

Governance and Ethics Committee Decision taken on 8 August 2018

Part I

Decision Notice (Item 4)

Written decision of West Berkshire Council's Governance and Ethics Committee

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Written Decision of West Berkshire Council's Governance and Ethics Committee

Member who this Decision relates to:	Councillor Dominic Boeck who was accompanied by Councillor Graham Bridgman
Person who made the original allegation:	Mr Thomas Tunney on behalf of Newbury Constituency Labour Party's Executive Committee who was accompanied by Ms Julie Wintrup
Organisation:	West Berkshire Council
West Berkshire Council's Governance and Ethics Committee Reference:	NDC2/18
Chair of the Governance and Ethics Committee:	Councillor Keith Chopping
Other Members of the Governance and Ethics Committee:	Councillors Steve Ardagh-Walter, Jeff Beck, Paul Bryant, James Cole, Geoff Mayes (Parish Council Representative), Anthony Pick, Quentin Webb, Barry Dickens (Parish Council Representative) and Jane Langford (Parish Council Representative)
Apologies:	Councillor Jeff Brooks
Declarations of Interest:	<p>Councillors Ardagh-Walter, Beck, Bryant, Chopping, Cole, Pick and Webb declared a personal interest in this item by virtue of the fact that the subject member was a fellow member of the Conservative Group.</p> <p>Councillors Ardagh-Walter, Beck, Pick and Cole also declared that they have previously canvassed</p>

	<p>with the subject member during elections.</p> <p>The subject member has previously acted as the agent for Councillor Webb during elections.</p> <p>None of these councillors consider the subject member to be a close personal friend.</p> <p>As their interests were personal and not prejudicial they were permitted to take part in the debate and vote on the matter.</p> <p>Councillor Anthony Pick declared a personal interest in this item by virtue of the fact that his wife was a member of the Newbury and District Association of the National Trust as was the Investigator, Elizabeth Howlett. As his interest was personal and not prejudicial he was permitted to take part in the debate and vote on the matter.</p> <p>Jane Langford declared a personal interest in this item by virtue of the fact that she was a member of the West Berkshire Conservative Association, however she did not know any of the parties involved in the complaint. As her interest was personal and not prejudicial she was permitted to take part in the debate but as a parish councillor she was not able to vote on the matter.</p>
Monitoring Officer:	Sarah Clarke
Investigator:	Ms Elizabeth Howlett
Clerk of the Governance and Ethics Committee:	Moira Fraser and Stephen Chard
Date of the Governance and Ethics Committee:	08 August 2018
Date Decision Issued:	09 August 2018

Summary of the Original Allegation

Mr Tunney alleged that Councillor Boeck had expressed negative opinions regarding transgender people (specifically Eddie Izzard and referred to as thread one) by making comment and retweeting comments on his social media account which referred to a generalised opinion of a transgender individual's merits, contribution and ability, as well as endorsing the characterisation of transgender people as mentally ill (referred to as thread two).

Outcome of the Initial Assessment

The Monitoring Officer, in consultation with the Independent Person, concluded that in this case while not making any findings of fact, if the allegations were substantiated and if Councillor Boeck was deemed to have been acting in his capacity as a councillor, they may constitute a breach of West Berkshire Council's Code of Conduct and therefore the allegation should be referred for investigation.

The Panel noted that in order for a complaint to be deemed valid it should be satisfied that the complaint met the following tests:

1. it was a complaint against one or more named members of the authority or an authority covered by the Governance and Ethics Committee;
2. the named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
3. the complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.

The Monitoring Officer in consultation with the Independent Person stated, while the complaint appeared to meet the first two elements of the test, from the information provided it was not possible to clarify in what capacity the comments had been made i.e. if Councillor Boeck was acting, claiming to act or giving the impression of acting in his capacity as a councillor. They noted that if the complaint failed the third test it could not be deemed to be a breach of the Council's Code of Conduct.

They noted that Councillor Boeck had been a councillor since 2011 and was a Member of the Council's Executive and that he had therefore a higher profile as a local councillor in West Berkshire. As such, it might be more likely that he would be regarded as having been acting in his official capacity as a councillor when he blogged or networked. It was also not clear from the information provided if Councillor Boeck had made the comment and retweeted the comments using resources issued to him by the Council.

The Panel concluded that in retweeting comments, without making a comment to the contrary, Councillor Boeck could be regarded as endorsing those comments. It was accepted that Members could make political points but by referring to an individual (Eddie Izzard) 'an attack on individuals may be seen as disrespectful'. The investigation would therefore need to consider if his social network activity was deemed to be disrespectful, bullying and/or intimidating. The Panel noted that Councillor Boeck had on the 09 April 2018 tweeted an apology on his twitter account.

The Panel noted that although Councillor Boeck had attended the Council's mandatory equalities training the investigation would need to consider if he had failed to adhere to any regulations pertaining to equality.

Relevant Sections of the Code of Conduct

West Berkshire Council's Code of Conduct provides that:

- Councillors must treat councillors, co-opted members, officers, members of the public and service providers with courtesy and respect.
- Councillors must, when using or authorising the use by others of the resources of the Council, use resources properly and in accordance with the Council's relevant policies.
- Councillors must not engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation.
- Councillors must not do anything which may cause the Council to breach any of the equality enactments as defined in the relevant equalities legislation.

