

Supplemental Item for Governance Committee

Monday 13 November 2023 at 6.00pm
in the Council Chamber Council Offices
Market Street Newbury

Part I

Page No.

- 3 **NDC0823** 1 - 14
- 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 the then Councillor Lynne Doherty (Complainant) in respect of Councillor Adrian Abbs (Subject Member) from West Berkshire Council submitted on 29 March 2023.*
- Should the Committee determine that a breach of the Code of Conduct has occurred they will need to determine an appropriate sanction.*



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**Report of an Investigation into a Complaint
by former Cllr Lynn Doherty against Cllr
Adrian Abbs of West Berkshire Council**

Private & Confidential

**Final Version
2 September 2023**

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Richard Lingard – Curriculum Vitae

Educated at Magdalen College School Oxford and Southampton University, I qualified as a Solicitor in 1980, trained in private practice and spent four years in the commercial sector before going into Local Government.

At the time of my retirement in September 2011, when I became a non-practising Solicitor, I was Head of Legal & Democratic Services and Monitoring Officer at Guildford Borough Council, for whom I worked for some 30 years.

Since 2011, I have conducted and reported on some 60 investigations into allegations of misconduct against City, County, Borough, Parish and Town Councillors and Officers. I have also carried out a number of procedural and governance reviews and provided training on ethical standards. My work has been carried out for local authorities in Berkshire, Hampshire, Hertfordshire, Kent and Surrey.

I am also an Independent Member of the Surrey Police Misconduct Panel.

EXECUTIVE SUMMARY

This is the final version of my report of an investigation that I have carried out into a complaint brought by former Councillor Lynn Doherty of West Berkshire Council ('the Council') against Cllr Adrian Abbs.

I have concluded, on the balance of probabilities, that Cllr Abbs breached the Council's Code of Conduct by virtue of his conduct at a meeting of the Council's Executive held on 23 March 2023.

1. INTRODUCTION – THE COMPLAINT

- 1.1 Following an initial telephone call on 16 June from Nicola Thomas, Service Lead, Legal & Democratic Services, I was formally instructed by email of 28 June to conduct an independent investigation into a complaint lodged by Lynn Doherty who was at the material time, Leader of the Council. For the sake of clarity, I refer to her throughout this report as Cllr Doherty.
- 1.2 Ms Thomas provided me with a copy of the complaint, a link to the recording of the meeting of the Council's Executive during which the conduct complained of was alleged to have occurred, and contact details for the two councillors.
- 1.3 For ease of reference, Cllr Doherty's complaint as submitted to the Council's Monitoring Officer is set out in full at **Appendix 1** to this report and the reader is invited to refer to it before proceeding further.
- 1.4 It will be seen that Cllr Doherty's complaint focuses on the manner in which Cllr Abbs conducted himself in an exchange with Cllr Steve Ardagh-Walter of whom he had asked a question. The basis of Cllr Doherty's complaint is that Cllr Abbs interrupted Cllr Ardagh-Walter and refused to leave the meeting when instructed to do so.
- 1.5 She considered that his behaviour amounted to three breaches of the Council's Code of Conduct – lack of respect, bullying and bringing the Council into disrepute.
- 1.6 Unusually (and helpfully) for an investigation of this nature, the conduct complained of was recorded in full and may be viewed here:

<https://www.youtube.com/live/eAEWzt-ZeA8?feature=share&t=5760>

The relevant part of the meeting begins at 1 hour 35 minutes in.

2. PROCESS

- 2.1 Following receipt of my instructions, I viewed the relevant section of the recording a number of times in order to familiarise myself with the context and with the people involved.

- 2.2 I then contacted both councillors and invited them to meet me via Zoom in order that I could hear what each of them had to say about the incident.
- 2.3 I had Zoom meetings with both of them (Cllr Doherty first) during the afternoon of 14 July. In accordance with my usual practice and with their consent I made recordings of our meetings and used them as the basis of notes of our respective discussions which I then sent to them each for comment.
- 2.4 Cllr Doherty returned my notes approved as drafted and Cllr Abbs made some small amendments. The recordings were then deleted. Section 5 below incorporates Cllr Abbs' comments and save where the contrary appears, Sections 4 and 5 represent the views and opinions expressed to me by the respective interviewees.

