

# Written Decision of West Berkshire Council's Advisory Panel

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| <b>Date of the Advisory Panel:</b>              | 25 July 2018  |
| <b>Reference Number :</b>                       | NDC2/18   |
| <b>Member who this Decision relates to:</b>     | Councillor Dominic Boeck  |
| <b>Person who made the original allegation:</b> | Mr Thomas Tunney (on behalf of Newbury Constituency Labour Party's Executive Committee)   |
| <b>Authority:</b>                               | West Berkshire Council  |
| <b>Chair of the Advisory Panel:</b>             | Mike Wall (MBE)   |
| <b>Other Members of the Advisory Panel:</b>     | Adrian Edwards, Marigold Jaques, Mollie Lock, Alan Macro, Tony Renouf   |
| <b>Apologies:</b>                               | James Rees, Darren Peace  |
| <b>Declarations of Interest:</b>                | <p>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.</p> <p>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.</p> <p>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.</p> |
| <b>Monitoring Officer:</b>                      | Shiraz Sheikh (Deputy)  |
| <b>Investigator:</b>                            | Ms Elizabeth Howlett  |
| <b>Clerk of the Advisory Panel:</b>             | Moira Fraser  |
| <b>Date Decision Issued:</b>                    | 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