



# Basingstoke and Deane

## **BASINGSTOKE AND DEANE BOROUGH COUNCIL** **DECISION NOTICE**

### **DECISION NOTICE:**

**Reference: 048555/AGR**

**Complainants: Cllr Onnalee Cubitt and Cllr David Potter**

**Subject Member: Cllr Simon Bound**

On dates between 18<sup>th</sup> December 2020 and 2<sup>nd</sup> February 2021 the Deputy Monitoring Officer, Independent Standards Assessor and Independent Person considered a complaint from the Complainants concerning the alleged conduct of the Subject Member under the Council's Code of Conduct (the Code), whilst acting as a member of Basingstoke and Deane Borough Council. The Complainants also made a separate complaint against Cllr McCormick arising from the same set of facts which is the subject of a separate decision letter.

The Subject Member has taken the opportunity to comment upon the Complaint.

### **Summary of the complaint**

On the 18<sup>th</sup> December the Complainants submitted two complaints under the Council's Arrangements for Considering Complaints (the Arrangements). The first against the Subject Member and the second against Cllr McCormick which is dealt with in a separate decision letter.

The complaint states that the Subject Member and Cllr McCormick in submitting their Complaint against the Complainants on the 7<sup>th</sup> December breached the Code of Conduct in that

- they failed to abide by the Nolan principle of openness under paragraph 1(2)(e);
- they attempted to intimidate the Complainants by using the Code of Conduct as a tool of punishment contrary to paragraph 2(2)(c )
- that without acting in good faith they disclosed confidential information contrary to paragraph 3(a)(iv)

### **Relevant provisions of the Code**

## Paragraph 2

(2) You must not:

- c) Intimidate or attempt to intimidate any person;

## Paragraph 3

You must not

- (a) disclose confidential information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
  - (iv) the disclosure is:
    - (aa) reasonable and in the public interest; and
    - (bb) made in good faith and in compliance with the reasonable requirements of the authority

## Nolan principles Paragraph 1(2)

(c) Openness – holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

## Facts

On the 7<sup>th</sup> December the Subject Member and Cllr McCormick made a complaint to the Monitoring Officer under the Code of Conduct relating to an email written by Cllr Cubitt on the 3<sup>rd</sup> December responding to the SWOW survey consultation- the SWOW survey consultation related to an office accommodation refurbishment project (the Bound and McCormick Complaint). Cllr Cubitt had addressed this email to most Councillors and some officers. This email contained the below paragraph. The Subject Member and Cllr McCormick objected to the use of the phrase “Year Zero” alleging it demonstrated a lack of respect for those who have suffered injustice or unfair treatment due to the origins of the term in the Cambodian genocide. This complaint (the Bound and McCormick Complaint) is the subject of two separate decisions which found that Cllr Cubitt had not used the term in this context.

*“As elected members we are honoured to be the current custodians/guardians of local democracy in our Borough. The Wood Panelling and the Parlour give a sense of our history of our Town and our Borough. The same applies to the contents of our display cabinets. It is something to show visitors and the children of our Borough and beyond. The Council and its collective history does not belong to us. We should not be aspiring to create a utilitarian “Year Zero” space at great expense especially in these straightened times. Councillors have not requested this. This SWOW Project has not been initiated by councillors. Indeed it appears councillors did not know anything about it until the Members’ Briefing on 1st October.”*

On Friday 4<sup>th</sup> December, prior to submitting his joint Complaint against Cllr Cubitt (and Cllr Potter), Cllr McCormick contacted the Gazette and informed them of Cllr Cubitt’s views as submitted in response to the SWOW survey. Subsequently the Gazette asked him for comments on Cllr Cubitt’s email and he submitted a reply to the Gazette on the 6<sup>th</sup> December. On Monday 7<sup>th</sup> December the Gazette published an article in which Cllr

McCormick is quoted as stating Cllr Cubitt “lacked a sense of proportion” and that “in no way is a civic office re-organisation anything like a genocide”. As the Subject Member did not pass the email to the Gazette the allegation relating to breach of paragraph 3(a)(iv) of the Code does not apply to his actions and is not covered in this decision letter.