3. THE COUNCIL'S CODE OF CONDUCT & MATERIAL CONSIDERED

- 3.1 The WBC Code of Conduct for Members may be found on the Council's website. In common with those adopted by local authorities across the country, the Code of Conduct is based on a national model, framed against the background of the seven Nolan Principles of Standards in Public Life.
- 3.2 A person bringing a complaint of an alleged breach of a council's code of conduct is not obliged to specify which particular paragraph(s) of the code the subject member is considered to have breached and it is open to the Monitoring Officer and / or the Investigator to cast the net wider if it is considered appropriate to do so. In this instance (see her complaint) Cllr Doherty cited the following paragraphs:

4.1 (a) [Councillors must] Treat councillors, co-opted members, officers, members of the public and service providers with courtesy and respect.

4.2 (a) [Councillors must not] Engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation.

4.2 (f) [Councillors must not] Conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.

- 3.3 I do not consider any other paragraphs to be relevant here and I have accordingly assessed Cllr Doherty's allegations against the paragraphs set out above.

4. CLLR LYNNE DOHERTY

- 4.1 As noted above, I interviewed Cllr Doherty (LD) on 14 July. This is what she told me:
- 4.2 LD is Director of Social Care Operations for SSAFA and until the elections on May 4 this year when she lost her seat, she was Leader of WBC.

- 4.3 She explained that she was chairing a meeting of the Executive on 23 March when the incident involving Cllr Abbs (AA) took place during a discussion about aspects of the operation and performance of the Household Waste Recycling Centre and other 'Environmental' issues.
- 4.4 AA asked the Portfolio Holder for Waste, Cllr Steve Ardagh-Walter (SA-W) a question. Although SA-W started to reply, AA interrupted him before he had finished. SA-W asked AA not to interrupt him but he continued to talk over him and LD attempted to stop him interrupting by use of the gavel (which she described as the 'chair's first port of call') but AA continued to talk over SA-W.
- 4.5 AA said "*You're not letting the truth out - stop with your gavel, blimey*". At this point, LD asked AA to leave the meeting but he refused. He added "*I'm listening to my Leader – I'm not listening to you*". Cllr Lee Dillon, AA's Group Leader, then went to speak to AA, apparently in an attempt to calm him down.
- 4.6 AA then said that he understood (presumably because Cllr Dillon had told him) that the Police could be called if he refused to leave. He added that he would make a '*small statement*' and then leave. He continued to speak for several seconds but his microphone was switched off by a Democratic Services Officer at LD's direction and there is no recording of what he said after that stage. LD then suspended the meeting for five minutes "*while Cllr Abbs gets himself together*".
- 4.7 The members present all then left the room and when the meeting resumed, AA was absent. Upon reopening the meeting, LD apologised to those present, including members of the public, for what had happened and asked the Monitoring Officer to read an extract from the WBC constitution, which she did, as follows:
- 'Under 5.14.1 If at a meeting of the Executive a member persistently disregards the ruling of the Executive Leader or behaves irregularly improperly or offensively or wilfully obstructs the business of the Executive, any member may move that the member named be not heard further; that the member named shall leave the meeting and if the motion is seconded, may be put to a vote without discussion.*
- 5.14.2 Suspension of sitting. If there is a general disturbance or the named member or member of the public continues to misbehave after a motion under Rule 5.9.4 has been carried and orderly business is prevented, the Executive Leader may adjourn the meeting for as long as they consider necessary.'*
- 4.8 Cllr Dillon then commented: "*What was just read out wasn't what happened. The Monitoring Officer did not tell you that you had to call a vote. Although there were tempers there [indicating AA's now empty seat] this didn't happen in a constitutional way. No motion was seconded, although I suspect that if it had been, it would have been carried. We need to bear in mind that the Officers should be advising the Leader so that matters are conducted in the correct procedural manner.*"

