

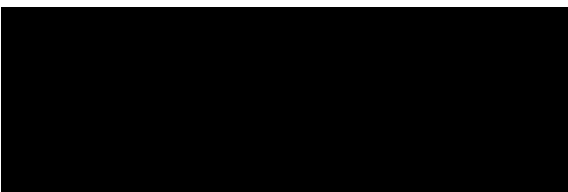
**Report of an Investigation into a Complaint
by former councillor Steve Masters against
Cllr Ross Mackinnon of West Berkshire
Council**

Private & Confidential

Final Version 1 June 2024

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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 the 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 over 60 investigations covering 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 provide training on ethical standards and the responsible use of social media by councillors. My work has been carried out for local authorities in Berkshire, Buckinghamshire, Hampshire, Hertfordshire, Kent and Surrey.

I have also recently completed an eight-year term as 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 Mr Steve Masters against Cllr Ross Mackinnon of West Berkshire Council ('WBC' / 'The Council') in respect of his alleged breach of the Council's Code of Conduct.

I have concluded that Cllr Mackinnon has breached the WBC Code of Conduct.

1. INTRODUCTION

- 1.1 On 6 March 2024 I was instructed by an email from Nicola Thomas, Deputy Monitoring Officer of the Council, to conduct an independent investigation into a complaint by former councillor Steve Masters (SM).
- 1.2 Ms Thomas provided me with a copy of the complaint, the full text of which is reproduced at **Appendix 1** to this report, contact details for the people concerned and related documentation.
- 1.3 The following is a brief summary of the complaint:
 - That Councillor Mackinnon engaged in disrespectful, bullying and intimidating behaviour by referring to Mr Masters as a '*poisonous little toad*' and referring to '*choosing violence*' in reference to the Complainant in a WhatsApp chat.

2. PROCESS

- 2.1 Following receipt of my instructions, I reviewed the documentation and contacted Mr Masters and Cllr Mackinnon, inviting them to meet me via Zoom in order that I could hear what each of them had to say about the matter.
- 2.2 I had a Zoom meeting with Mr Masters on 3 April and, after some delay caused by his unavailability, with Cllr Mackinnon on 19 April.
- 2.3 I subsequently spoke at Mr. Masters' request to three further people – one serving councillor (Carolyne Culver) and two former councillors, both of whom asked to remain anonymous.
- 2.4 In accordance with my usual practice and with their consent, I made recordings of my discussions with all interviewees and used them as the basis of notes which I sent to each of them for comment.
- 2.5 Cllr Mackinnon approved my notes as drafted whilst Mr Masters, Ms Culver and the other two interviewees made some minor amendments and clarified certain issues.

- 2.6 I then deleted all the recordings.
- 2.7 It should be noted that save where the contrary appears, the views, opinions and statements of fact set out in Sections 3 - 7 below are those of the interviewees concerned.

3. FORMER COUNCILLOR STEVE MASTERS

- 3.1 As noted above, I interviewed Mr Masters (SM) via Zoom on 3 April. I began by asking him whether his understanding was that Cllr MacKinnon (RM) was probably going to apologise for the language he had used in his tweets but that he had never actually got round to doing so. He confirmed that RM was requested informally to apologise, but explained that there was a considerable 'back story' to this matter. He explained that a Subject Access Request had been submitted in an effort to establish from official email traffic whether there was a pattern of inappropriate behaviour on the part of members of the Executive Group and senior members of the Council.
- 3.2 The result of the search (which took over a year) disclosed that Lynne Doherty (former Leader – see below) had sent emails asking the Conservatives' Democratic Services political assistant to search for hashtags – thus using public resources for political ends – so that the Conservatives could 'smear' SM.
- 3.3 SM is still on Newbury Town Council but is no longer a member of WBC. He served as a 'Green' from 2019 until 2023.
- 3.4 I asked SM about the origin of the disagreement that gave rise to the complaint under investigation. He explained that during his re-election campaign in 2023, he and friends and colleagues had been delivering Green Party leaflets round the ward and one leaflet was posted through the door of Lynne Doherty - former fellow Ward Councillor, Tory and at that time Leader of the Council, but no longer on the Council having, like SM, lost her seat at the May 2023 elections.
- 3.5 She objected to his leaflet on the Tory candidates' WhatsApp group and matters escalated from there. Someone took screenshots of the WhatsApp exchanges because they were so dismayed by them. SM was described as a '*poisonous little toad*' in a post by RM. RM's wife then 'chimed in' along the lines of '*There are people who can sort things out, including my husband*'.
- 3.6 A candidate whom SM believed to have been new to the group asked '*Do I have to be more violent?*'
- 3.7 I asked SM what he believed Lynne Doherty had objected to. His reply was '*I think it's because it said 'Only Steve worked hard all year round*'.
- 3.8 SM raised with the Council's Chief Executive his conviction that there was a culture of bullying within and by the Conservative Group but in a nutshell, he got nowhere.

