



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 Onnalee Cubitt

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 Potter 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). The first against the Subject Member and the second against Cllr Potter which is dealt with in a separate decision letter.

The complaint states that on the 4th December the Subject Member 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

The complaint states that the use of such a term shows a complete casual lack of respect to all those who have suffered injustice and unfair treatment, referencing killing, murder and genocide, and that the term must not be used lightly. It is said that this infers

that council officers are operating the same way as Pol Pot and the Khmer Rouge and that this is an attempt to bully and intimidate officers who are carrying out the instructions of the elected representatives of the borough.

The complaint also states that the Subject Member has breached the Nolan principle of Honesty in stating that members had no knowledge of the accommodation project until 1st October and that the Subject member has not behaved objectively in attempting to get other members to support her view of the project.

Relevant provisions of the Code

Paragraph 2

- (1) You must treat others with respect.
- (2) You must not:
 - b) Bully any person;
 - c) Intimidate or attempt to intimidate any person;

Nolan principles Paragraph 1(2)

(c) Objectivity – in carrying out public business, including.....holders of public office should make choices on merit.

(f) Honesty- holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Facts

Whilst not referred to in the complaint the Subject Member 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 Subject Member 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.”

Decision

In accordance with the Arrangements, the Subject Member has not breached paragraph 2(1) of the Council’s Code of Conduct or conducted herself contrary to the Nolan principles.

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 and the totality of the consultation comments.

It is alleged that in using the term "Year Zero" in the sentence:

“The Council and its collective history does not belong to us. We should not be aspiring to create a utilitarian “Year Zero” space [...]”

the Subject Member 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 conations 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:

“The comments in my emails concerned the Borough’s history and the pride the Council, and residents, should take in it. They did not, on any reasonable interpretation, refer or allude to political violence or repression. They simply stated that the Council should not present to residents an image of the Borough in which its history has seemed to vanish, such that it is now starting anew from the present day.”

The use of the term must therefore be viewed in its context as an internal consultation response to fellow members, copied to officers who were responsible for the project. The comment is found to have been made solely in relation to the refurbishment of the civic space in the council offices in the context erasing the history of the council offices. No disrespect was intended towards those who have suffered under the Pol Pot regime.

Consideration was also given on whether an inference could be drawn that officers, in taking forward the SWOW project, were operating in the same way as Pol Pot but given that the term Year Zero was used in the context of starting anew, this cannot be inferred.

The consultation response from the Subject Member did not amount to bullying or intimidation of the officers involved in the project. ACAS defines bullying as ‘offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.’ The purpose of the consultation was to invite member responses to the accommodation proposals. The views and opinions shared in the email illustrate the Subject Member’s strongly held views which she expresses unequivocally. Whilst it is possible that some might object to the language used or how she makes her political case or who she shares it with, the views do not amount to bullying or intimidation. The response copied in other members and officers who were involved in the project but did not attempt to assert pressure on any particular group of officers.

Further whilst there has been no breach of the Code of Conduct, in any event the Subject Member had the right of freedom of expression under Article 10 ECHR. Political expression – what is said or published by elected representatives such as councillors – is of particular importance and in accordance with the law, receives enhanced protection under Article 10.

The case of *Heesom v Public Service Ombudsman for Wales*(2014) EWHC 1504, considered a councillor’s right to free speech in some detail and set out the following principles:-

- (a) While freedom of expression is important for everyone, it is especially so for an elected representative of the people;
- (b) The enhanced level of protection applies to all levels of politics, including local;
- (c) Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-

rational and aggressive language, that would not be acceptable outside that context, is tolerated.

(d) Article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false;

(f) There is a distinction between facts, and comment on matters of public interest involving value judgment. Comments in the political context amounting to value judgments are tolerated even if untrue, as long as they have some factual basis. Even where something expressed is not a value judgment but a statement of fact (e.g. That members did not know about the SWOW project until the all members briefing on the 1st October), that will be tolerated if what is expressed is said in good faith and there is some reasonable (even if incorrect) factual basis for saying it.

It is clear that the Subject Member did not agree with the approach being taken to the accommodation project and expressed her opinions in strong terms but this she was entitled to do by virtue of her right of free speech as referred to previously. The response expresses the Subject Members belief that there has been a lack of adequate scrutiny of the plans and suggests that the project has not had sufficient visibility with Members, stating that members did not know about it until the Members Briefing on the 1st October.

This is a view that she is entitled to take and it is important that members are able to raise such issues with officers as part of their role. Individual members receiving the email from the Subject Member would have been aware of when they became aware of the project and it is likely that different members would have become aware of the project at different times depending on their roles. Whilst there had been a capital allocation in the council's budget for some time under various titles such as "Fit for the Future" this is unlikely to have had details of the accommodation changes. There is therefore scope for different members to hold different views about when they were briefed on the project and on what they thought was in scope under the original capital project. That said it does not matter whether the Subject Member was incorrect in stating that members had not been briefed until the 1st October as the comment was made in good faith and the extent of the plans under the consultation gave her a reasonable basis for making her comment. There has therefore been no breach of the Nolan principles by the Subject Member.

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.

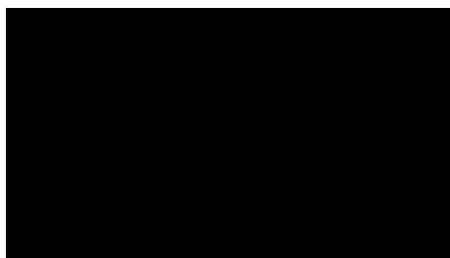
Access to the complaints process

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