

Notice of Meeting



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Governance and Ethics Committee

Wednesday, 8th August, 2018 at 10.00 am in Council Chamber Council Offices Market Street Newbury

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Date of despatch of Agenda: Tuesday, 31 July 2018

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Andy Day/Moira Fraser/Stephen Chard on (01635) 519459/519045/519462

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Further information and Minutes are also available on the Council's website at www.westberks.gov.uk



WestBerkshire
C O U N C I L

Agenda - Governance and Ethics Committee to be held on Wednesday, 8 August 2018
(continued)

To: Councillors Steve Ardagh-Walter, Jeff Beck (Vice-Chairman), Jeff Brooks, Paul Bryant, Keith Chopping (Chairman), James Cole, Barry Dickens, Jane Langford, Geoff Mayes, Anthony Pick and Quentin Webb

Substitutes: Councillors Jason Collis, Sheila Ellison and Alan Macro

Agenda

Part I

Page No.

- 1 **Apologies**
To receive apologies for inability to attend the meeting (if any).
- 2 **Declarations of Interest**
To remind Members of the need to record the existence and nature of any personal, disclosable pecuniary or other registrable interests in items on the agenda, in accordance with the Members' [Code of Conduct](#).

Standards Matters

- 3 **NDC2/18** 1 - 66
Purpose: To make a determination as to whether a breach of the Code of Conduct has occurred after considering the Investigator's report about a complaint received from Mr Thomas Tunney on behalf of Newbury Constituency Labour Party's Executive Committee (Complainant) in respect of Councillor Dominic Boeck (Subject Member) from West Berkshire Council submitted on 03 April 2018.
Should the Committee determine that a breach of the Code of Conduct has occurred they will need to determine an appropriate sanction.

Andy Day
Head of Strategic Support

West Berkshire Council is committed to equality of opportunity. We will treat everyone with respect, regardless of race, disability, gender, age, religion or sexual orientation.

If you require this information in a different format or translation, please contact Moira Fraser on telephone (01635) 519045.



West Berkshire
C O U N C I L

Agenda Item 3

Complaint Ref:	NDC2/18
Report to be considered by:	Governance and Ethics Committee
Date of Meeting:	08 August 2018
Purpose of Report:	<ol style="list-style-type: none">To make a determination as to whether a breach of the Code of Conduct has occurred after considering the Investigator's report about a complaint received from Mr Thomas Tunney on behalf of Newbury Constituency Labour Party's Executive Committee (<i>Complainant</i>) in respect of Councillor Dominic Boeck (<i>Subject Member</i>) from West Berkshire Council submitted on 03 April 2018.Should the Committee determine that a breach of the Code of Conduct has occurred they will need to determine an appropriate sanction.
Paragraphs of the Code of Conduct that the complaint might relate to: General Obligations: <ul style="list-style-type: none">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 the 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.	

Monitoring Officer's Details	
Name:	Sarah Clarke
Job Title:	Head of Legal Services
Tel. No.:	01635 519596
E-mail Address:	Sarah.Clarke@wesberks.gov.uk

Appendices:

Appendix 1 WBC Code of Conduct

Appendix 2 WBC Social Media Policy

Appendices 3, 4 and 5 Initial complaint and associated paperwork

Appendix 6 Response to initial complaint by the subject member

Appendix 7 Initial Assessment Notice

Appendix 8 Investigators report

Appendix 9 Comments from Independent Person on the Investigator's Report

Appendix 10 Comments from Subject Member on the Investigator's Report

Appendix 11 Comments from the Complainant on the Investigator's Report

Monitoring Officer's Report

1. Introduction

- 1.1 A complaint was received from Mr Thomas Tunney on behalf of Newbury Constituency Labour Parties Executive Committee on 03 April 2018 concerning an alleged breach of West Berkshire Council's Code of Conduct by Councillor Dominic Boeck. The complaint was considered by the Monitoring Officer in consultation with the Independent Person (Lindsey Appleton) on 30 April 2018 where it was decided to refer the allegation for further investigation.
- 1.2 Ms Elizabeth Howlett was appointed to investigate the matter on behalf of West Berkshire Council.
- 1.3 The Investigator concluded that there was evidence of a breach, under the revised localism arrangements.
- 1.4 The Advisory Panel met on the 25 July 2018 to consider if it concurred, based on the facts set out in the report, with the Investigator's conclusion. The Advisory Panel then had to make a recommendation to the Governance and Ethics Committee to make a final determination on the matter.
- 1.5 The Advisory Panel concurred with the findings of the Investigator as set out in her report. The Panel requested that it be recorded that in relation to conclusions 1, 2 and 4 the decision of the Panel was unanimous. In relation to Question 3 the majority of members of the Panel agreed that retweeting a comment meant that the subject member endorsed the original tweet.
- 1.6 The Advisory Panel recommended on the basis of the information before them, that if the Special Governance and Ethics Committee concurred with the finding that a breach of the Code of Conduct had occurred, the following sanctions be considered:
 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.

2. Conclusion

- 2.1 The Governance and Ethics Committee is required to decide if there has been a failure by the Subject Member to comply with the Code of Conduct.

- 2.2 In reaching the above decision, the Committee must have regard to the Appendices to this Report, together with any oral evidence which is presented during the meeting of the Governance and Ethics Committee.
- 2.3 If the Committee determine that there has been a breach of the Code of Conduct, the Committee must then consider what sanction to impose. In determining sanctions, the Committee must have regard to any mitigation presented by the Subject Member together with any advice that is given by the Monitoring Officer.

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West Berkshire Council Councillor's Code of Conduct September 2016

1. Introduction

The initial version of this Code of Conduct ("this Code") was adopted by the [Council](#) at its meeting on 10 May 2012 and confirmed at its meeting on 16 July 2012 pursuant to the duty to promote and maintain high standards of conduct by [Councillors](#) and others set out in the [Localism Act 2011](#) ("the Act"). It came into effect on 1 July 2012 and revisions were adopted on 12 December 2013 and 15 September 2016.

2. Gifts and Hospitality Protocol and Appendices

- 2.1 The [Councillors' Gifts and Hospitality Protocol](#) is an associated document to be read in conjunction with this Code.
- 2.2 [Appendix 1](#) contains definitions used in this Code and its Appendices (or identifies where they may be found). Within the electronic version of this Code defined words or phrases are hyperlinked for ease of reference (on the first occasion they appear): to the relevant definition within Appendix 1 or elsewhere within the Appendices as relevant; or to an external document (eg legislation).
- 2.3 [Appendix 2](#) contains the [Ten Principles of Public Life](#) ('the Nolan Principles').
- 2.4 [Appendix 3](#) gives guidance for declaring and registering interests.
- 2.5 [Appendix 3a](#) sets out the prescribed definitions relating to [Disclosable Pecuniary Interests](#).
- 2.6 [Appendix 3b](#) contains a flow chart relating to the declaration of interests.
- 2.7 [Appendix 4](#) sets out the rules relating to [Dispensations](#).
- 2.8 [Appendix 5](#) sets out the process for investigating alleged breaches of this Code.

3. Application

- 3.1 This Code applies to Councillors and [Co-Opted Members](#) (eg whenever they are acting, claiming to act, or giving the impression they are acting in their [Capacity](#) as a Councillor or Co-Opted Member). Where a [councillor](#) is not acting with Capacity no breach of this Code is likely to occur.
- 3.2 It is a Councillor's or a Co-Opted Member's personal responsibility to comply with this Code.
- 3.3 This Code is consistent with and based upon the Ten Principles of Public Life (also known as the Nolan Principles).

3.4 Should a complaint be made against a Councillor or Co-Opted Member it will be dealt with in accordance with the Act and its supporting regulations.

3.5 If a Councillor or Co-Opted Member needs any guidance on any matter relating to this Code, they should seek it from the [Monitoring Officer](#) or their own legal adviser (but it is repeated that it is entirely their personal responsibility to comply with the provisions of this Code).

4. General Obligations

4.1 Councillors and Co-Opted members **must**:

- (a) Treat councillors, co-opted members, officers, members of the public and service providers with courtesy and respect.
- (b) When involved in the decision making of the Council:
 - (i) ensure that they are aware of and comply with the requirements of the [Bribery Act 2010](#);
 - (ii) have regard to any advice provided to them by the Council's Chief Financial Officer or Monitoring Officer pursuant to their statutory duties;
 - (iii) give reasons for decisions made in accordance with any legal requirements and/or reasonable requirements of the Council.
- (c) When using or authorising the use by others of the resources of the Council, use the resources properly and in accordance with the Council's relevant policies.
- (d) Have regard to the applicable [Local Authority Code of Publicity](#) under the Local Government Act 1986.

4.2 Councillors and Co-Opted Members **must not**:

- (a) Engage in [bullying or intimidating behaviour](#) or behaviour which could be regarded as bullying or intimidation.
- (b) Do anything which may cause the Council to breach any of the equality enactments as defined in [section 33, Equality Act 2006](#).
- (c) Disclose information given to them in confidence or information acquired by them which they believe or are aware is of a confidential nature except where:
 - (i) they have the consent of a person authorised to give it;
 - (ii) they are required to do so by law;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice;
 - (iv) the disclosure is reasonable and in the public interest;
 - (v) the disclosure is made in good faith and in compliance with the reasonable requirements of the Council or its professional advisers.
- (d) Prevent another person from accessing information if that person is entitled to do so by law.

- (e) Improperly use knowledge gained solely as a result of their role as a Councillor for the advancement of their Disclosable Pecuniary Interests.
- (f) Conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.

5. Interests, Dispensations, Sensitive Interests and Bias

- 5.1 Councillors **must** declare any interests (Disclosable Pecuniary Interests, [Other Registrable Interests](#) and [Personal Interests](#)) that relate to their public duties and **must** take steps to resolve any conflicts arising in a way which promotes openness and transparency, including registering and declaring interests in a manner conforming with the procedures. Further guidance is contained within Appendix 3.
- 5.2 Councillors who have a Disclosable Pecuniary Interest may apply for a Dispensation to enable them to speak and/or vote at a [Meeting](#) on the specific grounds set out in the Dispensation Procedure in Appendix 4.
- 5.3 If the Monitoring Officer agrees that an interest is a [Sensitive Interest](#) the Councillor **must** disclose its existence at a relevant Meeting but is not required to provide specific details (see Appendix 3). The Monitoring Officer shall also exclude the details of the Sensitive Interest from the published version of the Register of Interests.
- 5.4 When exercising a quasijudicial function (eg Planning, Licensing and Appeals), interests which do not qualify as Disclosable Pecuniary Interests or Other Registrable Interests could nevertheless lead a reasonable member of the public to conclude that there was a real possibility of bias on the part of a Councillor. In such circumstances the Councillor should not participate in the decision making process (ie the Councillor should not vote nor, unless they are requested to do so by the Chairman of the Meeting on a point of clarification, speak on the matter). The interest should be registered with the Monitoring Officer.