- 3.9 It was a member of the Conservative Group who took the screenshots of the WhatsApp exchanges and actually went to the Police before telling SM about it. It was only with the greatest reluctance that the person who took the screenshots handed copies over to SM.
- 3.10 SM said that RM had previously been complained about by members of the public because of the way in which he had criticised SM on social media. The whole environment was very toxic.
- 3.11 I asked SM if he could narrow down what it was that he wanted RM to apologise for, other than (obviously) his calling SM ‘*a poisonous little toad*’. He commented that violence and violent language has over recent years been normalised in political discourse. He regards this trend as extremely ill-judged and not language becoming of someone in public office. He commented: “*The ‘poisonous little toad’ is trivial, I’ve been called worse I’m sure. It is the allusion to violence that requires the foremost apology.*”
- 3.12 Although the post was in theory in a private group, someone in that group felt disturbed enough by what they had read to raise it with the Police.
- 3.13 The Group was a Conservative Candidates’ WhatsApp group, one member of which was a WBC employee – their political assistant, who contributed to the group’s exchanges. SM regards the fact that this assistant was a member of the group as determinative of RM acting as a Councillor when making the posts the subject of his complaint.
- 3.14 SM said that he would accept a ‘proper’ apology at a Council meeting but not a ‘*mealy-mouthed*’ apology by email along the lines of ‘*I’m sorry if you feel that.....*’ The apology should cover not only the comments directed at SM but also the nature of the language used which SM considers is unbecoming for someone in RM’s position.

4. THE ALLEGEDLY OFFENSIVE MATERIAL

- 4.1 Mr. Masters’ complaint (See **Appendix 1**) was accompanied by a very extensive (almost sixty pages) reproduction of exchanges of posts on Social Media and other material including emails and an extract from a local newspaper. The following extracts from this material are to be found on pages 93, 96, 97 and 101 of Agenda Item 7A of the Initial Assessment Meeting held on 13 April 2023. Although copies of the entire document can be made available upon request, given that the facts of this matter are undisputed, I do not consider it either necessary (or indeed practical) to reproduce it in its entirety here.
- 4.2 The following is a summary of what appears on each of those pages:

Page 93:

Cllr Mackinnon: *“Did the poisonous little toad actually deliver that to your house?”*

Cllr Doherty: *“Yes:”*

Page 96:

Cllr Mackinnon: *“I see we’re choosing violence today. Love to see it.”*

Sarah (?): *“New to the group, so I need to be more violent do !!!!”*

Cllr Mackinnon: *“Come for the leader, you best not miss”*

Page 97:

Amanda Mackinnon: *“Hi Sarah. fellow Newbie here, but Ross is my husband so I’ve had the pleasure to meet many of the wonderful people on this chat already. We don’t all choose violence here but if you ever need back up we’re got a few characters ready to go...my husband for one”.*

Page 101:

Amanda Mackinnon: *“For when these WhatsApps get leaked we clearly mean violence on social media and not actual violence...these guys are all pussycats really, even the Glaswegian!”*