## Decision

**In accordance with the Arrangements, the Subject Member has not breached paragraph 2(2)(c) of the Council’s Code of Conduct or conducted himself contrary to the Nolan principle of openness.**

## Reasons for decision

### **1(2) (e) Principle of openness:**

It is alleged that the Subject Member and Councillor McCormick have not been open or transparent in their use of the complaints process. The Complainants do not challenge the Councillors’ right to use the complaints process to address concerns under the Equality Act 2010, but instead suggest that this was not the true intention of their complaint.

In their complaint, the Subject Member and Cllr McCormick objected to the use of the term ‘Year Zero’. They clearly found the use of the term deeply offensive interpreting it as being a reference to: ‘*The [beginning](#) (1975) of the period during which [Cambodia](#) was under the control of the [Khmer Rouge](#)’.*

They brought the complaint because they objected to the use of the term ‘Year Zero’. This is supported by Cllr McCormick’s response of the 27<sup>th</sup> January to this complaint when he stated: *The use of “year zero” juxtaposed with “utilitarian” leave little room for doubt as to the context.*

The findings in the Complaint decision against Cllr Cubitt found that Subject Member and Cllr McCormick did not appear to recognise or have considered other uses of the term “Year Zero” in their complaint against Cllrs Cubitt and Cllr Potter.

This is also highlighted in Cllr McCormick’s response:

*There has been public commentary that “Year Zero” can mean other things and that Cllr Cubitt was alluding to one of the other meanings; these do not fit the context in which it was used in Cllr Cubitt’s email.*

There is therefore insufficient evidence to conclude that the Subject Member and Cllr McCormick were trying to further any political argument about the pros and cons of the office refurbishment or that they had any other motivation in bringing the complaint. The Complainant’s offer no evidence for this allegation other than their own opinion. The Bound and McCormick Complaint was specific and focused on the terminology - ‘Year

Zero'; the context in which it is used; and their objection to its use. They were concerned that the use of this term was discriminatory and lacking in respect. Therefore there has been no breach of the Nolan principle of openness.

## **2(2)(c) Prohibition of intimidation:**

The Complainants argue that the Code of Conduct complaints process has been used to silence or intimidate Cllrs Cubitt and Potter. The suggestion is that the original complaint made by the Subject Member and Cllr McCormick was not in truth an attempt to uphold proper standards of conduct but was in fact intended to silence Councillor Cubitt in particular. All councillors are entitled to raise a complaint if they believe the Code of Conduct has been breached; making a complaint in, and of itself, is not intimidatory. The fact that the complaint was not dismissed at Stage 1 of the complaint process demonstrates that there was an issue that needed proper consideration.

The Subject Member and Cllr McCormick made the complaint because of their understanding of the term 'Year Zero'; they sought to "*call out*" the language used by Cllr Cubitt as, in their view, it was insensitive, unacceptable and offensive.

There is insufficient evidence to conclude that the Subject Member and Cllr McCormick sought to intimidate Cllrs Cubitt and Potter by raising this complaint. All the Cllrs involved in this complaint are elected representatives of the Borough and well versed in both conducting themselves in robust political activity, and in withstanding the consequent pressure. There was no obvious victimisation of a weaker party or an obvious power imbalance. The complaints process is at the heart of standards work and ensures fair and balanced assessment of complaints and members must feel able to use the process without fear that lodging a complaint will be regarded as an act of intimidation.

This decision notice is sent to the person or persons making the allegation and the Member against whom the allegation was made.

## **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**

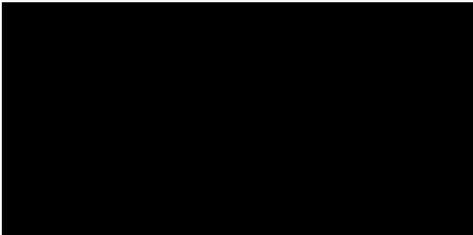
Certain groups of customers may find it more difficult to make a complaint for example due to English not being their first language, sight impairment etc. It is our duty to assist

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



Ann Greaves  
Deputy Monitoring Officer

Signed



Camilla Proctor  
Independent Standards Assessor

Date 4<sup>th</sup> February 2021