6. Gifts and Hospitality

Councillors **must** disclose and record any [gift or hospitality](#) they are offered or receive in accordance with the Councillors' Gifts and Hospitality Protocol.

7. Alleged breaches of this Code

- 7.1 Any allegation that a Councillor has breached this Code will initially be considered by the Monitoring Officer in consultation with one of the [Independent Persons](#). Where a matter is referred for investigation the Governance and Ethics Committee's Advisory Panel will consider the findings of the investigation. The Advisory Panel shall be chaired by an Independent Member and make recommendations to the Governance and Ethics Committee for final decision.
- 7.2 Appendix 5 is a flowchart outlining the process for dealing with alleged breaches of this Code.

West Berkshire Council

Councillor's Gifts and Hospitality Protocol

September 2016

1. Introduction

This Protocol is intended to complement the [Councillors' Code of Conduct](#). It offers guidance to [Councillors](#) with regard to best practice and the need to preserve integrity and demonstrate good governance. It has been written to protect both individual Councillors and the [Council](#) itself. The intention of this Protocol is to ensure that the Council can demonstrate that no undue influence has been applied or could be said to have been applied by any supplier or anyone else dealing with the Council and its stewardship of public funds.

This Protocol adopts the definitions in [Appendix 1](#) to the Code.

This Protocol sets out Councillors' obligations to declare any relevant gifts and hospitality which might be offered to or received by them in their [Capacity](#) as a Councillor or to their spouse or partner as a result of their relationship with the Councillor.

The corollary of this is that gifts and hospitality offered to a [councillor](#) in their private capacity, of whatever value, do not need to be registered at all. Further, this Protocol does not apply to the acceptance of any facilities or hospitality which may be provided to a councillor by the Council.

It is the Councillor's responsibility to ensure any gifts and hospitality received or offered to them or their spouse/ partner are declared to the Council's [Monitoring Officer](#) in accordance with the agreed procedures.

Transparency is the issue: councillors should always consider whether any gifts or hospitality could be seen as being connected with their public role as a Councillor. It is public perception that matters.

A breach of this Protocol amounts to a breach of the Code and a complaint can be reported to the Monitoring Officer or the Governance and Ethics Committee and dealt with in accordance with the [process for alleged breached of the Code](#).

2. The Rules

- (a) A Councillor or their spouse/ partner must never:
- accept a gift or hospitality as an inducement or reward for anything which they do as a Councillor; or
 - accept a gift or hospitality which might be open to misinterpretation; or
 - accept a gift or hospitality which puts them under an improper obligation; or
 - solicit a gift or hospitality.
- (b) Prior to the acceptance of any hospitality with a value of £25 or more, a Councillor should whenever possible seek authorisation from the Monitoring

Officer, and only if consent has been given should the Councillor or their spouse/partner accept the hospitality.

- (c) A Councillor must register every individual gift or item of hospitality over £25 in value that is offered to them and indicate whether or not it was accepted.
- (d) A Councillor's registration of the gift or hospitality must be made within 28 days of the date of offer or receipt as the case may be.
- (e) Registration is made by a declaration in writing to the Member Services Officer(s) working on behalf of the Monitoring Officer, preferably electronically (eg by email), and giving details of:
 - the value (or estimated value) and details of the gift or hospitality offered or received;
 - if the gift or hospitality has been accepted, the reason for that acceptance;
 - whether to the Councillor's knowledge the donor of the gift has, or has had in the past, or is likely to have in the future, dealings with the Council.
- (f) A Councillor should be aware of serial givers or repeat offers of hospitality as these may indicate a pattern of behaviour that might result in a breach of the Code of Conduct.
- (g) An offer of a gift or hospitality that appears over-generous must be declined; it could be seen as an inducement to affect a Council decision.
- (h) Even if all Councillors, or a large number of them, are offered or receive the same gift or hospitality, they must each make individual notifications.

Please note that the press and public have the right to inspect gift and hospitality declarations as submitted (and that Officers cannot edit the declarations).

Guidance

3. Should a Councillor accept gifts and hospitality?

It is not sufficient just to register gifts or hospitality; a Councillor **must** consider whether it is appropriate or sensible to accept them in the first place. The general test of caution is one of common sense and perception, ie would a reasonable member of the public question the appropriateness of hospitality or gifts offered to or received by the Councillor or their spouse/partner? If a Councillor is concerned the acceptance could be misinterpreted they **must** decline it and declare it.

A Councillor or their spouse/ partner **must never** solicit a gift or hospitality, or accept any gift or hospitality offered as an inducement or which puts them under any obligation.

Particular care must be taken in relation to gifts and hospitality offered by current or potential contractors for the Council. In certain cases, the acceptance of a gift or hospitality from these sources could constitute a criminal offence, even if declared. If there is any suspicion that any offer is intended as an inducement, then the matter **must** be reported in accordance with established procedures.

The Bribery Act 2010 has offences of "bribing another person" (active bribery) and of "being bribed" (passive bribery). The offences consist of "promising, offering or giving" or "requesting, agreeing to receive or accepting an advantage (financial or

otherwise)" in circumstances involving the improper performance of a relevant function or activity.

In the context of the Council the relevant function or activity means a public activity which a reasonable person would expect to be performed in good faith, impartially or in a particular way by a person performing it in a position of trust. There is a maximum penalty of 10 years' imprisonment or an unlimited fine for these offences.

4. Must a Councillor register all gifts and hospitality that they are offered?

A Councillor **must** register any gift or hospitality worth £25 or more that they or their spouse/partner are offered, and whether it was accepted. Where the value of any gift or hospitality is under £25 a Councillor **may** wish to declare receiving it.

5. What about gifts or hospitality that a Councillor is offered but did not accept?

A Councillor **must** register any offer of gifts and/or hospitality over £25 even if declined, since this protects both their position and that of the Council.

6. What is the value of the gift / hospitality?

A Councillor may have to estimate how much a gift or some hospitality is worth in their written declaration. It is suggested that they take a common sense approach, and consider how much they reasonably think it would cost a member of the public to buy the gift, or provide the hospitality in question. If as a result they estimate that the value is £25 or more, then the Councillor **must** declare it.

Where hospitality is concerned, a Councillor can disregard catering on-costs and other overheads, eg staff and room hire. If the refreshments, of whatever kind, would cost £25 or more in a comparable establishment providing food of comparable quality, the Councillor **must** register it.

If a Councillor is not certain whether the value is under £25, the safest course of action is to register it and give an approximate value.

7. What about gifts of low value?

There is no requirement to declare gifts of a value of less than £25. However, in order to be transparent, if a Councillor or their spouse/ partner receive a series of related gifts which are all under £25, but together total above £25, then they **must** register them if they are from the same person. If the small gifts offered by or received from different persons are connected in some way, it is good practice to register them.

8. How does a Councillor register gifts and hospitality that they receive?

A Councillor **must** give the Member Services Officer(s) working on behalf of the Monitoring Officer written details about the gifts and hospitality they or their spouse/ partner are offered, preferably by email. The best advice is to get into the habit of registering things as soon as possible.

9. Which organisation does a Councillor make declarations to?

A Councillor **must** also consider that they might be offered gifts and hospitality in their capacity as the Council's representative on an outside body. It is a Councillor's responsibility to ensure that they declare any gifts and hospitality in accordance with that organisation's rules and procedures.

10. How to deal with the issue of when gifts or hospitality are offered or received in different capacities or where there are overlapping roles

Councillors need only declare gifts and hospitality to the Monitoring Officer where they are offered or received in their Capacity as a West Berkshire District Councillor.

If a councillor receives gifts or hospitality in another capacity, eg arising from holding another public office, they should register in accordance with whatever code is in place for that other body. If a particular body does not actually require the councillor to register anything, then they do not need to do anything in respect of the receipt of a gift or hospitality directly attributed to their role within that organisation.

If the councillor is not sure what capacity they or their spouse/partner was offered or received something in, provided they declare the gift or hospitality *at least once* with the body that appears to be the most appropriate, they will have fulfilled their duties. The overriding purpose is public transparency.

11. What happens if a Councillor does not register a gift or hospitality?

Failure to notify the Monitoring Officer, or the Members Service Officer(s) acting on their behalf, of the offer or receipt of a gift or hospitality with a value of £25 or more is a breach of this Protocol and consequently also a breach of the Code of Conduct. An alleged breach of the Code can be the subject of a complaint to the Monitoring Officer or Governance and Ethics Committee which could result in the matter becoming the subject of an investigation.

12. Gifts which are more likely to be considered acceptable

It is the responsibility of the Councillor to decide whether or not to declare gifts and hospitality.

The Council has however agreed that in appropriate circumstances Members of the Council may choose to accept gifts and hospitality in the following circumstances:

- Civic hospitality provided by another authority;
- Modest refreshments offered or received in the ordinary course of duties as a Councillor eg at formal meetings, training or working meetings or when in contact with constituents;
- Tickets for sporting or cultural events which are sponsored or supported by the Council;
- Small gifts of low intrinsic value branded with the name of the company or organisation making the gift (eg pens, diaries, calendars etc);
- Modest souvenir gifts from another public body given on the occasion of a visit by or to that body;
- Hospitality offered or received in the course of an external visit or meeting which has been authorised by the Council. In such cases the arrangements should be made by Officers rather than the Councillors who will be benefiting and hospitality should be commensurate with the nature of the visit; and
- Other unsolicited gifts where it is impracticable to return them or where refusal would in the circumstances cause offence. In such cases the Councillor may wish to pass the gift to the Chairman's Charity.

Offers/receipt of gifts and hospitality of these types are still subject to the requirements of this Protocol regarding the notification to the Monitoring Officer of gifts and hospitality of greater than £25 in value. The appropriateness of acceptance must always be considered beforehand. It must also be noted that the fact that a gift or hospitality does not have to be notified under this Protocol does not necessarily mean that it is appropriate to accept it.

13. Will the register be open to the public?

The register is available to the public in the same way as the register of Disclosable Pecuniary Interests is. It is open for inspection at the Council Offices, Market Street.

Regular updates of declarations will be reported to the Governance and Ethics Committee as part of the quarterly performance monitoring reports.

14. Further assistance

It is each Councillor's own individual responsibility to observe this Protocol, but the Monitoring Officer will help where possible. If a Councillor has any questions at all please contact the Monitoring Officer, Deputy Monitoring Officer(s) or the Democratic and Electoral Services Manager for advice and assistance.