- 4.9 LD accepted the procedural point made by Cllr Dillon and then went on to re-start the meeting.
- 4.10 Although AA's interruption of SA-W was the action which gave rise to the complaint, LD considers that the breaches of the Code of Conduct consisted of AA's lack of respect for everyone in attendance and his interruption of the process under which a significant amount of business had to be conducted during what was the last meeting of the Executive before the elections a few weeks later.
- 4.11 We then looked in turn at the three elements of LD's complaint and I asked her to explain why she thought AA's actions amounted to bullying.
- 4.12 She said that as she walked past AA on the way out of the room when the meeting was suspended, AA said something along the lines of "*Why would anyone respect you? Nobody respects you*". She said it was a very personal attack. Whatever he said was not recorded because the microphones had been switched off.
- 4.13 LD believes that when councillors were out of the room during the short suspension, Cllr Dillon spoke to AA and persuaded him not to return to the meeting. The remainder of the meeting passed without incident.
- 4.14 LD explained that when she was seeking to exclude AA from the meeting, she did not have the Council's constitution to hand but acted on guidance from the Chief Executive and the Monitoring Officer, who were sitting either side of her throughout. She is however confident that as Chair of the meeting, she had the right to do as she did without the formality of a motion to exclude being proposed, seconded and voted upon.

5. CLLR ADRIAN ABBS

- 5.1 I interviewed Cllr Abbs (AA) shortly after concluding my discussion with Cllr Doherty and I invited him to outline the situation as he saw it.
- 5.2 By way of introduction, AA told me that he is now Lib Dem Councillor for Wash Common Ward and Portfolio Holder for Climate Action, Waste Strategy and Biodiversity with special responsibility for EV charging. He has been a member of WBC since 2019. At the time of the incident complained of he was Shadow Portfolio Holder for the Environment.
- 5.3 He explained that the meeting on 23 March was the last meeting of the Executive before the May elections and it had become apparent that a number of motions put forward by him and by the Green Party had been bundled together and effectively '*kicked into the long grass*'.
- 5.4 Of particular concern to him was a tactical motion he had put together to do with household insulation. He had initiated the motion at a meeting of the Environmental Advisory Group (EAG) in order to secure cross-party agreement and was particularly surprised to see it being side-lined. This was, he said, why

he '*called it out*' by interrupting SA-W. This had the effect of causing LD to start using the gavel and telling him to get out of the chamber.

- 5.5 The whole idea behind the motion was to secure cross-party support in order to take an item to full Council and in turn to instruct the officers to put together a plan / strategy to help the neediest residents of West Berkshire.
- 5.6 He entirely accepts that he interrupted SA-W before he had finished replying to his question.
- 5.7 *[I commented at this stage in our discussion that having watched the video a number of times, I had the impression that his was more of a series of comments than a question – indeed SA-W can be heard thanking him for his 'comments' and going on to explain why certain issues could not be progressed as quickly as he would like.]*
- 5.8 AA accepted that they were comments rather than questions due to his surprise and having to think on his feet at the time.
- 5.9 I asked AA whether with hindsight he thinks it would have been more constructive to have allowed SA-W to finish what he had to say and then ask him another question but I get the impression that AA believed that the constitution would not have allowed him to do so and that this, coupled with what he saw as LD's overzealous adherence to the letter of the constitution and her over-use of the gavel would not have enabled him to do so.
- 5.10 He further commented that this was the way in which not just LD as Leader but the then ruling party (i.e., the Conservatives) ran things. He added that the WBC constitution is not set up in a way that allows debate.
- 5.11 AA then said that the Leader of the Council does have the power to allow a '*comeback*' question or comment and that since he became Leader, Cllr Dillon has exercised this power / discretion.
- 5.12 This seemed to conflict with what he had told me earlier about the absolute bar embodied in the constitution and I invited him to reconcile this apparent contradiction.
- 5.13 In his commentary on my notes of our discussion, AA said that anyone chairing a meeting has the flexibility (he called it '*largesse*') to allow for '*small movements*' outside of the constitution. He considers that LD could, as far as he is aware, easily have allowed follow-on clarification, his point being that LD used the constitution as a way of stopping debate, especially when it was something that did not fit a political narrative that the Conservatives wished to push. He added that if the issue had not been a matter about which he felt so passionately, he would not have bothered to interrupt S A-W,
- 5.14 He said at this stage that he did not recall seeing a copy of LD's complaint, so I said that I would send him a copy, which includes a link to the video (which I

had previously forwarded to him). I did so shortly after we had finished our meeting.

