



Basingstoke and Deane

BASINGSTOKE AND DEANE BOROUGH COUNCIL **DECISION NOTICE**

DECISION NOTICE:

Reference: 047630

Complainant: Mr and Mrs T Niven

Subject Member: Cllr Julian Jones

On 8th July 2020 and on further dates the Deputy Monitoring Officer (DMO) and Independent Standards Assessor (ISA) considered a complaint from Mr and Mrs Niven concerning the alleged conduct of Cllr Julian Jones, the Chairman of Dummer Parish Council. The Independent Person has been consulted on this decision.

A general summary of the complaint is set out below:

The facts

The complaint relates to an email exchange between Cllr Jones and a Mr H that took place between the 13- 15th June. On the 16th June Cllr Jones inadvertently forwarded this email chain to a Mr S. Mr S then forwarded the email on and the residents who had been complaining of the odour nuisance, including Mr K and the Complainants, were then in receipt of it. The Complainants have made a formal complaint against Cllr Jones.

On the 13th June Mr H emailed Cllr Jones referring to “*the asylum*” and an “*odour incident*” and makes a comment that “*it’s set fair for tranquilizer shots to be given*”. Cllr Jones responds that there have been two complaints from S making no comment on the language used by Mr H.

On the 14th June Mr H emails Cllr Jones in the following terms

“Looks like there will be another need for tranquillizers between 8AM and noon tomorrow (Monday) as the wind is set fair to give the patients a blast of the eau de pong. For the rest of the week it looks as if the God of Odours has smiled on our friends in the asylum as the wind is mainly from northerly directions. This may however set [Mr S] off

as he seems to be able to detect odours from as far away as Newbury water treatment works, perhaps even beyond!!”

In his response on the 16th June Cllr Jones responded
“Let’s hope the God of Odours continues to smile on the asylum.”

Cllr Jones took advice on how he should deal with the matter and subsequently met with Mr and Mrs G who advised him to apologise to the residents. This he did on the 20th June though it is not clear whether he apologised to all the residents who saw the email. He also decided to resign as the chair of the AD Plant Liaison Panel.

The Allegations

The complainant alleges that the following paragraphs of the Dummer code have been breached.

2. (1) You must treat others with respect.

(2) 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);

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

Application of the Code

The Dummer Parish Council Code of Conduct applies when a councillor acts in the role as a member.

The DMO and ISA therefore considered whether Cllr Jones was acting as a Councillor when corresponding with Mr H.

Cllr Jones was corresponding with Mr H in relation to parish business involving nuisance complaints from the A D Plant. Mr H and Cllr Jones were both members of the liaison panel at the time and Cllr Jones was the chair. Cllr Jones was on the liaison panel representing the Parish Council. He was therefore acting in his role as a councillor, and even though the email exchange was intended to be private, his conduct in respect of this matter is governed by the Code of Conduct.

Decision

In accordance with the Arrangements, Cllr Jones has failed to treat others with respect. His conduct did not however bring his office or the Parish Council into disrepute and it did not cause the Parish Council to breach the Equality Act 2010.

It is noted that Cllr Jones has already apologised for his conduct to some residents who received the email chain recognising that he should have condemned the vocabulary in the emails. It is recommended that he checks that all the residents who received the email chain have received an apology from him, and if not, that he should apologise to

those that have not. It is noted that he has resigned as chair of the A D Plant Liaison Panel which is appropriate in the circumstances. It is further recommended to the Parish Council that arrangements should be made for Cllr Jones to undertake equalities training and acceptance of this recommendation should be noted in the minutes of the Parish Council meeting that considers this report.

Reasons for decision

Allegation 1: Disrepute

General Obligation 4 of the Parishes Code of Conduct states

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

Actions which diminish public confidence in a councillor's ability to discharge their functions will bring their office into disrepute. The concept is concerned with damage to public confidence and reputation of the individual and authority as a whole.

The test is whether or not a members' conduct "could reasonably be regarded" as having these effects. It is an objective test and does not rest on one individual's perception. As a result, there will be a range of opinions that a reasonable person could reach in relation to the conduct in question.

Thus, the question considered was whether Cllr Jones's conduct fell within a range that brought either his office as Chair of the Parish Council or the Parish Council itself into disrepute.

To make a finding that either the office of Chair or the Parish Council has been brought into disrepute case law has established that the conduct must have damaged the reputation of the councillor's office or the Parish Council. Damage to the reputation of Cllr Jones alone is not sufficient (*Livingstone v Adjudication Panel for England* [2006] EWHC 2553)

Consideration was given to whether the email exchange had impacted on the public confidence in the Parish Council or the office of Chairman of the Parish Council. The test is whether a member of the public, knowing all the relevant facts, would reasonably think that Cllr Jones actions were so significant that it would impact on the Parish Council's ability to properly carry out its functions.