Appendix 1

West Berkshire Council - Councillor's Code of Conduct

Definitions

This appendix provides definitions to some of the words and phrases used in the Code of Conduct and its Appendices.

'Bullying or 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 councillor will be found guilty of bullying when both parties have contributed to a breakdown in relations.)

'Capacity' – a Councillor or Co-Opted Member is acting in their Capacity as such when they are:

- acting as a representative of the Council; or
- participating in a [Meeting](#); or at briefing meetings with officers and members of the public; or
- corresponding with the authority other than in their private capacity.

'Council' means West Berkshire Council.

'councillor' means an elected member of the Council.

'Councillor' means a councillor where they are acting in their Capacity.

'Co-Opted Member' means a person who is not a councillor but who:

- is a member of any committee or sub-committee of the Council; or
- is a member of, and represents the Council on, any joint committee or joint sub-committee of the Council.

'Disclosable Pecuniary Interest' has the meaning given to it in the Act (see Appendix 3).

'Dispensation' has the meaning given to it in Appendix 5.

'Independent Person' means a person appointed by the Council in accordance with the Act who is consulted before the Council makes any decision on an allegation of a breach of this Code.

'Meeting' means any meeting of:

- the Council;

- the executive of the Council;
- any of the Council's or its executive's committees, sub-committees, joint committees, joint sub-committees, task groups, or area committees;

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of councillors.

'Monitoring Officer' means the Monitoring Officer of the Council (*who has the specific duty to ensure that the Council, its Officers, and its councillors, maintain the highest standards of conduct in all they do*).

'Other Registrable Interest' has the meaning given to it in Appendix 3.

'Personal Interest' has the meaning given to it in Appendix 3.

'Relevant Person' has the meaning given to it in Appendix 3.

'Sensitive Interest' has the meaning given to it in Appendix 3.

Appendix 2

West Berkshire Council - Councillor's Code of Conduct

The Ten Principles of Public Life ('the Nolan Principles')

Selflessness

Councillors should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

Councillors should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.

Objectivity

Councillors should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

Councillors should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

Councillors should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal judgement

Councillors may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others

Councillors should promote equality by not discriminating against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

Duty to uphold the law

Councillors should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

Councillors should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.

Leadership

Councillors should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Appendix 3

West Berkshire Council - Councillor's Code of Conduct

Interests

Introduction

Councillors and Co-Opted Members **must** declare any interests that relate to their public duties and **must** take steps to resolve any conflicts arising in a way which promotes openness and transparency, including registering and declaring interests in a manner conforming to the procedures.

There are three types of interest:

- Disclosable Pecuniary Interests
- Other Registrable Interests
- Personal Interests

Councillors should also always consider whether any interest could be seen as being prejudicial to their decision making as a councillor. It is public perception that matters.

1 Disclosable Pecuniary Interests (DPIs)

- 1.1 [Schedule 2 of the Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#) lists the disclosable pecuniary interests specified for the purpose of the Act. This list is in [Appendix 3a](#).
- 1.2 The requirements to register interests apply to either an interest of the councillor or an interest of the councillor's spouse, civil partner or partner. However, the councillor does not have to differentiate between their own or their spouse/civil partner/partners' interests or to name them.

2 How to declare a DPI

- 2.1 Councillors **must** notify the Monitoring Officer of any DPI, within 28 days of taking up office or becoming aware of their interest. As with the Code, the requirement to disclose DPIs applies to Co-Opted Members as well as to councillors.
- 2.2 Any interests **must** also be disclosed at a Meeting if they are relevant to the matters under discussion.
- 2.3 The Act makes participation in such matters a criminal offence if the Councillor has a DPI.
- 2.4 Where, as an Executive Member, a Councillor may discharge a function alone, and they become aware of a DPI in a matter being dealt with, or to be dealt with by them, the Councillor **must** notify the Monitoring Officer of the interest and **must not** take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

3 Other Registrable Interests

- 3.1 Councillors are required by law to register Other Registrable Interests.
- 3.2 An Other Registrable Interest is one which a member of the public who knows all the relevant facts relating to it would reasonably consider that interest is so significant that it is likely to prejudice or influence the councillor's judgement of the public interest.
- 3.3 These relate to:
- (a) any body of which a councillor is a member or in a position of general control or management and to which they are appointed or nominated by their authority;
 - (b) any body exercising functions of a public nature; directed to charitable purposes; or one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which they are a member or in a position of general control or management;
 - (c) any easement, servitude, interest or right in or over land which does not carry with it a right for the councillor (alone or jointly with another) to occupy the land or to receive income.

4 How to declare an Other Registrable Interest

- 4.1 Councillors **must** notify the Monitoring Officer of any Other Registrable Interests, within 28 days of taking up office or becoming aware of their interest. As with the Code, the requirement to disclose Other Registrable Interests applies to Co-Opted Members in addition to councillors.
- 4.2 A Councillor may participate in decision making relating to their Other Registrable Interests to make representations, answer questions or give evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. The Councillor **must** leave the Meeting immediately after making representations, answering questions or giving evidence.
- 4.3 Subject to the Councillor disclosing the interest at the Meeting, they may attend a Meeting and vote on a matter where they have an Other Registrable Interest that relates to the functions of their authority in respect of:
- (a) housing, where they are a tenant of their authority provided that those functions do not relate particularly to their tenancy or lease;
 - (b) school meals or school transport and travelling expenses, where they are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where they are in receipt of, or are entitled to the receipt of, such pay;
 - (d) an allowance, payment or indemnity given to councillors;
 - (e) any ceremonial honour given to councillors; and

- (f) setting council tax or a precept under the Local Government Finance Act 1992.

5 When an Other Registrable Interest becomes a Personal Interest

- 5.1 The Council has many dual-hatted councillors who are also town or parish councillors. Membership of a body exercising functions of a public nature, such as town and parish councils, is an Other Registrable Interest and usually restricts a Councillor's participation in decision making. A Councillor would however be permitted to participate in decision making at Planning Committee meetings because their membership of a town or parish council is unlikely to prejudice or influence the Councillor's judgement of the planning application before the Committee. In this instance the Councillor should follow the rules on how to declare a Personal Interest.
- 5.2 Conversely, there might be times when a councillor's membership of a town or parish council is likely to prejudice or influence the Councillor's judgement of the planning application before the Committee. The Councillor should seek advice from the Monitoring Officer if they are unsure.

6 Personal Interests

- 6.1 A Councillor has a Personal Interest in any decision of their authority where the interest might reasonably be regarded as affecting their well-being or financial position or that of a [Relevant Person](#) to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward
- 6.2 A Relevant Person is:
 - (a) a parent, grandparent, sibling, child, aunt, uncle, cousin (or partner/spouse of any of those people) by birth or by marriage; or
 - (b) any person or body who employs or has appointed a Relevant Person, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom a Relevant Person has a beneficial interest in a class of securities exceeding the nominal value of £25,000.00; or
 - (d) any body of a type described in Other Registrable Interests.

7 How to declare a Personal Interest

- 7.1 Where a Councillor has a Personal Interest in any business of the Council a Councillor needs to disclose to the meeting the existence and nature of that interest when they address the meeting on that business.
- 7.2 Personal interests do not need to be declared to the Monitoring Officer, but Councillors should seek advice if they are not sure what type of interest they have.

8 When a Personal Interest becomes an Other Registrable Interest

- 8.1 As outlined in [the Code](#), a situation may arise where a member of the public who knows all the relevant facts relating to it would reasonably consider that an interest is so significant that it is likely to prejudice or influence the Councillor's judgement of the public interest. In that circumstance their interest would be considered to be an Other Registrable Interest.

- 8.2 A Councillor would have an Other Registrable Interest in a planning application that their parent had submitted because that Relevant Person is likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward or parish. A DPI would not cover this aspect as they relate to Councillor and their spouse/partner only. The existence of a close family tie would mean that the public might consider that it would prejudice the Councillor's view when considering the application.
- 8.3 In this instance the Councillor should follow the rules on how to declare an Other Registrable Interest.

9 Interests arising in relation to overview and scrutiny committees

In any business before an overview and scrutiny committee of the council (or of a sub-committee of such a committee) where:

- (a) that business relates to a decision made (whether implemented or not) or action taken by the executive or another of their authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, they were a member of the Executive, committee, sub-committee, joint committee or joint sub-committee they were present when that decision was made or action was taken,

a Councillor may only attend a meeting of the overview and scrutiny committee for the purpose of answering questions or giving evidence relating to the business, and they **must** leave the room where the meeting is held immediately after making representations, answering questions or giving evidence. The Councillor should not stay in the meeting for the purposes of taking part in the committee's general debate.

10 Register of Interests

The Council will maintain a register of councillors' interests, and make it available to the public on their website.

11 Sensitive Interests

- 11.1 Where a councillor is concerned that the disclosure of the details of an interest (whether a DPI or Other Interest which the councillor is required to disclose) at a Meeting or on the Register of Members' Interests, and such disclosure would lead to the councillor or a person associated with them being subject to violence or intimidation, the councillor may request the Monitoring Officer agree that such interest is a Sensitive Interest.
- 11.2 If the Monitoring Officer agrees that the interest is a Sensitive Interest the councillor **must** still disclose the existence of the interest at a relevant Meeting but the councillor is not required to provide the details of the Sensitive Interest during the meeting. The Monitoring Officer shall also exclude the details of the Sensitive Interest from the published version of the Register of Members' Interests.

Appendix 3a

West Berkshire Council - Councillor's Code of Conduct

Prescribed Definitions for Disclosable Pecuniary Interests

The following table replicates [Schedule 2 of the Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#) and gives the prescribed definitions for Disclosable Pecuniary Interests.

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the relevant period in respect of any expenses incurred by a Councillor in carrying out duties as a member, or towards the election expenses of a councillor. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the Councillor's partner/ spouse (or a body in which the Councillor's partner/ spouse has a beneficial interest) and the Council— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.
Corporate tenancies	Any tenancy where (to the Councillor's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the Councillor's partner/ spouse has a beneficial interest.

<i>Subject</i>	<i>Prescribed description</i>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to the Councillor’s knowledge) has a place of business or land in the area of the Council; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the Councillor’s partner/ spouse has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

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Appendix K

Social Media Protocol for Councillors

1. Background

- (a) The Scheme was approved at the full meeting of West Berkshire Council on 12 December 2013 and is available on the Council's website.
- (b) The scheme will be reviewed in December 2016 or such earlier time as may be required.
- (c) The purpose of the protocol is to ensure that Councillors make use of social media effectively whilst avoiding potential accusations that they may be breaching the Council's Code of Conduct. It is also designed to ensure that the reputation of the Council is not adversely affected and that the Council is not subject to legal challenge as a result of information posted on social networking sites or blogs.
- (d) Advice on the use of social media can be sought from different departments across the Council but enquiries should in the first instance be directed to the Head of Strategic Support, West Berkshire Council, Market Street Offices, Market Street, Newbury, RG14 5LD.

