



Basingstoke and Deane

BASINGSTOKE AND DEANE BOROUGH COUNCIL **DECISION NOTICE**

DECISION NOTICE:

Reference: 048389/AGR

Complainant: Cllrs Simon Bound and Andrew McCormick

Subject Member: Cllr David Potter

On dates between 10th December 2020 and 15th January 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), as a member of Basingstoke and Deane Borough Council. The complainants also made a separate complaint against Cllr Cubitt arising from the same set of facts which is the subject of a separate decision letter.

The Subject Member has had an opportunity to comment upon the Complaint.

Summary of the complaint

On the 7th December the Complainants submitted two complaints under the Council's Arrangements for Considering Complaints (the Arrangements). One against the Subject Member and the second against Cllr Cubitt which is dealt with in a separate decision letter.

The complaint states that on the 4th December the Cllr Cubitt responded to the SWOW survey (relating to an office accommodation project for future working) with a covering email that compared the project to "Year Zero". The complainant highlighted that "Year Zero" is a term that has been used historically to describe the takeover of Cambodia by the Khmer Rouge in the 1970s, which led to mass genocide and caused the death of nearly 2 million people.

It is said that because the Subject Member commented that he “entirely endorsed the contents of Cllr Cubitt’s email” that both councillors had demonstrated a lack of civic leadership and a complete casual lack of respect for those who have suffered injustice and unfair treatment- examples of killing, murder and genocide should and must not be used lightly.

Relevant provisions of the Code

Paragraph 2

(1) You must treat others with respect.

Facts

Whilst not referred to in the complaint but highlighted by the Subject Member in his comments on the complaint, Cllr Cubitt had sent an earlier email to Councillors and Officers on the 23rd October stating:-

“I am NOT in favour of the Council Chamber being changed. I don’t believe the costs are justified at this juncture. I believe the current physical structure is excellent. It already doubles up as a meeting room if needed. It has always been the technology which lets the side down, not the physical structures.

I am NOT in favour of the wood panelled corridor being removed as it gives Members and visitors alike a sense of history of our Town and Borough. Same with regards to the Mayor’s Parlour. We are honoured to be the current custodians/guardians of local democracy.

The Council and its collective history does not belong to us. Why would we want to create an utilitarian, ‘Year Zero’ space at vast expense which will render our local democratic space an ‘anywhere, anytown, anyplace space’ devoid of character and any sense of our collective past?

On the 3rd December in response to the SWOW survey consultation the Cllr Cubitt wrote to Councillors and some officers:-

“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 be-long 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 the 4th December the Subject Member responded to Cllr Cubitt’s email, sending his email to the same members and officers stating:

“How refreshing Onnalee to read a well thought out and expressed email on this matter unlike others, which I entirely endorse.

I note Cllr T..... takes a similar considered view of the current situation and the uncertainties of 2021 onwards and I am pleased about that."

The complaint against the Subject Member and Cllr Cubitt was received on the 7th December.

Decision

In accordance with the Arrangements, the Subject Member has not breached paragraph 2(1) of the Council's Code of Conduct

Reasons for decision

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 stated 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, the totality of the consultation comments and any comments upon them.

It is alleged that Cllr Cubitt in using the term "Year Zero" and the Subject Member in endorsing her use of the term, demonstrated a lack of respect for those who have suffered injustice or unfair treatment as set out above, due to the origins of the term in the Cambodian genocide.

The term "Year Zero", has a number of historical connotations including to the Pol Pot Regime in Cambodia in the mid-1970s and to the French Revolution in 1792. Whatever its origins, it is a term that has passed into common use as a way of describing new beginnings or systems that wipe the slate clean, erasing what was there before.

Collins Dictionary definition gives 3 separate meanings:-

1. The beginning (1975) of the period during which Cambodia was under the control of the Khmer Rouge
2. The beginning of revolutionary change
3. The beginning of any new system or regime

The dictionary also gives a number of examples of the usage of the term Year Zero such as

“He begins his survey with 1066, 'our architectural year zero' (Sunday Times (2007))”

The Subject Member in responding to the complaint stated that he came to his own conclusion about Cllr Cubitt's reason for using the words in the context she meant to use them. He stated that the composition and context in which the words were used is all important and gave the view that:

“an alternative, sensible interpretation and meaning of “Year Zero” and its use by Councillor Cubit, is the resetting and renewal of an organisational structure.”

He considered that as Councillor Cubitt was arguing that the council should not be aspiring to create a Utilitarian/ Year Zero space at great expense, her reference to Year Zero was in the context of organisational change and that such reference seemed entirely appropriate to him.

It is clear therefore that the Subject Member in endorsing Cllr Cubitt's use of the term Year Zero did so in the context of organisational change. He intended no disrespect towards those who have suffered under the Pol Pot regime.

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.

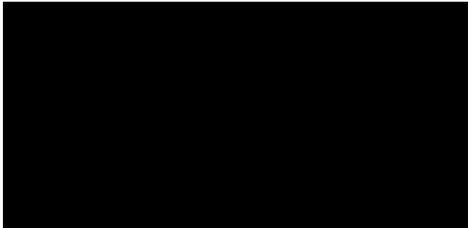
Access to the complaints process

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 4th February 2021