Undoubtedly the insensitive email exchange has damaged Cllr Jones's own reputation amongst those members of the public who inadvertently saw the private email exchange but it has not brought the Parish Council into disrepute in that it has not impeded the ability of the council to carry out its functions.

Allegation 2: Equalities

General Obligation 2(2) of the Council's Code of Conduct states

(2) 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);

Councillors are subject to legal prohibitions against discrimination contained in the Equality Act 2010. The Equality Act 2010 renders unlawful various types of discrimination on the basis of nine protected categories, including disability and race.

Direct and indirect discrimination are treated differently. Direct discrimination can as a matter of law never be justified and occurs when there is a **difference in treatment based** on a criterion which is explicitly a protected characteristic or linked to one.

Consideration was given to whether Councillor Jones had treated Mr S less favourably than he had treated the other residents due to his race. A comparison was made with how he had treated other residents. The comment made by Mr H that referred to Mr S was *"This may however set [Mr S] off as he seems to be able to detect odours from as far away as Newbury water treatment works, perhaps even beyond!!"*. There is nothing in this comment that is racist even if a view is taken that Cllr Jones condoned Mr H's comment.

Consideration was also given to the question of whether Cllr Jones discriminated against the group of residents as a whole in referring to the residents as "the asylum", essentially picking up on the language used by Mr H about this residents group as *"our friends in the asylum"*. Direct Discrimination is a palpable or visible unfavourable treatment of a person or people by another or others, based on one of the nine protected characteristics. Cllr Jones used the term "asylum" as a term of general abuse, not because he genuinely thought that the residents had mental health issues. This does not therefore amount to direct discrimination.

Indirect discrimination is defined as applying an apparently neutral provision, criterion or practice which puts an individual sharing a protected characteristic at a particular disadvantage. The conduct of Cllr Jones does not fall to be considered as indirect discrimination.

Whilst not amounting in law to either direct or indirect discrimination, the entire tone of the conversation shows a worrying disrespect towards people with disabilities as there is an assumption that certain groups of people with disabilities, in this case, people with mental health issues are inferior, and therefore making comments that associate individuals with this group is to insult or slur them, specifically for example the comment about "inmates of the asylum".

Allegation 3: Respect

General Obligation 2(1) of the Council's Code of Conduct states:

"You must treat others with respect".

The term "respect" is not defined in the Code, however the requirement to treat others with respect must be viewed objectively.

In the case of *R (Mullaney) v Adjudication Panel for England (2009) EWHC 72*, the High court agreed that:

"The concept of respect is perfectly capable of being applied by a reasonable person. The definition of respect ... is straightforwardly stated as 'failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another'. The circumstances are also relevant and can include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged act of disrespect".

The conduct must be unreasonable, unwarranted and personalised to breach the Code.

It should also be set within the context of who was involved in the exchange and the totality of the exchange by email.

The first issue is whether referring to the small group of residents who were experiencing odour nuisance as "the asylum" shows a lack of respect from the chair of the Parish Council to those that he represents. Secondly, whether, in picking up the language of Mr H, he condoned the whole tenor of his emails and with particular reference to Mr S. Engaging in "banter" with Mr H, and not challenging him was disrespectful to Mr S and to this group of residents some of whom were upset and hurt by these comments. Cllr Jones had no good reason to treat residents who were raising legitimate odour complaints in such a way. He was therefore disrespectful to others in breach of this obligation.

Consideration has been given to Cllr Jones's rights under Article 10 of the European Convention on Human Rights of freedom of expression. Whilst in the political context, a degree of immoderate, provocative, emotive and non-rational speech is to be tolerated, pure abuse does not receive such protection. The reference to "the asylum" was a term of general abuse.

Right of Appeal

There is a right of Appeal to the Monitoring Officer within 10 working days of the date of this notice

Additional Help

If you need additional support in relation to this or future contact with us, 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 Disability Discrimination Act 2000.

We can also help if English is not your first language.

Access to the complaints process

Certain groups of customers may find it more difficult to make a complaint for example due to English not being their first language, sight impairment etc. It is our duty to assist the complainant in gaining access to the complaints procedure but we must not make the complaint for them or misrepresent their complaint. The Council do not insist that a

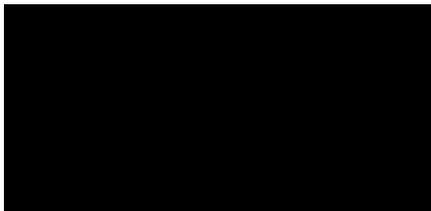
complaint is made in writing, particularly where this would hinder an individual in making their complaint.

The following services are available to assist customers in making their complaint.

Translation
Interpreting
Braille/Large Print
Minicom
Text
Online form

Signed

Date 18th December 2020



**Ann Greaves
Deputy Monitoring Officer**