2. Application

- 2.1 This protocol applies to you as a Member of this Council when you are acting or purporting to act in your role as a Member and you have a responsibility to comply with the provisions of this protocol. The protocol should be read in conjunction with the Members Code of Conduct (Appendix H to Part 13 Codes and Protocols of the Council's Constitution).
- 2.2 Bear in mind the Code of Conduct when you blog, use social networking sites or any other digital content publication service. You should pay particular attention to the following paragraphs of the Code:
 - Disrespect;
 - Bullying;
 - Disclosure of confidential information;
 - Disrepute;
 - Misuse of authority resources.
- 2.3 It is difficult to give definitive advice on the application of the Code of Conduct as each blog and social networking page is different. The content of a blog or other social networking tool and the circumstances surrounding its creation will determine whether or not it might be covered by the Code of Conduct. There are however two general rules that councillors should bear in mind when deciding on whether to publish content:

- (1) Only publish what you would say verbally in public, even in an informal discussion, when representing the Council.
 - (2) Only publish what you could defend in court if asked to do so.
- 2.4 Ethical use of online social media is not limited to what is covered in the Code of Conduct. Councillors are encouraged to respect the Seven Principles of Public Life as set out in section 28(1) of the Localism Act 2011 which can be found at paragraph 2.2 in the Members Code of Conduct (Appendix H to Part 13 Codes and Protocols of the Council's Constitution). While your conduct may not be a breach of the Code it may still be viewed as less than exemplary and attract adverse publicity for your office and the Council.

3. Associated Policies

- 3.1 This protocol should be read in conjunction with the Members Code of Conduct (Appendix H to Part 13 Codes and Protocols of the Council's Constitution), the Council's ICT Policy, the Council's Equalities Policy, the Local Authority Code of Publicity under the Local Government Act 1986. The Council's Social Media Guidelines and Social Media Guidance can be found on the Council's website.

4. Introduction

- 4.1 All Members of the authority are required to act in accordance with the Members Code of Conduct whilst acting in their official capacity. Blogging and social networking are effective methods for councillors to interact with constituents and support local democracy. Used effectively, they can engage those who would not normally have access to local councillors and politics.
- 4.2 However it is not always clear whether such activities are covered by the Code of Conduct. This guide is intended to assist councillors in complying with the Code and ensuring that the use of online media is well received. You should think about what you say and how you say it, in just the same way as you must when making statements in person or in writing. You will also need to think about whether you are seen to be, or give the impression that you are acting in your official capacity as a councillor.
- 4.3 If you do give the impression that you are acting in your official capacity whilst blogging or using social media, such activity may be subject to the Code of Conduct. Individual councillors are permitted to write their own official blogs as Members of West Berkshire Council but in these they must conform to the protocols of the Council. If you have a private blog you must bear in mind that if you refer to council business in it, you may be viewed as acting in your official capacity. To make sure you comply with the Code of Conduct, you are requested to observe the following guidelines:

You should:

- consider whether you need to set appropriate privacy settings for your blog or networking site – especially if you have a private, non-political blog;
- keep an eye out for defamatory, untrue or obscene posts from others on your blog or page and remove them as soon as possible to avoid the perception that you condone such views and to prevent any potential libel action being taken against you;

- act in accordance with the Council’s Equality Policy
- 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;
- be careful about being ‘friends’ with service users who are vulnerable adults or children, as this could be regarded as a safeguarding issue;
- ensure you use Council facilities appropriately; and be aware that any posts you make using Council facilities will be viewed as being made in your official capacity and/ or an inappropriate use of Council resources;
- be aware that by publishing information that you could not have accessed without your position as a councillor, you will be seen as acting in your official capacity;
- make political points, but be careful about being too specific or personal if referring to individuals. An attack on individuals may be seen as disrespectful, whereas general comments about another party or genuine political expression is less likely to be viewed as disrespect.
- consider that English Law allows actions for libel to be brought in the High Court for any published statements alleged to defame a named or identifiable individual or individuals. Blogging, social media and other forms of digital content publication are covered by the libel laws.

You should not:

- blog, tweet or network in haste;
- place images or text on your site from a copyrighted source (for example extracts from publications or photos) without permission;
- post comments that you would not be prepared to make in writing or face to face;
- use Council facilities for personal or party political blogs;
- refer in a blog to any information identified by the Council as confidential or exempt;
- disclose information given to you in confidence by anyone or information acquired by you which you believe or are aware is of a confidential nature;
- publish personal data of individuals unless you have their express written permission to do so;
- give the impression that you are expressing the views of the Council where it is not appropriate to do so;
- use online accounts and digital publishing services associated with a specific council office if you no longer hold that office, or during Purdah;

- if you are involved in determining planning or licensing applications or other quasi-judicial decisions, publish anything on your blog that might suggest you do not have an open mind about a matter you may be involved in determining.

5. Derogatory comments

- 5.1 On occasion, councillors might find themselves the subject of offensive or defamatory remarks on other people's blogs or networking sites. The following approach is advised in such circumstances, and applies equally to any form of publication:
- 5.2 Pursue a policy of indifference to such remarks, but if you do wish to respond, do not be tempted into retaliation because you may risk breaching the Code. You could ask the blog owner/person making the remarks to remove them from the site.
- 5.3 If the person making the comments is a local authority, town or parish councillor, discuss the situation with the Monitoring Officer. It might be the case that the person has breached the Code of Conduct by making the remarks, and it could be appropriate to make a complaint to the Governance and Ethics Committee.
- 5.4 Aside from any possible breaches of the Code of Conduct, the matter is usually deemed private between yourself and the individual. The Council cannot provide legal assistance for pursuit of a claim through the civil courts, but you may decide that you wish to take independent legal advice.

6. Use of Social Media During and after Council Meetings

- 6.1 Members are permitted to use social media for the reporting of proceedings of public Council meetings. If Members wish to use social media during meetings they should inform the Chairman who will make it clear to any members of the public attending that this activity is permissible. Members will need to consider whether using social media may distract them from participating and understanding information that is being shared at the meeting prior to a decision being made.
- 6.2 Councillors should however switch their mobile phone or other equipment to silent mode, so that no disruption is caused to proceedings. If, at a meeting, a Member's use of an electronic communication device is causing proceedings to be disrupted any Member may move that the Member should desist from using the device. If the motion is seconded it should be put to the vote without discussion. Members wishing to record (whether in an audio or visual format) meetings will need to do so in accordance with Appendix A to Parts 4 (Council Rules of Procedure), 5 (Executive Rules of Procedure), 6 (Overview and Scrutiny Rules of Procedure) and 7 (Regulatory and Other Committees Rules of Procedure).

NDC2/18

**Complainant: Thomas Tunney on behalf of Newbury Constituency Labour Parties
Executive Committee**

Subject Member: Dominic Boeck

Cllr Boeck has expressed opinions regarding transgender people, in this case embodied by Eddie Izzard, whose profile has increased by election to the Labour Party NEC. These opinions have been expressed publicly on Cllr Boeck's social media account (Twitter) and refer 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.

I have provided screenshots with the offending posts highlighted.

The first (Marked as A) offers endorsement of the view that Mr Izzard's capability as a politician is directly related to his chosen gender identity. The retweet offers no other context than two photographs of Mr Izzard. No comment is made as to his actions, policies, political record, beliefs or opinions.

This is an attack based purely on the way Mr Izzard defines himself and infers a connection between objective "weakness" and Mr Izzard's gender identity and sends an appalling message to transgender residents and staff, stating that transgender individuals are less capable or "weaker" than those who do not identify as such. It is my view that Mr Izzard should in fact be celebrated as an exemplar, regardless of political orientation.

The second post in the same screenshot adds a rejoinder to the comment by "@timothywookey" that Mr Izzard would be rejected by voters on account of his status as a "cross dressing transvestite" [sic] - the rejoinder offered by Cllr Boeck is that "And he's not even funny!". Clearly the tone of the original post is sarcastic and identifies the reason for Mr Izzard's (speculative) failure to connect with "working class blue collar workers in the north" partly on his gender identity. Cllr Boeck clearly conveys his support for the underlying point by using the rejoinder - he is augmenting the post rather than taking issue with it. The irony is not lost that Cllr Boeck's directly preceding post decries antisemitism and discrimination against Jewish people based on publicly-available posts on social media.

The second screenshot (Marked as B) retweets an opinion offered by the "BrexitTory_" account that clearly equates transgender identity with mental disorder in the context of a news story about an individual that was asked to leave a lecture hall in the US for claiming there were only two genders. Cllr Boeck does not offer any advisory text on his Twitter profile that "retweets do not equal endorsement", so I must conclude that he supports the view that transgender people are mentally ill, contrary to medical evidence, common sense and basic human empathy.

I cannot understand how a major employer can be seen to be taking their responsibilities under the Equality Act 2010 seriously when elected members of the Council publicly express endorsement for opinions that are deliberately designed to undermine transgender people and paint them as mentally ill, worthy of ridicule simply by dint of their appearance, or otherwise less capable than those who are not.

Clearly, this behaviour also falls short of the members Code of Conduct in Part 13 of the Council Constitution that draws attention to the Nolan principle of Respect for others, namely "Councillors should promote equality by not discriminating against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability."

Further, Appendix H clearly states that "Councillors and Co-Opted Members must not engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation."

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Dominic Boeck Retweeted



Rod Bishop @rodbishop15 · Apr 1

Just when you think Labour couldn't be anymore ridiculous they bring in Eddie Izzard to the top table. He'd rough Putin up as Foreign Secretary and most definitely seal our borders to keep undesirables out. Ffs 🤡🤡🤡



142 291 507



Dominic Boeck @dominicboeck · 35m

And he's not even funny!

Tim @timothywookey

People say #eddieizzard will help reconnect labour with its supporters. I couldn't agree more, if a pro European, cross dressing transvestite with a 20 million fortune can't connect with working class blue collar workers in the north then something's not right.

1



Dominic Boeck @dominicboeck · 38m

This man holds appalling views.



#LabourAntisemitism @GnasherJew

This is Roy, Roy is a holocaust denier & virulent antisemite. Roy has been selected as a council candidate for @twlabour His repulsive posts are public, yet @UKLabour

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Tweets

Tweets & replies

Media

Likes



BBC Newsnight

136

1,450

963



Retweeted by Dominic Boeck



BrexitTory @BrexitTory_ · 16 Mar

There are two genders but three options;

1 Male

2 Female

3 Mental Disorder

You're welcome.