- 5.15 In his comments on my meeting notes, AA said that he had subsequently read the complaint and saw it as '*politically motivated rather than having any real substance*'.
- 5.16 We then looked at the three elements of the complaint – respect, bullying and disrepute. He does not regard the tone of voice he used during the incident as bullying or even aggressive, although he acknowledges that he is passionate about the matter that was under consideration. He accepts that he may well have said something along the lines of "*I've lost respect for you*" as LD walked behind him as the meeting was being adjourned. He also commented that calling someone a bully is an easy but hurtful thing to say and he refutes the allegation entirely.
- 5.17 He acknowledged that LD had the power to ask for a vote to seek his removal from the meeting but also commented that in seeking to exclude him from the meeting, she had failed to follow the correct constitutional process. This is the point upon which Cllr Dillon commented when the meeting resumed.
- 5.18 AA said that his efforts to make a statement as to why this matter was so important to him and why he was going to leave the meeting were thwarted by his microphone being switched off at LD's direction.
- 5.19 He decided on advice from Cllr Dillon not to return to the meeting but stands by his view that he does not consider that the severity of what he admitted doing (i.e., interrupting SA-W) warranted being asked to leave the meeting or that it constituted a breach of the Code of Conduct.

6. NICOLA THOMAS

- 6.1 In view of doubts about exactly what the WBC constitution allows or prohibits during debate, I asked Ms Thomas for her comments and, specifically, whether or not Cllr Abbs was permitted to ask Cllr Ardagh-Walter a supplementary question or to make a further comment.
- 6.2 Her initial response was that in member (or public) questions, there is the ability to ask a supplementary question that relates to the answer to the original question but that there is no ability to enter a debate.
- 6.3 I followed this up with a further query about the basis upon which Cllr Doherty had sought to exclude Cllr Abbs from the meeting. Ms Thomas told me that under the constitution, the correct process was for a motion to be proposed, seconded and then voted on, as alluded to by Cllr Dillon when the meeting resumed.
- 6.4 However, given the difficult circumstances obtaining at the time, she was unable to find the relevant section of the constitution quickly and suggested to

Cllr Doherty that members should rise and leave the room so that order might be restored. Chief Executive Nigel Lynn agreed with this proposal.

6.5 During the recess, Ms Thomas located the relevant section of the constitution and read it out when the meeting resumed, as can be seen on the recording. Cllr Doherty accordingly followed the advice provided at the time, although she acknowledged with hindsight that the correct process should have been followed.

6.6 Ms Thomas concluded by commenting that Cllr Abbs, an experienced member, would or should have known that he had the ability to ask a supplementary question.

7. WAS COUNCILLOR ABBS BOUND BY THE CODE?

7.1 The WBC Code of Conduct to which Cllr Abbs signed up on taking office, was in force at the material time, as were the overarching provisions of the Seven Principles of Public Life (The Nolan Principles).

7.2 Cllr Abbs was clearly acting in his capacity as a Councillor at the material time and he was therefore bound by the provisions of the Code.

8. CONSIDERATIONS & CONCLUSION

8.1 This is not a criminal investigation. A prosecutor bringing a criminal charge has to prove the case '*beyond all reasonable doubt*', which is the criminal 'burden of proof'. The applicable standard in this matter is the civil burden of proof, namely '*the balance of probabilities*'.

8.2 Looking in turn at each of the cited paragraphs of the Code of Conduct, I would comment as follows.

8.3 Paragraph 4.1 (a) requires councillors, co-opted members, officers, members of the public and service providers to be treated with courtesy and respect, words which do not need the assistance of a dictionary to be understood.

8.4 It goes without saying that the very nature of local government business is such that from time to time, emotions including disappointment, frustration, anger and strong feelings will be generated, but such emotions must not be allowed to undermine the fundamental principle that debate must be just that – debate, and not argument.

8.5 Despite what may now be commonly seen in television interviews and coverage of parliamentary proceedings, interrupting another speaker can never be justified. It is only good manners to wait until a speaker has finished what he or she has to say before coming back with a comment or further question if (as in this case they do) the rules of debate so allow.

8.6 By his own admission, Cllr Abbs interrupted Cllr Ardagh-Walter and as can be seen from the video, he talked loudly over Cllr Doherty and answered her back

when she attempted to restore order. Although as explained in paragraph 8.17 below, I do not consider that Cllr Doherty handled the situation in the best way but that does not detract from the fact that Cllr Abbs was, in my view, disrespectful towards her as well as towards Cllr Ardagh-Walter.