The definition in the Code of Conduct of 'bullying and intimidating behaviour' is:

"Bullying and intimidating behaviour means offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. Such behaviour can have a damaging effect on a victim's confidence, capability and health. Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs [but within the scope of the Code of Conduct]. It may happen once, or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying.

It is also unlikely that a member will be found guilty of bullying when both parties have contributed to a breakdown in relations."

Investigation

Ms Elizabeth Howlett was appointed to undertake the investigation on behalf of the Monitoring Officer. She interviewed the following people as part of the investigation:

- 1) Councillor Dominic Boeck; and
- 2) Mr Thomas Tunney.

The investigator also considered the social media postings that were the subject of this complaint and had regard to West Berkshire Council's Constitution including the Social Media Protocol for Councillors.

Conclusion of the Independent Investigator

1. **Was Councillor Boeck acting, claiming to act or giving the impression of acting in his capacity as a councillor?** This is the key question because it determines whether the Code of Conduct applies at all. Mr Tunney said at the interview that his personal view was no. Councillor Boeck was not representing West Berkshire Council. A lot of the tweets were political rather than about council business. Councillor Boeck was a political person.

However, Mr Tunney subsequently emailed to change his mind about his response to this question. He had answered that based on tweet history and thought it could only really be classed as politically motivated but looking deeper into Councillor Boeck's twitter account Mr Tunney considers there are numerous examples of him talking about council work projects. There are two tweets that highlight Councillor Boeck discussing council business and identifying himself as a councillor. Mr Tunney believes that anyone following his tweets would easily associate Councillor Boeck's tweets with him being a Councillor at West Berkshire. Councillor Boeck said that he had never claimed on twitter to be a councillor.

Councillor Boeck is not simply a councillor. He is a high-profile councillor. He is a member of the Executive at West Berkshire Council. He holds a position of responsibility. He is the Chair of the Health and Well-being Board. One of the priorities of the Board for this year is mental health. I do not think Councillor Boeck was claiming to act as a councillor but I do think he has a sufficiently high profile in the community because of his role at West Berkshire Council for him to be followed on twitter purely because he is a councillor. It is likely that he was perceived by followers of his account to be acting in his capacity as a councillor.

I therefore conclude that he gave the impression that he was acting in his capacity as a councillor even though I accept he may not have intended that.

2. **Did Councillor Boeck make the comment, retweet the comments, using resources issued to him by the Council?** Probably not. It is impossible to be absolutely certain about this. From the discussion with Councillor Boeck I am reasonably confident that all the social media activity took place on Councillor Boeck's iPhone which is his own personal property.
3. **Was the social network activity deemed to be disrespectful, bullying and/or intimidation?** I make a clear distinction between the two threads. The first was a political comment. If it was aimed at Eddie Izzard at all it was in his position as a member of Labour's National Executive so it was aimed at the Labour party. Mr Tunney himself believed it was aimed at humiliating the Labour party. The Code of Conduct has always accepted that political debate and political comment is going to be robust and that the Code of Conduct should not stifle this. Eddie Izzard has chosen to enter the political arena. The complainant was not complaining on behalf of Eddie Izzard. I do not therefore believe that the first thread was disrespectful, bullying or intimidating towards an individual.

The second thread is different. It directly characterised transgender people as mentally ill. It was disrespectful. It is particularly unfortunate because of the role Councillor Boeck now holds on the Executive. Mental health is directly within his remit. Councillor Boeck accepts that he was careless with this retweeting and acted in haste.

4. **Did Councillor Boeck fail to adhere to any of the regulations pertaining to equality?** The complainant believes it was offensive to transgender people.

Councillor Boeck said that he had clearly offended some people but he had not compromised any rights. I believe the answer is yes because Councillor Boeck failed to treat those with mental illness with respect. It was a mistake and he has acknowledged this and apologised.

Decision of the Advisory Panel

In respect of complaint NDC2/18 the Advisory Panel concurred with the findings of the Investigator. The Advisory Panel agreed to refer a recommendation to the Special Governance and Ethics Committee who would make a final determination on this matter.

The Advisory Panel did not identify any areas of the Investigator's report that required further clarification.

The Advisory Panel recommended that the following people be invited to attend the Special Governance and Ethics Committee where the matter would be determined:

1. Investigator – Ms Elizabeth Howlett
2. Complainant – Mr Thomas Tunney
3. Subject Member – Councillor Dominic Boeck

The Advisory Panel recommended that if the Special Governance and Ethics Committee concurred with the finding that a breach of the Code of Conduct had occurred the Panel would recommend that the following sanctions could be applied:

1. A formal letter be sent from the Chairman of the Governance and Ethics Committee to the subject member indicating that he failed to comply with West Berkshire Council's Code of Conduct.
2. Given the current focus of the Health and Wellbeing Board on mental health the Conservative Group Leader be consulted and asked to remove the subject member from this portfolio but it be noted that they did not wish to have him removed from the Executive.
3. As the matter had already appeared in local media a formal press release, sanctioned by the Governance and Ethics Committee, be drafted and sent to the local newspaper.
4. The subject member be asked to attend additional equalities training and social media training.

