

BASINGSTOKE AND DEANE APPEAL DECISION NOTICE

REFERENCE: 044783/AGR

Complainant: Ms S Moore

Subject Member: Cllr T Robinson

Introduction

My name is Howard Bone, and I am a Senior Solicitor employed by Test Valley Borough Council. I have previously been employed as Deputy Monitoring Officer and Monitoring Officer by another local authority for some nineteen years. I have been appointed by Ann Greaves, Deputy Monitoring Officer to Basingstoke and Deane Borough Council, to determine this appeal, effectively standing in the place of the Council's Monitoring Officer for that purpose.

In determining this appeal, I have considered Basingstoke and Deane's Code of Conduct and its adopted arrangements for dealing with complaints, the original complaint form, the apology issued by Cllr Robinson to all Council Members on 30 July 2018, the Deputy Monitoring officer's original decision, and the complainant's email to the Deputy Monitoring Officer of 18 December 2018 indicating a wish to appeal against that decision. I have also taken the opportunity to view the webcast of the meeting in question (full Council on 19 July 2018).

I am treating this as an appeal by the complainant against the "Stage 2" decision, under paragraph 6.9 of the document entitled "Arrangements for dealing with complaints against Councillors."

Basis of Complaint

The complainant sets out details of the complaint on the Council's standard complaint form. The complaint relates to comments alleged to have been made by Cllr Robinson at the 19 July 2018 Council meeting, comments which (in the complainant's view) accused the Labour Party Councillors of being anti-Semitic.

The complainant was not present at the meeting, but a friend of the complainant who had been present repeated the comments to her. Both the complainant and her friend were upset by these remarks, although I am not aware of the friend having made a complaint.

The comments are set out in the complaint as being words to the effect of "at least we are not anti-Semitic".

I have taken the opportunity to watch the webcast of the Council meeting where the alleged comments were made. The webcast includes a speech by Cllr Regan, a Labour Party councillor, on a motion concerning cuts to bus services. During his speech, Cllr Regan refers to the cuts made over the past eight years, and goes on to refer to the conduct of the Brexit negotiations being carried out at that time by the Government. At this point it is possible to hear [at 1hr 51' 00"] the words "anti-Semitic" being called out, followed by other remarks. It is not however possible to hear the whole sentence which included these words, but it is apparent that the words and subsequent comments were made in response to Cllr Regan's remarks. I note that the webcast shows no obvious reaction from Cllr Regan

or the other councillors in the camera shot, and in any event Cllr Regan continued with his speech. Nothing more was said in later speeches about the comments in question.

In Cllr Robinson's email to all Council Members of 30 July 2018, he does not repeat the precise words in question, but does refer to the comment being "inappropriate", before apologising for this and assuring members that he does not consider any Basingstoke Labour Councillor to be anti-Semitic. He goes on to state that he finds the national Labour Party stance on the issue to be unacceptable.

Decision of Deputy Monitoring Officer

The Deputy Monitoring Officer and the Independent Person assessed the complaint, and concluded that the Code of Conduct had not been breached. It was concluded that the Subject Member had not made a personal attack against either the complainant or the complainant's friend, but had made a remark against the Labour group as a whole, with no individual councillor being named. The remark was made during political debate in the Council Chamber.

The Decision Notice went on to consider the allegation of bringing the Council into disrepute. It notes that case law has established misuse of the office of a councillor could bring disrepute on the office, but personal misconduct is unlikely to do so. Applying the test of whether the alleged conduct would cause the reputation of the authority to suffer in the mind of a reasonable onlooker, it was concluded that in this case, this was unlikely. The Decision Notice concluded that the Code of Conduct had not been breached.

Findings of Fact

No formal investigation has been carried out, but it would appear from the evidence before me, as set out above, that Cllr Robinson did in fact say words to the effect of "at least we are not anti-Semitic", and that those words were made in response to a speech by a Labour Party councillor, during a public Council meeting.

Basis of Appeal

The complainant states in her initial submission that in her view, this was a "stupid and wrong statement to make about other councillors". The basis of the complaint is that in making his comments, Cllr Robinson was not showing respect for other councillors, and was bringing his office into disrepute.

The complainant also adds to her original complaint, stating that in her view, Cllr Robinson has also fail to comply with another paragraph of the Code [Paragraph 2(2)] which requires that Councillors must not:-

- (a) do anything which may cause the Council to breach any of the equality enactments (as defined in the Equality Act 2010);
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person

In her appeal of 18 December 2018, the complainant states that in her view, the Council are underplaying the nature of Councillor Robinson's comments and the impact this sort of comment has on people. She believes that in making the comments, Councillor Robinson is being as hateful as using any other inflammatory, derogatory, name, and that making false accusations of anti-Semitism trivialises real acts of anti-Semitism.