8.7 I have therefore concluded that Cllr Abbs breached Paragraph 4.1 (a) of the WBC Code of Conduct by failing to show courtesy and / or respect to Cllr Ardagh-Walter and Cllr Doherty by interrupting and talking over them.

8.8 Paragraph 4.2 (a) provides that Councillors must not engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation.

8.9 There are any number of definitions of 'bullying', but I consider that the meaning ascribed to it by ACAS reflects the generally accepted understanding of what it constitutes, namely:

'.....offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.'

8.10 As noted at Paragraphs 4.11 and 4.12, Cllr Doherty considered that the remark that he addressed to her as she walked past him as the Executive meeting was suspended constituted bullying on the part of Cllr Abbs.

8.11 I have had considerable experience of dealing with allegations of bullying, both in employment and during the course of a number of previous investigations and I have to say that whilst whatever Cllr Abbs may have said to Cllr Doherty as she left the room may well have been unpleasant, I do not consider that it approaches being classified as bullying.

8.12 I therefore find no breach of Paragraph 4.2 (a).

8.13 Paragraph 4.2 (f) provides that Councillors must not conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.

8.14 There is no dispute that Cllr Abbs interrupted Cllr Ardagh-Walter - he admits doing so and the video evidence demonstrates it.

8.15 Whilst there is no doubt that Cllr Abbs' conduct was, in the context of Paragraph 4.1(a) discourteous and disrespectful, I do not believe that the now outdated person '*the man on the Clapham Omnibus*' or more correctly the average informed person in the street would consider that this brief episode in any way brought the office of councillor or the Council itself into disrepute. It would, in my view have to be a much more serious or sustained matter to have that effect.

8.16 I therefore find no breach of Paragraph 4.2 (f).

8.17 If I may be permitted a comment, I would say, with due respect to Cllr Doherty, that her response to Cllr Abbs' interruption was something of an over-reaction to a situation which could probably have been dealt with in a much more low-key manner. Her use of the gavel, her attempt to eject Cllr Abbs from the meeting, the switching off of the microphones and the subsequent suspension of proceedings simply aggravated the situation. A call to calm down and the seeking of an apology should have been all that was necessary. That said, I stand by my finding of discourtesy as outlined in Paragraph 8.7.

8.18 Finally, I confirm that this, the final version of my report, was framed in the light of comments received from both Cllr Doherty and Cllr Abbs.

Richard Lingard
2 September 2023

CLLR DOHERTY'S COMPLAINT

Dear Sarah,

I would like to submit in writing to you my official complaint against Councillor Adrian Abbs, following his conduct at the Executive Meeting of the 23rd of March 2023.

I believe that Councillor Abbs has breached both our own Code of Conduct for Members and the Nolan Principles.

The evidence of this can be found at 1hour 36 minutes of this video recording - <https://www.youtube.com/live/eAEWzt-ZeA8?feature=share&t=5760>

Cllr Abbs disrupted the meeting by refusing to let Cllr Ardagh-Water respond to him. On the first occasion as Chairman I let this go but when Cllr Abbs continued, despite Cllr Ardagh Waters polite request for him to be able to answer, I attempted to end the disruption with use of the gravel.

You can watch for yourself what happened next.

I believe the evidence shows the following breaches of our Code of Conduct –

4.1 a) Treat councillors, co-opted members, officers, members of the public and service providers with courtesy and respect.

4.2 (a) Engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation

4.2 (f) Conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.

I would particularly highlight to you 4.2 a and the Nolan Principle of Respect for Others. You will hear on film Cllr Abbs comments to me about 'no respect for me' specifically. As I walked passed him he repeated these in an insulting and intimidating manner. I believe that Cllr Abbs treatment specifically direct at me was an attempt to undermine my position and was highly intimidating.

I am sure that those witnesses in the Chamber will be able to support this, especially the way in which he responded to me when I asked him to leave the Chamber, which he flatly refused to do and sat challenging me as to what happens next.

All of my actions were guided by both the CEO and the legal representative at the meeting.

I would appreciate if you would investigate this matter.

Kind Regards
Lynne

Cllr Lynne Doherty

Leader, West Berkshire Council
Newbury Speen Ward - Conservative

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