5. CLLR CAROLYNE CULVER

- 5.1 At Mr Masters’ (SM) request, I contacted his partner Cllr Carlyne Culver (CC) and spoke to her via Zoom on 26 April.
- 5.2 At the material time, CC was the Green Party’s Group Leader. Unlike SM, who lost his seat at the May 2023 elections, CC was re-elected and she continues to represent the Ridgeway Ward on WBC.
- 5.3 When the unpleasant comments on the Conservative Candidates’ WhatsApp group were made, CC acted as support to SM. She had various conversations with the Police about the matter. She regards the conduct of the Group members as entirely inconsistent with the LGA’s ‘Debate Not Hate’ initiative.
- 5.4 She also commented that no form of vetting of candidates takes place and there is no control over who says what during the WhatsApp exchanges. Her concern is that nobody senior in the WhatsApp group intervened after the comments were posted to say that they were inappropriate or even to clarify whether the language was metaphorical.
- 5.5 There is no means of ensuring that everyone in such a group knows and understands what exactly is meant by ‘violence’ in this context nor of guaranteeing that they might not take physical action against someone. This

concern has been highlighted by the murder of two MPs, Jo Cox and Sir David Amess.

- 5.6 CC commented that if the expression does not imply the use of physical force, but is, as has been suggested, one with some currency among, particularly, younger people it was an odd one, given their age, for Cllr Mackinnon, an existing councillor, and his wife to have used during the last election campaign.
- 5.7 I asked CC for her view on whether Cllr Mackinnon was acting as a councillor at the material time. Her response was that the comments were made as part of a WhatsApp chat between councillors seeking re-election and candidates seeking election for the first time. The comments were made in the context of a discussion about the election campaign. If Cllr Mackinnon had made the comments to his mates in a private chat only then could it be argued that it was private and not a situation to which the Code of Conduct applied.
- 5.8 I asked CC what she knew about the composition of the WhatsApp group. She does not have a comprehensive list of members but is aware that Cllr Mackinnon and Lynne Doherty (both seeking re-election) were members, as were Cllr Mackinnon's wife, and another lady whose name she could not recall but who apparently was noted as having said something along the lines of '*Oh, I need to be more violent do I?*'. Her understanding is that the group comprised councillors seeking re-election, other candidates seeking election and other people supporting their campaign including the Conservative Assistant who was paid for by WBC.
- 5.9 CC knows which member of the group disclosed the screenshots and told me that the person concerned said that involvement of the police was the way forward. There was no willingness to hand over screenshots to the Greens. CC understands that one other councillor member of the Conservative group also had concerns and went to the Police. The primary concern was talk about violence rather than Cllr Mackinnon's calling SM '*a poisonous little toad*', which, she said, might almost have been regarded as political badinage.
- 5.10 CC's greatest concern is the potential for people involved in groups such as that under discussion to be radicalised, especially considering that parties do not yet vet people (e.g., no DBS checks are carried out) and she considers that the WBC Chief Executive has a role to play in rising above all the politicians and underlining the importance of the LGA's '*Debate not Hate*' campaign, the true objective of which is not to stifle criticism but to ensure that hate speech is not used in political debate.
- 5.11 Finally, she remarked that it is not the role of a party assistant paid for by WBC to get involved, as happened here, in party political campaigning.

6. OTHER INTERVIEWEES

- 6.1 At SM's request, I also spoke to two other former councillors, both of whom, out of what appeared to be a genuine fear of reprisals and / or repercussions, wished to remain anonymous.

- 6.2 Anonymous testimony has very limited evidential value save in exceptional circumstances, none of which apply here but it is right to say that neither interviewee told me anything significant that I had not already gleaned from my examination of the documentation supplied with my instructions and / or my interviews with SM and CC. Both however confirmed that the comments about violence had been referred to the Police.
- 6.3 Whilst neither interviewee believed that there was an immediate threat of physical violence, both believed that the conduct complained of should be nipped in the bud, particularly in the light of the murders of Jo Cox and Sir David Amess – hence the involvement of the Police. It is however far from clear what effective action if any was taken following their involvement.

7. CLLR ROSS MACKINNON

- 7.1 I interviewed Cllr Mackinnon (RM) on 19 April. He had previously responded in some detail to the complaint in his submission to the Initial Decision Assessment meeting in April 2023. For ease of reference, I reproduce his response here:

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 (e.g. 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.

- 7.2 Cllr Mackinnon also addressed the most controversial element of the posts – 'choosing violence':

"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".