Summary of the Evidence Considered and Representations Made at the Meeting

Written Evidence Considered:

West Berkshire Council's Code of Conduct

West Berkshire Council's Social Media Policy

The initial complaint and associated paperwork

The response to initial complaint by the subject member

The Initial Assessment Notice

The Investigators report into complaint NDC2/18

Comments from Independent Person on the Investigator's Report

Comments from Subject Member on the Investigator's Report

Comments from the Complainant on the Investigator's Report
The Advisory Panel's Decision Notice
Sanctions which could be applied

Oral Evidence Presented at the Meeting:

1. Presentation from Elizabeth Howlett (Investigator)
2. Presentation from Thomas Tunney (Complainant) including comments from Julie Wintrup.
3. Presentation from Councillor Dominic Boeck (Subject Member) including comments from Councillor Graham Bridgman.

Findings as to whether or not the Member failed to follow the Code of Conduct

After carefully considering both the written evidence submitted and the oral evidence given at the hearing, the Committee found that in respect of the complaint made by Mr Thomas Tunney on behalf of Newbury Constituency Labour Party's Executive Committee on 03 April 2018, Councillor Dominic Boeck had breached West Berkshire Council's Code of Conduct. In reaching that decision, the Committee resolved:

1. That they concurred with the Investigator's finding that Councillor Boeck was "*acting, claiming to act or giving the impression of acting in his capacity as a Councillor" even though he may not have intended that.
*To quote the West Berkshire Code of Conduct for Councillors

Reason: Although these two threads did not refer to Council business and Councillor Boeck's profile, at the time he retweeted the threads which were the subject of the complaint, did not identify himself as a Councillor he acknowledged that there were references to Council business on his twitter account, a number of the tweets were of a political nature and that he did use his twitter account for Council business.

Councillor Boeck was a member of the Executive at the time of the incidents and the Council's Social Media Protocol for Councillors stated that "be aware that the higher your profile as a councillor, the more likely it is you will be seen as acting in your official capacity when you blog or network".

The Committee therefore felt that any reasonable person looking at his twitter feed would perceive that Councillor Boeck was acting in his capacity as a Councillor.

2. That they concurred with the Investigator's finding that Councillor Boeck did not make the comment and retweeted the threads , using resources issued to him by the Council and that in all likelihood all the social media activity took place on Councillor Boeck's iPhone which was his own personal property.

Reason: There was no information presented to indicate that Councillor Boeck had used his Council equipment and Councillor Boeck had stated that he had used his personal phone for social media activity.

3. That, in relation to thread one, the comments made by Councillor Boeck about Eddie Izzard on his twitter account constituted robust political debate or political

comment and therefore the comments were not disrespectful, bullying or intimidating.

Reason: The Committee agreed with the assertion of the independent Investigator that the tweet amounted to political comment and was not a personally directed insult and could therefore not be deemed to be disrespectful.

4. That, in relation to thread two, where Councillor Boeck had retweeted the comments offered by BrexitTory even if he had acted carelessly or in haste he had not contradicted the opinion offered. In retweeting the comments it could be concluded that he supported the view that transgender people were mentally ill. His behaviour could therefore be deemed to be disrespectful and therefore Councillor Boeck had breached the Council's Code of Conduct.

Reason: The Committee stated that retweeting a comment that linked transgenderism to mental illness, without a qualifying comment to the contrary, could be seen by any reasonable person to be endorsing the comment.

5. The Committee also considered that thread two, whilst of itself contrary to the regulations pertaining to equality, this did not amount to a separate breach of the Code of Conduct

Reason: The Committee commented that in retweeting the comment Councillor Boeck had not bound the Council by his actions and therefore he had not done anything which would have caused the Council to breach any of the equality enactments as defined in legislation.

Sanctions Imposed and the Reasons for the Sanctions

After carefully considering all the information, both written and oral, provided to the Committee they determined that a formal letter would be sent to the subject member by the Chairman of Governance and Ethics Committee, indicating that he had failed to comply with West Berkshire Council's Code of Conduct The letter would be sent within 15 clear working days of the meeting.

In reaching a decision as to which sanctions to apply the Committee had regard to the advice of the Monitoring Officer that any sanction should be both proportionate and reasonable.

The Committee accepted that the subject member did not intend to cause offence and that the thread was re-tweeted inadvertently.

The Committee noted in particular the steps that the subject member had already taken, regarding this matter, including:

1. He had removed the offending tweet.
2. He had made a public apology on more than one occasion for offence caused by his action. The Committee accepted the finding of the Independent Investigator that Councillor Boeck's apology was genuine.
3. He had co-operated with the Investigator and the investigation.
4. He had resigned from his post as Portfolio Holder for Health and Wellbeing.

Right to Appeal

Under the revised Localism Act 2011 there is no appeals mechanism in place. Parties may challenge the decision by way of Judicial Review in the High Court. Parties are advised to seek independent legal advice prior to pursuing this option

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