Feminist Professor Ejects Student from Class for Stating There are Only Two Genders



Feminist Professor Ejects Student from Class for Stating There are Only Two Genders

markpantano.com

53

238

456



Retweeted by Dominic Boeck



Britain Elects @britainelects · 16 Mar

Theresa May has responded to the Salisbury incident...

Well, 52%

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To the Monitoring Officer and Independent Person

Thank you for the opportunity to respond to the complaint lodged against me that I have breached the Council's code of conduct for members in that I expressed opinions regarding transgender people and in doing so have engaged in bullying or intimidating behaviour.

SUMMARY

The only opinion that I expressed was that I do not find Eddie Izzard funny, which is not in any way bullying or intimidating. The complaint claims that in retweeting with or without comment posts made by others I expressed opinions whereas my intention was to bring to the attention of those in my informal network opinions and news items of interest.

RETWEET MARKED AS B IN THE COMPLAINT

The complaint refers to two retweets, one that I posted without comment and one that I posted with a comment. The first retweet interested me because the main part of the thread referred to a case where a professor told a student to leave her class because the student had expressed the opinion that there are only two genders, male and female. This disturbed me because I believe that freedom of speech for students in many universities is being threatened by an unwillingness of student bodies and leaders to entertain concepts and opinions with which they do not agree. Examples of this are the no-platforming of Germaine Greer by student unions in some UK universities and in February the disruption with aggressive and intimidating behaviour of a talk by Jacob Rees-Mogg at the University of the West of England. In retrospect, I realised that I should have taken more care in retweeting and that I should have removed the last post in the thread that contained comments unacceptable to me and to others. The complaint states that in retweeting I endorsed the characterisation of transgender people as mentally ill and this I reject.

RETWEET MARKED AS A IN THE COMPLAINT

The second retweet related to a light-hearted comment on Eddie Izzard's ability to reconnect the Labour party with its traditional supporters which referred to his pro-European opinions, his transvestism and his substantial fortune. Taken at face value the tweet indicates that its author believes Eddie Izzard will be successful but his tone belies that. The complaint states that the author's scepticism reflects opinions on the capability of transgender people whereas it simply sets out what all who seek elected office soon discover – that different constituencies are influenced in different ways by different individuals. The complaint goes on to make much of the original tweet's reference to Eddie Izzard's transvestism and links that to my supposed negative personal view of transgender people's abilities. As a comedian, I do not find Eddie Izzard particularly funny but I have no doubt that he portrays a very positive image of transgender people through his heroic sequences of daily marathon runs for charity and his public persona as a man who wears glamorous feminine clothes and makeup. There is much to admire about him.

APOLOGY

I do not hold the views that the complainant attributes to me. I strongly believe that all people deserve to be respected for who they are, whoever they are. After I learnt that I had caused offence to some I resolved to clarify my personal views and on 9 April in two tweets I tweeted the following:

I resolve to look closer at tweets before I retweet them and I regret any offence I may have given in this way. I absolutely do not believe that anyone with gender issues is mentally ill. I do believe without doubt that people of any gender and sexual orientation must be respected and I will make sure that my behaviour online and off reflects that.

SUPPORT

I received supportive comments for these last tweets through Twitter from Newbury Labour Party and private individuals. In comments made to the Newbury Weekly News and included in an article in the paper, Richard Benyon MP stated that I am an “honourable man”. A previous Labour Party Parliamentary candidate for Newbury wrote the following to me through Messenger:

Hi Dominic. Saw the NWN stuff about the Twitter thing and I wouldn't worry about it. People in Newbury know that you are not a bad person, and obviously political people will make more of this than what it actually is. Keep up the good work.

CONTEXT

I presently have 126 followers. **BrexitTory** and **Tim**, whose tweets I retweeted, have 24,900 and 20,300 followers respectively.

Twitter is a fast moving informal platform that allows users to consume a wide range of news, stories and opinions. Some users express truly offensive opinions, on the right and left of the political spectrum, as well as threats of violence and real intimidation. By contrast, while some may have found my retweets unpalatable I have struggled to find evidence that anyone felt bullied or intimidated by them.

I have not found any direct responses to my retweets other than an initial one from the Newbury Labour Party. After that came retweets and likes from four political organisations and twelve individuals, that I have seen. All the individuals are politically active and included the complainant, Thomas Tunney, who tweeted “let’s unseat this Tory”.

Initial Assessment of Complaint – NDC2/18

Complaint

On 30 April 2018, the Monitoring Officer (Sarah Clarke) and Independent Person (Lindsey Appleton) of this Authority considered a complaint from Mr Thomas Tunney on behalf of Newbury Constituency Labour Parties Executive Committee concerning the alleged conduct of Councillor Dominic Boeck, a member West Berkshire Council.

A general summary of the complaint is set out below:

Mr Tunney alleges that Councillor Boeck had expressed negative opinions regarding transgender people (specifically Eddie Izzard) 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.

Potential breaches of the Code of Conduct identified

The following potential breaches of the Code of Conduct were discussed:

General Obligations:

- 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 the 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.

* **Bullying or 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 councillor will be found guilty of bullying when both parties have contributed to a breakdown in relations.)*

Nolan Principles:

- **Respect for others** - Councillors should promote equality by not discriminating against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.
- **Leadership** - Councillors should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Social Media Protocol for Councillors

Paragraph 2.2: Members should pay particular attention to the following paragraphs of the Code of Conduct when they blog, use social networking sites or any other digital content publication service:

- Disrespect;
- Bullying.

Paragraph 2.3: Members should only

- publish what they would say verbally in public, even in an informal discussion, when representing the Council.
- publish what they could defend in court if asked to do so.

Paragraph 4.2: Members should think about what they say and how they say it, in just the same way as they must when making statements in person or in writing. Members will also need to think about whether they are seen to be, or give the impression that they are acting in their official capacity as a councillor.

Paragraph 4.3: If Members do give the impression that they are acting in their official capacity whilst blogging or using social media, such activity may be subject to the Code of Conduct. If they have a private blog they must bear in mind that if they refer to council business in it, they may be viewed as acting in their official capacity.

Paragraph 4.3: Members should

- keep an eye out for defamatory, untrue or obscene posts from others on their blog or page and remove them as soon as possible to avoid the perception that they condoned such views and to prevent any potential libel action being taken against them;
- be aware that the higher their profile as a councillor, the more likely it is they will be seen as acting in their official capacity when they blog or network;
- make political points, but be careful about being too specific or personal if referring to individuals. An attack on individuals may be seen as disrespectful, whereas general comments about another party or genuine political expression is less likely to be viewed as disrespect.
- consider that English Law allows actions for libel to be brought in the High Court for any published statements alleged to defame a named or identifiable individual or individuals. Blogging, social media and other forms of digital content publication are covered by the libel laws.

Paragraph 4.3: Members should not:

- post comments that they would not be prepared to make in writing or face to face;
- use Council facilities for personal or party political blogs;

Decision

In accordance with the Localism Act 2011, following the initial assessment the Monitoring Officer, in consultation with the Independent Person, is able to decide on one of the following four outcomes:

1. the complaint will be investigated fully by an independent investigator;
2. no further action will be taken on your complaint;
3. some form of informal resolution will be sought;
4. the matter will be referred to the Director of Public Prosecution or the Police where it is suspected that some form of criminal conduct has occurred in relation to interests that have not been disclosed.

The Monitoring Officer in consultation with the Independent Person has 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.

It was noted that in order for a complaint to be deemed valid it should be satisfied that the complaint meets the following tests:

1. it is 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 may be more likely that he will 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.

In considering the complaint the Monitoring Officer in consultation with the Independent Person had regard to West Berkshire Council’s Code of Conduct, West Berkshire Council’s Social Media Policy for Councillors, the information submitted by the complainant and the information submitted 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.

What happens now?

Investigation

The Monitoring Officer will appoint an external investigator to undertake an investigation on behalf of the Governance and Ethics Committee. The Council will notify the complainant and subject member of the details of the investigator who will contact them in due course to arrange an interview with them. In addition the investigator may wish to interview additional witnesses. All information provided to the Governance and Ethics Committee already will be given to the investigator. You may wish to consider whether there is any additional information you would want them to consider.

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 Equality Act 2010.

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

West Berkshire Council is committed to promoting and demonstrating fairness and equality of opportunity. We will ensure that no one is treated less fairly on the grounds of age, disability, gender, gender identity, marriage/civil partnership, pregnancy/maternity, race, religion/ belief, sexual orientation, or on any other grounds, as set out in legislation, which cannot be justified.

If you require this information in a different format, such as audio tape, or in another language, please ask an English speaker to contact Moira Fraser on Telephone 01635 519045, who will be able to help.’



Signed **Date**

Monitoring Officer:.....

Signed **Date**

Independent Person.....

EJHLEGAL

Standards Investigation at West Berkshire Council NDC 02 - 18

A report for the Monitoring Officer at West
Berkshire Council

Elizabeth Howlett, Solicitor
June 2018

A report investigating a complaint made by Mr Thomas Tunney. The complaint is about an alleged breach of the Code of Conduct of West Berkshire Council by failing to treat members of the public with courtesy and respect and by engaging in bullying or intimidating behaviour (or behaviour which may be regarded as such). The allegations are made against Councillor Dominic Boeck and concern the retweeting of messages on Councillor Boeck's social media account which referred to a generalized opinion of a transgender individual's merits, contribution and ability as well as endorsing the characterisation of transgender people as mentally ill.

Background

I have been asked by the Monitoring Officer at West Berkshire Council to investigate the following matters:

1. Was Councillor Boeck acting, claiming to act or giving the impression of acting in his capacity as a councillor?
2. Did Councillor Boeck make the comment, retweet the comments, using resources issued to him by the Council?
3. Was the social network activity deemed to be disrespectful, bullying and/or intimidation?
4. Did Councillor Boeck fail to adhere to any regulations pertaining to equality?

On 30th April 2018 the Monitoring Officer in consultation with Lindsey Appleton, the Independent Person for West Berkshire Council, considered the assessment of the complaint. The conclusion was that, 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 the Code of Conduct. An investigation was necessary to establish the facts before deciding if the Code of Conduct had been breached.

In order to undertake this investigation, I have interviewed Councillor Boeck and the complainant. I have also considered the social media postings that are the subject of this complaint and have had regard to West Berkshire Council's constitution including the Social Media Protocol for Councillors. I would like to thank both Mr Tunney and Councillor Boeck for their cooperation.

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.”