- 7.3 Cllr Mackinnon told me that that SM had been viciously attacking him and his colleagues on social media. On the morning in question, Lynne Doherty who was standing in the same ward as SM was particularly upset by the wording of a campaign leaflet that SM had delivered to her house.

- 7.4 RM acknowledged that '*poisonous little toad*' was not a very kind description and not one he would use in public but this was a purely private discussion and he emphasised that there had been a long history of vitriolic provocation on the part of the Greens.
- 7.5 He emphasised that the WhatsApp group had no connection with the Council as such – it was a private group to facilitate discussion and sharing of information about the forthcoming election campaign. RM is adamant that he was not acting as a councillor when he posted the comment and his membership of the group came about because he was standing as a candidate and not because he happened to be one already.
- 7.6 One member of the group (whom RM was not prepared to identify, although I have since been told who it was) disclosed the post to SM but RM was reticent as to that person's motive for the disclosure and suspects a political motivation.

8. THE CODE OF CONDUCT & MATERIAL CONSIDERED

- 8.1 The Council's Code of Conduct for Councillors may be found in Part 13 of the WBC Constitution.
- 8.2 In common with those adopted by local authorities across the country, the Code is based on a national model and framed against the background standards of the Seven Principles of Public Life ('The Nolan Principles').
- 8.3 Anyone bringing a complaint of an alleged breach of an authority'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.
- 8.4 In this instance, Mr Masters cited the Council's Social Media Protocol for Councillors (Appendix K to Part 13 of the Code) as well as the following specific paragraphs of the Code of Conduct:
- 4.1 (a) – Councillors must treat councillors, 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 conduct themselves in a manner which could reasonably be regarded as bringing their office or their council into disrepute.
- 8.5 I do not consider any other parts of the Code to be applicable in this instance and I have therefore assed Mr. Masters' complaint accordingly.

9. ARE THE FACTS IN DISPUTE?

- 9.1 In my view, the short answer to this is no. The evidence is there to show that Cllr Mackinnon referred to Mr. Masters as *'a poisonous little toad'*. Indeed, he acknowledged that he did so and although he admitted that it was not a very kind description and not one he would use in public, he has not apologised for using it.
- 9.2 I have not been able to identify a reference to the use of violence specifically against Mr Masters but several references to the use of violence are made by Cllr Mackinnon and others. I address the meaning of violence in this context below.
- 9.3 I am therefore satisfied that the basic facts as alleged by Mr Masters are established on the balance of probabilities, which is the applicable standard of proof in matters such as this.

10. WHAT DOES 'CHOOSING VIOLENCE' MEAN?

- 10.1 The advent and exponential growth of social media has over the past few years seen a huge rise in new traditions, conventions, conversational shorthand, 'emojis' and phraseology, more particularly amongst the younger generation and in many instances, resulting in words acquiring the exact opposite of their traditional meaning, *'wicked'*, *'sick'* and *'bad'* being just some examples.
- 10.2 'Savvy' and regular users of social media may well be familiar with the development of such trends but others less used to this form of communication are not and it is therefore all the more important that communications that deliberately or accidentally find their way to a wider audience should be phrased in such a way that their real intention is clear.
- 10.3 The prospect of the supposedly confidential content of the Conservative WhatsApp group being leaked was clearly present as evidenced by Mrs Mackinnon's comment:

"For when these WhatsApps get leaked we clearly mean violence on social media and not actual violence...these guys are all pussycats really, even the Glaswegian!"

- 10.4 I take it that *'the Glaswegian'* is a reference to Cllr Mackinnon.
- 10.5 According to Wikipedia (which may not be the most reliable source of accurate information but is nevertheless probably on point in this instance) the expression *'choosing violence'* was first noted as being used in an idiomatic sense in the television series *'Game of Thrones'* to express that one is firmly committed to making one's own choice(s) regardless of disapproval from others.
- 10.6 Individuals are of course free to express themselves as they think fit, but it must be right to take into account the context within which they do so and having in mind their likely audience.

