

Cllr Masters' complaint relates to private messages made by me, in a personal capacity, on a closed and encrypted WhatsApp chat group comprising prospective Conservative candidates at the forthcoming elections to West Berkshire Council in May 2023. Some of the prospective candidates in the chat group are sitting Councillors, others are not. Several sitting Conservative Councillors are not standing for re-election – they are not part of the chat group.

## **Capacity**

Paragraph 3.1 of the Code of Conduct describes the application of the Code:

“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.”

Appendix 1 of the Code defines “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.”

Appendix 1 also defines “Meeting”:

“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”

My participation in the chat group is not a Meeting as defined by the Code, or a briefing meeting with officers and members of the public. Nor was I corresponding with the Authority.

I was also not acting, claiming to act, or giving the impression that I was acting as a representative of the Council. My participation in the group derives from my status as a prospective candidate in the forthcoming election, as is the case with many other prospective candidates in the group who are not sitting Councillors. No Council business was discussed in the group. I used my personal smartphone to communicate in the group.

It follows that, per paragraph 3.1 of the Code, no breach is likely to have occurred as I was not acting in my capacity as a Councillor. That selected messages from the chat group were subsequently disclosed, in breach of confidence, to Cllr Masters by a chat group member, does not affect the capacity in which I was acting when communicating in the chat group.

It is therefore my position that Cllr Masters' complaint fails on this point.

## **Context**

Nonetheless, I will point out some background as well as several factual inaccuracies and untruths in Cllr Masters' complaint.

Cllr Masters states that the messages emerged in the Newbury Weekly News of March 16. This is untrue. Cllr Masters had been given the messages and published them online on March 14, and his group leader had made a statement regarding them on March 9.

Cllr Masters states that my comment "I see we are choosing violence today" refers to him. This is untrue. "Choosing violence" is a metaphor referring to a strong social media response by members of the chat group to a dishonest Green Party leaflet. The phrase is widely understood by social media users in that context. A quick Google of the phrase shows this. There is absolutely no question that my comment referred to, encouraged, incited, or even joked about, physical violence against any person or group of persons.

Subsequent references to "violence" by the group members must be seen in that context. Indeed, a message posted by my wife, who is a prospective candidate, joking about the recent Matt Hancock WhatsApp leaks, makes it explicitly clear that social media activity is being referred to. Cllr Masters himself concedes in his complaint that "we do not have the full transcript of what else was in the WhatsApp chat".

This is precisely the problem. Individual messages have been disclosed out of context and reported in bad faith by the Green Party and the press, some implying and others explicitly stating that the Conservatives are joking about or even inciting violence against Cllr Masters, in order to deliberately damage our reputation. The responses and comments he refers to and reproduces in his complaint are predictable given the incomplete and misleading reporting of the chat group messages.

Cllr Masters states that a previous complaint against me was partially upheld. This is untrue. The complaint was referred for informal resolution by the Monitoring Officer. No part of that complaint was upheld. Cllr Masters and others have made public statements repeating this falsehood, alongside other misleading statements about the extent of Police involvement, which I understand are the subject of a separate complaint.

Cllr Masters argues that WhatsApp falls within the scope of social media, and states "multiple sources online confirm this". There are multiple sources online which conclude otherwise, as another quick Google shows. In this instance WhatsApp was being used as a closed, private and encrypted messaging service amongst friends. As such there was a reasonable expectation that any messages would remain private and not be disclosed more widely.

The additional information provided by Cllr Masters does not appear to have any relevance to the matter at hand.

Ross Mackinnon

31<sup>st</sup> March 2023