) - You must not treat others in a way that amounts to, or may reasonably be construed as unlawfully discriminating against them*

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The Hearing Panel acknowledged that the term firefighter is one that has been in use for over 20 years and is one of the many important changes that have been made in the workplace to move away from gender-biased language so as to contribute to and maintaining gender equality. All firefighters are termed as such as this describes the job they undertake, regardless of gender and the fact that they may be male or female is irrelevant.

The Subject Member did not dispute that his use of the term “firemen” was deliberate, the Subject Member’s justification being that he was addressing firefighters who were all male. This was not a term used in isolation and was attributed to the Subject Member at least twice during the statement he made at the Authority meeting.

The Subject Member’s perceived justification for the term used does not, however, outweigh the fact that both the Devon & Somerset Fire & Rescue Authority and all bodies nationally have adopted the stance that the term “fireman” is not inclusive and that such gender specific language should not be used as it can be seen as biased, discriminatory and demeaning.

In turning to the words used by the Subject Member with regards to fluid working, the Subject Member subsequently sought to qualify this by referring to childcare arrangements which, in his view, would make a female firefighter less able to meet the job requirements. However, qualifying a statement after the event does not lessen the impact of the words used at the time and it is the words and deeds at the time which were under consideration both during the investigation and at the hearing. It is how the words were viewed at the time which would give rise to a breach of the Code.

Whilst it may not have been the intent of the Subject Member, linking the statement to the use of the term firemen conveyed the impression to the listener that female firefighters are somehow separate to their male colleagues and less capable of meeting the requirements of the role.

Given this context, the Panel felt that an objective observer could reasonably construe the actions of the Subject Member as amounting to unlawful discrimination, contrary to paragraph 4.2(3) of the Code.

*Code Paragraph 4.1(2) - You must treat others with courtesy and respect*

In reviewing the comments made by the Subject Member, the Panel felt that an objective observer would consider them to be personally demeaning; the choice to use a term that was not gender neutral when addressing firefighters, regardless of their sex, can be seen as demeaning and this is further compounded by then using this term in conjunction with expressing concerns about female firefighters ability to undertake fluid working. Consequently, the Panel felt that the Subject Member had, due to his comments, breached paragraph 4.1(2) of the Code of Conduct for the Authority.

*Code Paragraph 4.2(11) - You must not conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Authority into disrepute.*

This provision of the Code requires an objective consideration as to whether, by their actions, the Subject Member has reduced their standing in the community.

In reviewing the statements made, as evidenced by the wording ascribed to the Subject Member both in the complaints and the media article, the Panel did not feel that the Subject Member had brought the Authority into disrepute. The statements made were the Subject Member’s own and were attributed solely to him, as an individual member of the Authority, rather than the Authority itself. As soon as the statements were made at the Authority meeting, the Subject Member was challenged by the Chair who clarified that the correct term was firefighter. A second member also expressed disappointment that the term firemen was still used by some Members. Consequently, there was no basis for a reasonable person to consider, objectively, that the comments were an Authority sanctioned statement.

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The comments made could, however, lead a reasonable, objective listener to conclude that the Subject Member was favouring male firefighters over women by addressing them as firemen and his comments on fluid working also could be interpreted as being detrimental to female firefighters. Consequently, the Panel felt that the comments – which were poorly judged with regard to their effect - could damage the Subject Member's standing in the Community and in this respect the Subject Member had breached paragraph 4.2(11) of the Code of Conduct for the Authority.

*Code Paragraph 4.1(1) - You must conduct yourself in a manner that is consistent with the Authority's duty to promote and maintain high standards of conduct by its Members.*

The Panel felt that, by virtue of having breached paragraphs 4.1(2), 4.2(3) and 4.2(11) of the Code of Conduct for the reasons indicated in the previous paragraphs, the Subject Member had also failed to adhere to the general principles of public life underpinning the Code and had conducted himself in a manner contrary to the Authority's statutory duty to promote and maintain high standards of conduct by Members. As such, the Subject Member had therefore also breached paragraph 4.1(1) of the Code of Conduct for the Authority.

**Views of the Independent Person**

The Localism Act 2011 requires the views of an Independent Person (as defined by the Act) to be sought and taken account of when deciding any allegation that has been subject to investigation.

The views of the Independent Person taken account of by the Panel are summarised below:

- that, by virtue of the statements made at the Authority meeting on 28 June 2019, the Subject Member had breached the Code of Conduct;
- that the language used by the Subject Member was not acceptable and that more thought should have been used, albeit there was no deliberate intent to offend;
- that the Subject Member had expressed regret for any offence caused; and
- that an appropriate sanction might be diversity and inclusion training for the Subject Member to include use of appropriate language.

**TO: Members of Devon &  
Somerset Fire & Rescue  
Authority**

Cllr T Napper  
33 Brooks Road  
Street  
Somerset  
BA16 0PN

19 December 2019

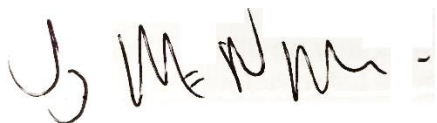
Dear Fire Authority Members,

### **Meeting of the Authority on 28 June 2019**

I am writing to you to apologise for my inappropriate use of the term 'firemen' at the meeting of the Authority on 28 June 2019. Whilst I did use the term as a conscious act, it was intended to reflect that fact that I had been talking with a group of male firefighters about issues that could potentially have a disproportionate impact on women who may wish to become firefighters. I meant no disrespect to any individuals or groups of employees and it has upset me to understand that my words have caused distress and offence to some.

I recognise now that my choice of words was not well considered and I welcome the opportunity to undertake training to help me better understand the negative impact that the use of gender-specific language can have, particularly on under-represented groups. Whilst I feel that I was not able to explain myself properly at the Authority meeting, I do regret using the words I did and I am sorry for the offence that was caused to my fellow Members and to those members of staff and public present at the meeting.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Terry Napper', written over a light grey rectangular background.

Cllr Terry Napper

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