10.7 Whatever currency the phrase '*choosing violence*' may have acquired amongst the social media cognoscenti, it is irresponsible and totally inappropriate to use it in a forum which one would hope was irrevocably committed to the principle of democracy and 'Debate Not Hate'. Little wonder that more than one member of the Conservative WhatsApp group was, to put it mildly, uncomfortable with the use of the phrase and all that it might appear to imply and encourage and decided to involve the Police.

11. WAS THERE A BREACH OF THE CODE?

11.1 This question has of necessity to be addressed in two stages, in that a breach can only be established if (1) the factual evidence is present and (2) Cllr Mackinnon was bound by the Code at the material time.

12. IS THE FACTUAL EVIDENCE THERE?

12.1 This question has already been answered in Section 9 above. The posts are there for all to see and Cllr Mackinnon has not denied that he called Mr. Masters '*a poisonous little toad*' or that he made a reference to '*choosing violence*'.

13. WAS CLLR MACKINNON BOUND BY THE CODE?

12.1 This question is less straightforward. Although the Code of Conduct was in force at the material time and Cllr Mackinnon was on the face of it bound by its provisions provided that he was acting as a councillor at the material time, he argues, in a nutshell, that the WhatsApp exchanges were an entirely private matter and that there was no nexus between the Council or his standing as a councillor and the activity in which he was engaged at the material time.

12.2 In reaching my conclusion in this matter I have sought to balance the strictly legal view (in effect, that advanced by Cllr Mackinnon) on the one hand with the more pragmatic approach that I believe to be appropriate in this case as expressed by Mr Masters and those who spoke in his support.

12.3 Political campaigning is not council business, but I agree with Cllr Culver that those members of the Conservative WhatsApp group who were councillors were known to be such and should have conducted themselves accordingly, not least in front of those members of the group who were not yet even candidates for election.

12.4 I also endorse Cllr Culver's comment that Cllr McKinnon's actions have brought the Council into disrepute as a result of the messages finding their way into the public domain – presumably something that Cllr Mackinnon would not have wanted to happen but which, as witnessed by the comment from his wife, was clearly anticipated as a possibility.

12.5 A number of the people whom I interviewed were firmly of the view that use of expressions such as '*choosing violence*' is unacceptable and that it was not acceptable to normalise this type of language amongst a group the composition

of which included some sitting councillors. This might give the impression that this was acceptable behaviour by West Berkshire Council members.

- 12.6 It took some time for Codes of Conduct and corresponding guidance from the Local Government Association to 'catch up' with the changes wrought by the growth of social media but most local authorities now provide training in its responsible use and indeed echo the advice contained in LGA guidance to the effect that some councillors have found it helpful to have separate social media profiles for personal and local authority use, though even the strictest privacy settings are no guarantee that posts or actions will remain private.
- 12.7 The LGA guidance specifically says this: '*As a rule of thumb, never post anything online you would not be comfortable saying or sharing in a public meeting*'.

13. CONSIDERATIONS

- 13.1 During the course of this investigation, I have been given a good deal of 'background information' which those to whom I spoke clearly felt I needed to know in order to understand the context in which Mr Masters' complaint arose. It quickly became clear to me that there has been a history of political unpleasantness and the development of a very toxic atmosphere amongst and between certain factions of WBC and whilst this might well go some way to explain what has given rise to this investigation, I have put political considerations aside and concentrated on the essential issue of whether there has been a breach of the WBC Code of Conduct.
- 13.2 I am not the final arbiter in this matter. My function is to investigate and to offer a view as to whether there has been a breach of the Code of Conduct. It is for elected members of the Governance Advisory Panel of WBC to make the final decision and, if appropriate to consider what sanction, if any, might be appropriate.
- 13.3 The standard of proof applicable in cases such as this is the civil standard of the 'balance of probabilities'. This is not a criminal investigation, to which the stricter standard of 'beyond all reasonable doubt' applies. This means that in order to find a breach, the decision maker has to conclude that it is more likely than not that a breach occurred.
- 13.4 Whilst I do not dispute the logic of Cllr Mackinnon's strict interpretation of the wording of the Code as set out in Paragraph 7.1, I believe it is necessary to look beyond the 'letter of the law' to the surrounding circumstances, the most significant of which in my view are that he was, at the time he made the posts, a high-profile serving councillor, known to be such and was proposing to stand for re-election.
- 13.5 His remark was made about another serving councillor who was also hoping to be re-elected to WBC and it was addressed to (inter alia) other prospective candidates who might reasonably have supposed that the sort of conduct Cllr

Mackinnon was exhibiting acceptable behaviour by a senior elected representative.

