

# 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**.....