Summary

Social media poses a specific challenge when determining if a councillor is acting as a councillor. The informality of it makes it less clear cut. If Councillor Boeck had been a backbencher my finding would have been that he was not acting in his capacity as a councillor. He did not claim to be a councillor and the subject matter of the message was not council business. However, Councillor Boeck is not a backbencher. He is a member of the Executive and therefore has a higher profile and a position of very specific responsibility and trust in the community. Although he did not hold himself out as a councillor his comments concerned an area that is a function of the Executive. One of the social media posts was, by his own admission, disrespectful and consequently I do consider that he was in breach of the Code of Conduct in respect of that posting.

The complaint

Mr Tunney submitted this complaint as a representative rather than as an individual member of the public. A private individual had come forward to discuss it with the Executive Team at the Labour party. This person wished to remain anonymous. Mr Tunney provided other examples of inappropriate social media behaviour by Councillor Boeck. His complaint includes the point that those incidents mentioned in the complaint were not ‘one-offs’. Mr Tunney commented that a lot of the problem stems from the people Councillor Boeck follows on twitter rather than original comments made by Councillor Boeck himself. Mr Tunney is particularly concerned by the fact that Councillor Boeck has taken on an important role that involves the oversight of mental health given the comment he retweeted.

Within two hours of the complaint being submitted Councillor Boeck had put a disclaimer on his twitter account saying that ‘retweeting did not imply endorsement’. Without any comment challenging what was being re-tweeted Mr Tunney questioned what else it could be but endorsement?

Whilst Mr Tunney said that he was horrified on a personal level at the retweets he was a very busy man and would not have complained as a private individual. There had been a complaint in writing. There had been a number of complaints on Labour’s Facebook page and Mr Tunney had also heard complaints from within the local

Conservative Party. He acknowledged that Councillor Boeck had been quiet on twitter recently.

The Social Media activity

The complaint cited two threads on twitter. The first concerned the endorsement of a view that Mr Eddie Izzard's capability as a politician is directly related to his chosen gender identity. The complaint is that there is no context so the message is that the 'weakness' of Mr Izzard is connected to his gender identity. In the second post (where Councillor Boeck added "And he's not even funny") the complaint is that this conveys support for the underlying point in that Councillor Boeck is augmenting the post not taking issue with it.

Councillor Boeck countered that the comment on Eddie Izzard was not about gender identity but about different constituencies being influenced in different ways by different individuals. It was a political comment.

The second thread was a news story about an individual in the US asked to leave a lecture hall for claiming there were only two genders. Mr Tunney believed it was offensive to equate transgender with mental illness. On this second post Councillor Boeck acknowledged that he should have taken more care. He had not realised that he was retweeting a comment about the mentally ill. He did not agree with the comment and he did not support it. It had been careless of him and it had been done in haste. The retweets were taken down within a day or two following advice that he had received that they were likely to offend some people.

Councillor Boeck said he had a very small twitter following (124) and generally followed and retweeted others rather than creating tweets himself. He had not appreciated that there was any problem until what he had sent was retweeted by Newbury Labour Party and by the local Green Party and Momentum. He felt all had a political point to make.

Councillor Boeck stands by the apology he made on 9th April. He has used twitter very little since and intends to use it only in his capacity as a councillor in the future. He said that he will make clear in his profile that he is a councillor.

The legal position

There are two important legal cases on the issue of the use of twitter.

McAlpine v Bercow [2013] EWHC 1342 (QB) (24 May 2013)

Sally Bercow was sued for defamation because of a tweet asking why Lord McAlpine was trending with an*innocent face*. The court stated that Twitter permitted users to express themselves in tweets of no more than 140 characters [at that time]. Tweets were used in a similar way to ordinary conversation. People tweet descriptions of what they are doing, or would like to do, jokes and gossip, and comments on people

or topics at large, and anything else they want to say. They tweet using conversational words and expressions.

The tweet that Sally Bercow sent was not a publication to the world at large, such as a daily newspaper or broadcast. It was a publication on Twitter. The hypothetical reader must be taken to be a reasonable representative of users of Twitter who follow Sally Bercow. A significant number retweeted the tweet to their own followers. The fact that the Defendant's followers used Twitter implied that they liked to be up to date with such matters. The finding of the court was that Sally Bercow had defamed Lord McAlpine by the words she used. This verdict has been treated as an important statement about Twitter. It confirmed that Twitter is a powerful and potentially dangerous weapon. It is more like a broadcast than an email and Twitter is subject to the law of defamation. Sally Bercow herself said: "Today's ruling should be seen as a warning to all social media users".

Jack Monroe v Katie Hopkins [2017] EWHC 433 (QB)

The perils of Twitter, even where tweets are swiftly deleted, were also examined in the High Court when food blogger Jack Monroe sued the columnist Katie Hopkins.

Monroe was awarded £24,000 plus costs in the case. However, Mr Justice Warby also ordered Hopkins to pay an initial £107,000 towards Monroe's legal costs within 28 days. The case confirmed that a tweet can be defamatory even if it is only sent initially to 140 followers and it is deleted within two and a half hours. That is enough time for it to be re-tweeted, viewed on a home page and picked up in mainstream media. The size of the following and the transient nature is irrelevant.

Hopkins had erroneously tweeted that Monroe approved of the vandalism of war memorials, after mistaking her for the journalist, Laurie Penny, who had expressed support for the vandalism. Monroe, who is from a military family, responded with an angry denial. Monroe said she would sue but offered to settle for a £5,000 donation to her chosen charity, Migrant Rescue. Hopkins, who had previously expressed controversial views on migrant issues, did not take up the offer. Hopkins later deleted the first tweet but also tweeted a derogatory statement comparing Penny and Monroe.

Warby J held that the tweets had caused Monroe "real and substantial distress". He said the second tweet, by implication, suggested that Monroe also condoned the vandalism.

He examined the "principles applied to Twitter", including that a tweet that is said to be libellous may need to be read as part of a series of tweets forming part of a "multi-dimensional conversation".

Rather than engaging in an “elaborate analysis” of a 140-character tweet, he held that the courts should adopt an “impressionistic approach” that takes into account “the whole tweet and the context in which the ordinary reasonable reader would read that tweet”.

Warby J also pointed out the difficulties of disclosure in Twitter cases — the first tweet was deleted, which meant the Twitter Analytics were not available, and Monroe’s Twitter records were deleted. This highlighted, in the Twitter context, the importance of retaining and preserving material that may become disclosable.

There is also a case on the issue of when a councillor is acting in the capacity of a councillor:

McTigue v Middlesbrough Council (2009) APE 0421 (a decision of the former Adjudication Panel for England) concerns blogging. When Councillor McTigue posted on a forum as "Indie" it was considered that ‘everyone knew’ she was a councillor despite the lack of identification as a councillor in her user name.

Conclusion

To address the specific questions asked by West Berkshire Council:

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.

Councillor Boeck apologised on 9th April 2018. He also added a disclaimer to his account that retweeting does not imply endorsement. Mr Tunney, the complainant, did not accept the apology as being sincere. The two do not know each other. The complainant is making his assumptions based on what he knows of Councillor Boeck from his twitter account. Councillor Boeck has made the point that others, including

Newbury Labour Party, accepted his apology graciously (on 10th April it welcomed the change of heart and looked forward to his future contributions to the social media debate).

I do not accept that a disclaimer saying that 'retweeting does not imply endorsement' is convincing if you retweet without any comment. What else are you doing if you retweet without comment other than endorsing the comment you are forwarding? Why would you forward it if you did not agree with it? If you forward it with a comment about how outrageous the comment is that is different but forwarding with no comment cannot imply anything other than endorsement.

I do not think Councillor Boeck had any idea of the reaction that his actions would cause. I believe it came as a complete shock to him. The problem, as Councillor Boeck himself said, is that twitter is a fast-moving platform that allows consumers to consume a wide range of views. There are very offensive views out there. Society as a whole is struggling with the impact of social media. Consequently, the law itself is having to evolve to deal with it. However, the legislation is clear and the case law is clear. Twitter might well be transitory and it can be very informal but the law still applies to it as does the Code of Conduct.

I do consider Councillor Boeck's apology to be genuine and that is to be welcomed as is the clear indication he gave that he now appreciates the impact of what he does on social media.

Date: 5 July 2018 at 11:26:09 BST

To: Lindsey Appleton <lindseyappleton@hotmail.co.uk>

Subject: Re: 04 letter with Draft investigators report - sm

Hello Moira,

Many Thanks for sending this through.

My only comment would be that I feel this is a thorough investigation with balanced conclusions. There is also enough evidence here to justify the decision to undertake the investigation as discussed.

If you need anything further, just let me know.

Kind Regards

Lindsey

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Dear Moira

I have read your letter and the report, as attached, and I understand the next steps. Please relay the following statement to the Panel.

I was brought up always to treat others with respect and I have always tried my best to do so. When there have been occasions, hopefully rare, in my long life when I failed in this regard I am sure that this has never been wilful or with malice, rather it has been through misunderstanding. This is exactly what happened when I inadvertently retweeted an unfortunate and wrong comment made by someone else. I should have taken more care, I have done since and will continue to.

Thank you and regards

Dominic Boeck
Ward Member for Aldermaston
Executive Member for Health and Wellbeing
West Berkshire Council
07956 546506
Dominic.Boeck@westberks.gov.uk

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Newbury CLP Executive Committee's response to complaint report into Cllr Boeck's use of social media by Ms Howlett, Solicitor
FAO Advisory Panel, West Berkshire Council (WBC)

This response discusses Ms Howlett's conclusions in light of the four questions raised. We concur with several points and consider the report to be thoughtful and rigorous, particularly with reference to the legal precedents. We differ with one of Ms Howlett's conclusions (3, point 1) and we place a different degree of importance on issues raised in (1) and (4).

We draw not only on WBC's standards described in the councillors' Code of Conduct as Ms Howlett has done, but also on WBC's own Joint Strategic Needs Assessment (JSNA) of Lesbian, Gay, Bisexual and Transgender people, who are recognised by the WBC as a vulnerable group. The JSNA draws on evidence that describes the "numerous inequalities in the health and wellbeing of LGBT people compared to the general population as well as inequalities in health and social care service access and provision" (JSNA, 2016)¹. Its purpose is to map the LGBT population in West Berkshire, highlight where health inequalities exist, and recommend how WBC with its partners might be the driving force in eradicating such inequality. The JSNA asserts "it has been demonstrated that commissioners and providers of health and social care services fail to recognise LGBT communities which serves as a barrier to service access"². We want to draw the JSNA to the attention of the Advisory Panel for two reasons.

First of all we realise there is no reason why the councillors who are part of the Advisory Panel - whether District, Town or Parish - should have any specialist knowledge of the particular social or health needs of people who identify as LGBT or any specialist mental health knowledge, even if they are part of the Health and Wellbeing Board. The JSNA is helpful in stipulating WBC's stated duties towards West Berkshire's LGBT residents and is based on research evidence.