- 13.6 I do not consider that the fact that the posts were (or rather were intended to be) private can simply absolve Cllr Mackinnon of his obligations as to conduct, particularly as the abusive comment was directed at another councillor. The fact that membership of the WhatsApp group included a WBC employee lends credence to my belief that there were links to WBC, thus bringing the Code into play.

14. DRAFT CONCLUSION

- 14.1 The sort of language to which Cllr Mackinnon and others involved resorted was, frankly, disgraceful, unprofessional and unbecoming of anyone in public life. It is quite obvious that this matter should never have got to the stage of a formal investigation. It could and should have been resolved months ago by the simple expedient of Cllr Mackinnon making an appropriately worded apology to Mr Masters.

- 14.2 His doing so would have put this matter to bed without the need for the expenditure of time and money necessarily involved in an investigation.

- 14.3 Having given the matter detailed consideration, I concluded that:

(1) by his conduct, Cllr Mackinnon failed to treat Cllr Masters (as he then was) with courtesy or respect contrary to Paragraph 4.1 (a) of the WBC Code of Conduct;

(2) through his irresponsible and inappropriate use of the phrase '*choosing violence*' he conducted himself in a manner which could reasonably be regarded as bringing his office and his council into disrepute, contrary to Paragraph 4.2 (f) of the Code and

(3) Whilst I regard Cllr Mackinnon's gratuitous insult aimed at Mr. Masters as childish and totally inexcusable, I do not consider that of itself it amounted to a breach of Paragraph 4.2 (a) of the Code of Conduct (Bullying).

15. RESPONSES TO THE DRAFT REPORT

- 15.1 I sent the draft report to Mr. Masters and Cllr Mackinnon on Thursday 16 May and invited them to let me have any comments by close of business on Friday 31 May.

- 15.3 Mr. Masters' only comment on the draft report related to the allegation in Paragraph 7.3 that he had viciously attacked Cllr Mackinnon and his colleagues on social media. He commented as follows:

'This is untrue and Mrs Doherty's complaint to that effect was found to be unfounded as all references were to national conservative party policies and actions. This again demonstrates the alternative reality Cllr Mackinnon inhabits

where simply being a Conservative party member is somehow a protected characteristic.'

15.4 At Cllr Mackinnon's request, I removed a reference in the draft report to the forthcoming General Election. His remaining comments and my responses are as follows:

1. **RM Comment:** *'The original panel accepted that "choosing violence" was a metaphor, yet you have included this in the scope of your investigation'*

RGL Response: The purpose of an independent investigation is to look afresh at the facts of a case. It is not appropriate simply to accept the findings or opinion of another person or body without applying independent thought.

It should be quite clear from Section 10 of this report that I have done just that. See in particular Paragraph 10.7. I also checked the scope of my investigation with Ms Thomas before sending out the draft report.

2. **RM Comment:** *'At no point in our conversation did you ask me about "choosing violence". Our conversation solely concerned "poisonous little toad". You have therefore reached conclusions on "choosing violence", opposite to those reached by the panel, without any input from me on the issue. This is outrageous.'*

RGL Response: Ironically, it was because Cllr Mackinnon submitted such a comprehensive response to the complaint for consideration by the Panel, that I did not think it necessary to canvass this with him in any further detail.

He made his position on the meaning of '*choosing violence*' quite clear and the fact that I maintain reservations about the impact of such a phrase on those not 'in the know' does not detract from my independence or the validity of my view. It is not correct that Cllr Mackinnon had no input on this issue.

3. **RM Comment:** *'You have spoken to several people who are supporters of Mr Masters in this complaint. You have not spoken to any other members of the chat group except for those suggested by Mr Masters. You have not spoken to former Cllr Doherty, or my wife. Yet you have reached a conclusion about what my wife meant by her comments on the group. I am sure her meaning is the opposite of what you ascribe.'*

RGL Response: The fact that those to whom I have spoken and whose concerns were passed on to me were quite clear in their concern about the nature of the language used – so concerned indeed that the Police became involved – speaks volumes as to how the language used was regarded. in certain quarters.