The complainant considers that it is clear that Cllr Robinson brought the Council into disrepute. His behaviour should in her view be subject to greater scrutiny than ordinary members of the public. She considers that his apology in fact makes the matter worse.

She concludes her appeal by seeking a finding that the Code of Conduct has been breached, and that he should make an unqualified apology at the next Council meeting.

Assessment of Complaint

The Code of Conduct states that it applies to councillors as a member of the Council when acting in their role as a Councillor. Given that the alleged remarks were made at a Council meeting, there is no doubt in my mind that the Code applied at the time the remarks were made.

At paragraph 2 the Code sets out general obligations, including at 2(1):-

“You must treat others with respect.”

Paragraph 2(2) provides:-

“You must not:-

- (a) do anything which may cause the Council to breach any of the equality enactments (as defined in the Equality Act 2010);*
- (b) bully any person;*
- (c) intimidate or attempt to intimidate any person...*

Paragraph 4 provides:-

“You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.”

The remarks were made during a meeting of full Council. Most Councils are made up of Councillors who align themselves to particular political parties, and this is clearly the case at Basingstoke and Deane. National politics therefore inevitably have an impact at local level and whilst there is often a degree of consensus on decisions, Councillors will expect that political divisions will surface during the conduct of Council business. The comments in question were made during a debate on cuts to bus services, and during his speech, at the point in question, Cllr Regan was referring to cuts made in past years, and the conduct of the current Government in negotiations on Brexit. Like any politician, having made remarks of this nature, Cllr Regan would not have been surprised if other Councillors responded to them. This is part and parcel of what could be termed the “cut and thrust” of political life.

Although the comments were made in response to Councillor Regan’s speech, I do not consider that Councillor Robinson was directly accusing Councillor Regan personally of being anti-Semitic (in the same way that Councillor Regan was making a general reference to the actions of the Conservative Government and the Conservative Party, rather than of Councillor Robinson himself). Councillor Robinson’s apology confirms this view.

The question of anti-Semitism is a major current issue for the Labour Party nationally. Councillor Robinson is a Conservative Party Councillor. I consider that in making these remarks, Councillor

Robinson was reacting to a political comment about the actions of his own political party. Although I do not in any way condone, agree with, or have any sympathy for the sentiments Councillor Robinson expressed in making those comments, they were in my view a comment on Councillor Regan's political party, rather than Councillor Regan, or any other Labour Councillor on the Council.

I would therefore conclude that Councillor Robinson's remarks would not amount to a failure to treat others with respect.

In terms of the allegation of a breach of Paragraph 2(2) of the Code, I do not consider that Councillor Robinson's remarks can in any way be said to be bullying or intimidating. However disagreeable the comments may be, they were a single isolated incident, rather than any form of campaign, and Councillor Regan continued his speech after they had been made, apparently having suffered no adverse affect.

Paragraph 2(2) (a) of the Code supports the Council in its duties under the Equalities Act 2010. If the Council acts in an anti-Semitic way, discriminating on the grounds of religion, it will not be complying with those duties. Making a comment about the approach the Labour Party is taking to claims that it is acting in an anti-Semitic way does not in my view give rise to a potential breach by the Council of the Equalities Act. If anything, the comments are criticising a group for (allegedly) failing to act in accordance with the principles set out in the Act, and the Councillor making them cannot therefore be in breach of paragraph 2(2)(a).

Turning to paragraph 4 of the Code (conduct which could be reasonably regarded as bringing the office or authority into disrepute), much of the above consideration applies equally to this part of the complaint. A reasonable onlooker would in my view be aware that they were watching a Council meeting, and would not be surprising to witness comments made with a political objective behind them. That being the case, there is in my view no breach of this paragraph of the Code.

I would echo the assessment of the Deputy Monitoring Officer, and consider that Councillor Robinson was unwise to have made the comments, given the (rightly) high sensitivities that the question of anti-Semitism raises. My decision should not therefore be taken in any way of approving or agreeing with the comments. Nevertheless, for the reasons set out above, I consider that in this case, no breach of the Code has occurred.

It is clearly for the Authority's Monitoring Officer and Deputy Monitoring Officer to give advice and guidance to Councillors on their conduct. I note that the Deputy Monitoring Officer has given guidance in her decision letter to Councillor Robinson on his future conduct. I would have taken the same approach had I been in her position.

Signed

H N Bone

Howard Bone

2 April 2019

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Date: 2 April 2019

Dear Ms. Greaves,

CODE OF CONDUCT – COMPLAINT AGAINST CLLR T ROBINSON

I refer to your request to me to determine an appeal against your decision dated 4 December 2018 in respect of the above complaint.

My Decision Notice is attached.

I trust this meets your requirements, but if you need clarification or any further information, please let me know.

Yours sincerely,



Howard Bone