Secondly, during the period of time since we brought the complaint, Cllr Boeck has been appointed to lead the portfolio for Health and Wellbeing and now chairs this important committee. We infer that he has been judged by his peers to be equipped to push forward WBC's LGBT health strategy. We want his peers on the Advisory Panel to know that in our view, however much, and however genuinely Cllr Boeck regrets his social media behaviours, it is those

¹ <https://info.westberks.gov.uk/CHttpHandler.ashx?id=43227&p=0>

² Williams et al (2013) in WB JSNA

behaviours and the underlying attitudes – and as result of his tweets, the public’s awareness of those attitudes - that rule him out of being suitable to take forward this important agenda. Of course people may learn and change their views over time, and we would support Cllr Boeck wholeheartedly in any developmental activities he is engaged in. However the Chair of the Health and Wellbeing Board ought properly to be someone all sections of the community can have confidence in and look to for leadership; someone who is attuned to and able to challenge discriminatory attitudes in others. It ought not to be someone who needs some re-training.

We also want to say a word about Cllr Boeck’s stated goal (May 2018) to “make mental health a priority”³, in his role as Portfolio Holder for Health and Wellbeing (H&WB). While such good intentions are admirable, his conflation of, and possible confusion around, the relationship between mental health disorders and transgenderism in his tweets introduces significant risks: to both WBC’s credibility – imagine a scenario where someone complaining about their treatment discovers the previously-held views of the H&WB Board’s Chair - and to the health and wellbeing needs of the residents of West Berkshire. If Cllr Boeck continues to put himself forward as a kind of ‘champion’ of people with mental health disorders who has some knowledge of the topic, while having publicly and so recently had to apologise for his offensive tweets, then it is possible that not only will West Berkshire residents not believe or trust his words, but will see his ‘championing’ as somewhat cynical, self-serving and even highly selective. They may come to think that there are the ‘right’ kinds of mental health problem – work related stress for example – and the ‘wrong’ sort, such as the anxiety, fear and shame that stems directly from discriminatory and stigmatising attitudes and have been shown to lead to suicide and suicide attempts (see for example Williams [2017]⁴, one of many such studies). Anyone who has experience of mental health issues knows that feeling excluded or marginalised *within an already marginalised and stigmatised group* is deeply isolating and very harmful to health. Fear of being judged within health services and by those in leadership roles is one of those very barriers to accessing services the JSNA refers to.

So with that as our contextual statement, we move on to the specific recommendations of the solicitor.

³ <http://info.westberks.gov.uk/index.aspx?articleid=35257>

⁴ Williams, A. (2017) Risk factors for suicide in the transgender community, *European Psychiatry*, 41, pp S1 – S910 <https://www.sciencedirect.com/science/article/pii/S0924933817318357>

1. Was Councillor Boeck acting, claiming to act or giving the impression of acting in his capacity as a councillor? Ms Howlett concludes that Cllr Boeck *gave the impression that he was acting in his capacity as a councillor* even though she accepts he may not have intended that. We agree that he gave the impression that he was acting in his capacity as a councillor, and would go further and say that's because being elected, as councillor, by the people to a public, vocational, largely autonomous role brings 24/7 responsibilities; it is not a compartmentalised, salaried or regulated 'job'. Like Ms Howlett we consider the council-related tweets to be pivotal to the identity he promoted on Twitter but we also consider councillors in general to undertake the responsibilities entrusted to them, that rely on good character and integrity, trustworthiness, judgement and sense of fair-play. So we place less importance on whether he explicitly claimed in his biography to be a councillor or not. He used his full name and a photograph of himself, an image familiar to the public. Instead we would want to see him consider himself to be an elected representative in *all* his public statements and forums. A teacher, doctor or social worker would not be excused for similar behaviours simply because they did not state their professional role (See the General Medical Council guidance to doctors⁵). We agree Cllr Boeck may be confused by social media and may not yet have settled on how he wishes to project himself – he has not, to date, stated himself to be a councillor in his biography – but a lack of understanding is no excuse.

2. Did Councillor Boeck make the comment, retweet the comments, using resources issued to him by the Council? Ms Howlett concludes "*Probably not. It is impossible to be absolutely certain about this*". We agree.

3. Was the social network activity deemed to be disrespectful, bullying and/or intimidation? Ms Howlett concludes that there are two threads to be considered separately here. She says of the comments regarding Eddie Izzard: *I do not therefore believe that the first thread was disrespectful, bullying or intimidating towards an individual.* And of the second, regarding transgenderism and mental health "*YES it was disrespectful*".

We agree with Ms Howlett's conclusion regarding the second thread, but consider the two to be intertwined and strongly connected to the broader narrative of Cllr Boeck's timeline. We would ask the Advisory Panel to bear this in mind when reviewing the part of the report that appears to exonerate Cllr Boeck when he references Eddie Izzard. Cllr Boeck claims that the comment regarding Mr Izzard was purely motivated by making a point in the

⁵ GMC guidance on social media use: <https://www.gmc-uk.org/>

interests of robust political debate, and was not related to Mr Izzard's gender identity. The report further posits that this is something that should be expected when commenting upon a person in Mr Izzard's position. However, this ignores two important considerations.

i. The point Cllr Boeck was making rests on two assumptions. Firstly that voters in the north of England would lack the finesse, tolerance or intelligence to see past the appearance of someone who did not conform to a binary gender identity, and secondly that as a result, this assumption made Mr Izzard's appearance worthy of comment – and contempt. Nothing was said about Mr Izzard's political views; Cllr Boeck simply chose to comment on a Labour member who presents as non-binary. So we would ask the advisory panel to consider the intent behind the original tweet. Was it to suggest Labour is out of touch with northern voters? Because if so, why would Mr Izzard be used to support such a point? It seems self-evident the point was made because Mr Izzard chooses to dress to reflect his transgender identity; the context and internal logic of the post rests on it.

Gender identity is a protected characteristic under the Equality Act 2010⁶ and was designed to protect against discrimination in the workplace *and* wider society. Guidance from the Advisory, Conciliation and Arbitration Service⁷ states that “someone with a non-binary identity could be protected if they are discriminated against because they are thought to be considering, thought to be going through or thought to have gone through gender reassignment from man to woman or woman to man, regardless of whether this perception is correct or not”.

There is broad parity of protection between those who may be perceived to be considering gender reassignment with individuals who might be black or from a minority ethnic background, gay, muslim, jewish, a pregnant woman, disabled or possessing a range of other possible characteristics. We would ask the Advisory Panel to consider how they would regard tweets that mocked David Lammy, Sajid Javid, Baroness Warsi, Diane Abbott or David Blunkett for their perceived inability to connect with a certain demographic or geographical region. As the law treats all of the characteristics these individuals possess as worthy of the same protection, we regard it as a mistake to gloss over this aspect of Mr Boeck's twitterfeed.

⁶ <https://www.legislation.gov.uk/ukpga/2010/15/contents>

⁷ <http://www.acas.org.uk/index.aspx?articleid=1363>

ii. Secondly, whether there is merit in the idea that this is simply “robust political debate” is debatable. We wholeheartedly reject the view that political debate takes place in some different kind of moral sphere to other types of public debate and as such is allowed lower standards. Indeed we consider this assumption to be a fundamental mistake made by those who operate in political ‘bubbles’, and to be one of the most alienating aspects of political discourse. As a local constituency group of the Labour Party we assert that politicians ought to hold themselves to higher, not lower, standards of public discourse than might be expected in other arenas, particularly when discussing individuals or groups who belong to minority and vulnerable groups. It is because of this that we suggest the tweet relating to Mr Izzard should not be considered in isolation, but in the context of Cllr Boeck’s other posts categorising transgenderism as a mental disorder. We would argue that both constitute and reinforce the same offensive and discredited view. Cllr Boeck is being given an extraordinary “pass” in the report, when the targeting of Mr Izzard is considered simply as robust political debate. We do not regard it as such.

4. Did Councillor Boeck fail to adhere to any regulations pertaining to equality? Ms Howlett concludes: *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.* We would concur of course – but would add, as all our comments above reflect, that this is not a simple case of a sin of omission; a failure to treat one group of people or another with respect. It is a sin of commission, in that the particular, pernicious and well-established conflation of transgenderism and mental disorder is a deeply damaging discourse promulgated by certain right wing fundamentalist groups. Mr Boeck may be unaware of this, but again ignorance is no excuse. As we have seen and as extensive evidence shows – and we need go no further than the Council’s own JSNA – there *is* a relationship between gender identity issues and transgenderism, and poor mental health. But it is not of the type Cllr Boeck promoted. People all too often become unwell *because of* the way they are treated or fear being treated by society (again, see Williams [2017] and many others). We have not seen this important distinction acknowledged and enunciated so far in this complaint process, or in Mr Boeck’s own apology, yet it is central given we are discussing WBC’s Chair of the H&WB Board.

In summary then, Cllr Boeck has a significant responsibility for mental health across the district as part of his new role, and in related ways as a senior councillor. It seems from the report of this incident in the Newbury Weekly News that he has actually fed the mistaken and damaging perceptions at play

and emboldened people who mistakenly share the view of transgenderism as a mental disorder. See some of the comments section of the NWN article online⁸.

We would ask members of the Advisory Panel: what message does it send when someone who appears to hold these views is given such a prominent position in the Council's executive and is moved, mid-investigation, to become Chair of the H&WB Board? What message would a young, transgender individual take from reading the tweet about Eddie Izzard, the tweet about mental illness, or – as is key- *both* in concert?

That they are mentally ill?

That they should not enter politics?

That they should expect to be mocked if they dare to do so?

That they should avoid parts of England?

That they are worthy of opprobrium on the basis of their clothing?

Cllr Boeck has a responsibility to promote equality and improve the health and wellbeing of the communities he serves. He has demonstrably failed to do so. Such behaviour normalises discrimination and stigmatisation of people who are already vulnerable and it is our considered view that this must be considered when sanctions are decided upon. Finally, we were very disappointed to see the MP for Newbury swiftly and categorically defending Cllr Boeck's actions in the NWN, following his own very high profile 'championing' of mental health during 2017. We remain worried that Mr Benyon's public defence of his friend looks like undue political influence, and would remind local politicians that mental health services operate in a medico-legal context. Powerful individuals ought to tread carefully if they are not to add to the perceived barriers that all too often prevent people seeking help.

Tom Tunney and the Newbury Constituency Labour Party (CLP) Executive Committee

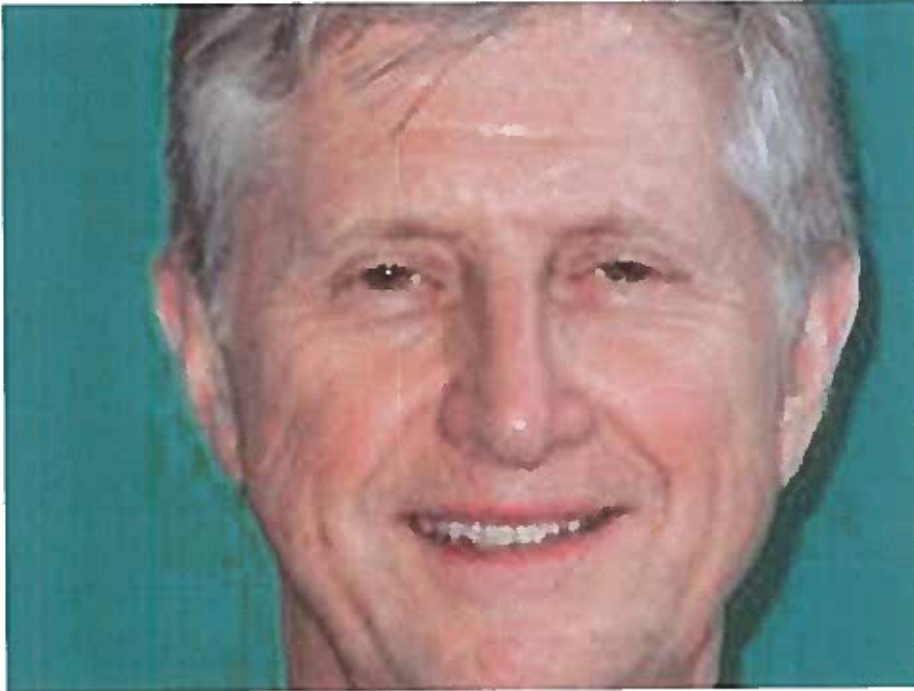
⁸ NWN comments: <https://www.newburytoday.co.uk/>

News

Fri, 13 Apr 2018

Senior councillor apologies over 'transphobic' retweet

Conservative councillor 'regrets' reposting comment



A SENIOR Conservative councillor has had to apologise after sharing online comments mocking transgender people as mentally disordered.

Political opponents have called for an inquiry after Dominic Boeck used his social media Twitter account to repost other users' comments.

He retweeted a post about comedian Eddie Izzard, recently defeated in his bid for a seat on the Labour Party's ruling body.

Original poster Rod Bishop published a photo of the transgender comic and said: "Just when you think Labour couldn't be any more ridiculous they bring on Eddie Izzard."

But what provoked most outrage was Mr Boeck's sharing of comments by another poster, using the moniker BrexitTory, who wrote: "There are two genders but three options - 1 male; 2 female; 3 mental disorder."

3 Mental Disorder

Mr Boeck subsequently deleted his reposting of the comments.

His Twitter profile states: "Retweets from me do not signify endorsement."

The chairwoman of Newbury Labour Party, Gemma Lowe, said: "West Berkshire Council has made a great deal of its commitment to improving the mental health of the community by raising awareness of its causes and fighting stigma.

"Research by Stonewall [UK lesbian, gay, bisexual and transgender rights charity] shows trans young people are particularly vulnerable to serious mental health problems; more than one in four have attempted suicide and 72 per cent, of a sample of 956, report having self-harmed.

"Yet one of our senior elected representatives, Dominic Boeck, seems to think it's acceptable to engage in transphobic, mocking tweets."

She called for a council investigation and added: "He is apparently unconcerned that his words serve to deepen and legitimise stigmatising attitudes and show awareness only of his own bigoted world view.

"We have been shocked by the content of his Twitter feed in general.

"Maybe he should read his own council's social media code of conduct – and report himself."

Mr Boeck later posted on Twitter: "I do believe without doubt that people of any gender and sexual orientation must be respected and I will make sure my behaviour online and off reflects that.

"I resolve to look closer at tweets before I retweet them and I regret any offence I may have given in this way.

"I absolutely do not believe that anyone with gender issues is mentally ill."

He told the *NWN*: "People have interpreted what I retweeted in a way I'm sorry about.

"I will make sure I don't put myself in that position again."

When pressed on why he had chosen to retweet the comments, Mr Boeck declined to comment.

Newbury's Conservative MP Richard Benyon described Mr Boeck as "an honourable man" and added: "I've known Dominic long enough to know that he is not how he is being portrayed.

"He has expressed his regret and apologised. The matter should be left there."

The *NWN* asked West Berkshire Council whether its code of conduct had been broken.

Council spokeswoman Peta Stoddart-Crompton, said: "We don't divulge receipt of complaints as it could prejudice outcomes."

Also follow: [Twitter](#)

Leave your comment

Text

Characters left: 1000

SEND

NewburyDenizen 19/04/2018 - 11:11

Wow, the comments here really shouldn't surprise me given the right leaning stance of this area of the country, what happened to compassion and caring for others? I guess having the country led by racism enabling Tories is only going to draw more of the selfish and different hating scum out into the public with bigoted views.

Reply

Westberkswalker 15/04/2018 - 09:09

scooberdoo3 13/04/2018 - 21:09

Here, here i think most people do. I certainly do.

Reply

Rebecca 15/04/2018 - 15:03

I don't

Reply



Louise 13/04/2018 - 12:12

Many of us concur with his view, get over it.

Reply

grumpy 13/04/2018 - 15:03

Indeed we do

Reply

Rebecca 15/04/2018 - 15:03

I don't

Reply

Show more comments

2 Comments

Sort by Oldest



Add a comment.



Dont Vote Benyon

Glad to see such nice people are in charge of our council's this foul person should be removed from his position with immediate affect.

Love how Benyons waded in to tell the NWN that this should be the end of it - wonder what his comment would of been if the shoe had been on the other foot and it was a lib dems or labour councillor who did this

Like Reply · 12w



Tom Tunney

It's ok he's an honourable man

Like Reply · 1 11w



Simon Kirby

I don't see any apology. "People have interpreted what I retweeted in a way that I am sorry about" isn't an acknowledgement of the hurt that this kind of mockery can cause. I have some sympathy for Dominic Boeck as attitudes have changed and, assuming his grammar school was anything like my comprehensive, all manner of people were mocked for all manner of reasons and it's easy enough to find yourself with prejudices that on reflection are hateful, but if he really is the honorable man that Richard Benyon says he is I would hope that he'll acknowledge the challenges for people with poor mental health and those with gender identity issues and instead promote more kindness and understanding.

Like Reply · 11w

Facebook Comments Plugin

Written Decision of West Berkshire Council's Advisory Panel

Date of the Advisory Panel:	25 July 2018
Reference Number :	NDC2/18
Member who this Decision relates to:	Councillor Dominic Boeck
Person who made the original allegation:	Mr Thomas Tunney (on behalf of Newbury Constituency Labour Party's Executive Committee)
Authority:	West Berkshire Council
Chair of the Advisory Panel:	Mike Wall (MBE)
Other Members of the Advisory Panel:	Adrian Edwards, Marigold Jaques, Mollie Lock, Alan Macro, Tony Renouf
Apologies:	James Rees, Darren Peace
Declarations of Interest:	Councillors Edwards and Jaques declared a personal interest in this complaint due to the fact that the subject member was a fellow Member of the Conservative Group. They did not however consider him to be a close friend. Councillors Lock and Macro declared a personal interest in this complaint due to the fact that the subject member was a Member of West Berkshire Council and they had come into contact with him as a normal part of their duties. Councillor Tony Renouf declared a personal interest in this complaint due to the fact that the subject member was his Ward Member. He did not however consider him to be a close friend and came into contact with Councillor Boeck during the normal discourse of his duties as the Chairman of Woolhampton Parish Council.
Monitoring Officer:	Shiraz Sheikh (Deputy)
Investigator:	Ms Elizabeth Howlett
Clerk of the Advisory Panel:	Moira Fraser
Date Decision Issued:	26 July 2018

Summary of the Original Complaint

Mr Thomas Tunney alleged that Councillor Dominic Boeck had expressed negative opinions regarding transgender people (specifically Eddie Izzard) 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.

Outcome of the Initial Assessment

The complaint which was received on the 03 April 2018 was initially assessed on 30 April 2018 by the Monitoring Officer and Independent Person (Lindsey Appleton) of West Berkshire Council.

They 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, his actions might have constituted a breach of West Berkshire Council's Code of Conduct and therefore the allegation should be referred for investigation.

It was 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 when tweeting these threads. 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.

The Initial Assessment Panel 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) this could be deemed to be an attack on an individual and might therefore be construed as being 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.

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:

- Councillor Boeck (the subject member)
- Mr Thomas Tunney (the complainant).

Ms Howlett in undertaking the investigation also considered the social media postings that were the subject of the complaint and had regard to West Berkshire Council's Constitution including the Social Media Protocol for Councillors. Ms Howlett also considered other relevant legal cases that she deemed pertinent to this case.

Summary of the Conclusion of the Independent Investigator

1. Councillor Boeck had given the impression that he was acting in his capacity as a councillor even though the investigator accepted that he may not have intended that.
2. All the social media activity most likely took place on Councillor Boeck's iPhone which was his own personal property.
3. Councillor Boeck's behaviour in respect of the first thread of the complaint was not disrespectful, bullying or intimidating towards an individual but Councillor Boeck's behaviour in respect of the second thread in which he directly characterised transgender people as mentally ill was disrespectful.
4. Councillor Boeck had failed to treat those with mental illness with respect and in so doing had failed to adhere to the regulations pertaining to equality.

Councillor Boeck had therefore breached West Berkshire Council's Code of Conduct.

Decision of the Advisory Panel

In respect of complaint NDC2/18 the Advisory Panel concurred with the findings of the Investigator. The Panel requested that it be recorded that in relation to conclusions 1, 2 and 4 the decision of the Panel was unanimous. In relation to Question 3 the majority of members of the Panel agreed that retweeting a comment meant that the subject member endorsed the original tweet. 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 also requested that the Council's 'Social Media Protocol for Councillors' be reviewed and where appropriate updated. They requested that the issue of retweeting, in particular, be included.

The Advisory Panel recommended that the following people be invited to attend the Governance and Ethics Committee where the matter will 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 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 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.

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

Sanctions Which Can be Applied to Councillors Deemed to Have Breached the Code of Conduct

- (i) A formal letter to the member from the Chairman of Governance and Ethics Committee indicating the failure to comply with the Code.
- (ii) Removal of a member from a particular committee which can only be achieved in consultation with the Group Leader of the members' party.
- (iii) Formal censorship motion via Council initiated by the Chairman of the Governance and Ethics Committee.
- (iv) A formal press release sanctioned by Governance and Ethics Committee summarising the breach.
- (v) A local resolution acceptable to the complainant and member and sanctioned by Governance and Ethics Committee.

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