I too am sure that Mrs Mackinnon's meaning is the opposite of what I ascribe – that does not detract from the validity of my coming to a different view.

4. **RM Comment:** *'You mention that individuals should consider their likely audience in mind when expressing themselves. I suggest that I know the attributes of my audience in a private chat group somewhat more than you do, given that you have not seen fit to ask any of that audience for their views, except for the naturally biased member put forward by Mr Masters.'*

RGL Response: I agree that Cllr Mackinnon will indeed know the attributes of his audience better than I do, but at least one of them (and almost certainly more) were clearly uncomfortable with the use of the phrase 'choosing violence' and it is significant that Mrs Mackinnon anticipated the possibility of its use being leaked and felt the need to explain it. See Paragraph 10.3.

5. **RM Comment:** *'You have made a very emotive conclusion which I suggest goes far beyond the remit of what your investigation should include'*

RGL Response: I reject Cllr Mackinnon's suggestion. As with the sixty-plus investigations that I have conducted over the past thirteen years, I have striven in this case to come to a view that I consider to be fair and balanced. Emotion does not come into it.

6. **RM Comment:** *'You have not justified why you consider that I was "acting as a representative of the Council", which would bring the code into play. In fact, you recognise that in a legal interpretation I was not. In a "pragmatic" interpretation, you say I am. In proceedings such as these, we do not (or should not) impose our personal "pragmatic" feelings to reach an outcome. That is stretching the bounds of fairness to breaking point.'*

RGL Response: I addressed this point in Paragraphs 12.2 to 12.5 above and have nothing to add.

16. FINAL CONCLUSION

- 16.1 I did not consider it necessary to amend the draft report otherwise than by the insertion of Mr. Masters' comment as above, together with Cllr Mackinnon's comments and my responses, or to change my draft conclusions.

- 16.2 I therefore stand by the conclusions set out in Paragraph 14.3 above, namely that:

(1) by his conduct, Cllr Mackinnon failed to treat Cllr Masters (as he then was) with courtesy or respect contrary to Paragraph 4.1 (a) of the WBC Code of Conduct;

(2) through his irresponsible and inappropriate use of the phrase '*choosing violence*' he conducted himself in a manner which could reasonably be regarded as bringing his office and his council into disrepute, contrary to Paragraph 4.2 (f) of the Code and

(3) Whilst I regard Cllr Mackinnon's gratuitous insult aimed at Mr. Masters as childish and totally inexcusable, I do not consider that of itself it amounted to a breach of Paragraph 4.2 (a) of the Code of Conduct (Bullying).

Richard Lingard
1 June 2024

THE COMPLAINT

Complaint

I wish to formally complain about the conduct of Cllr Ross MacKinnon.

In the Newbury Weekly News of the 16 March 2023, it emerged that Cllr MacKinnon had made the following statements in a WhatsApp platform group chat in reference to me:

"I see we are choosing violence today. Love to see it" He also referred to me, as a *"poisonous little toad"*.

Such was the tone of the exchange that others joined in, speculating that they themselves need to be "more violent". Cllr MacKinnon's wife, Amanda MacKinnon, then added "We don't all choose violence here but if you ever need back up we've got a few characters ready to do ... my husband for one."

The NWN report received widespread attention and universal condemnation of the language used.

Cllr MacKinnon issued an apology to me on January 13, following offensive comments he about me on social media, after a complaint about his behaviour was partially upheld. To endure further abuse less than 3 months later from Cllr MacKinnon clearly indicates a deliberate and sustained pattern of behaviour and the ineffectiveness of previous sanctions.

This complaint is because I strongly believe Councillor MacKinnon has breached the Social Media Protocol for Councillors, The Councillors Code of Conduct and the Nolan Principles and through the subsequent media attention he has brought the council in to disrepute.

The Constitution

Appendix K Social Media Protocol for Councillors

For the avoidance of doubt, I am operating on the basis that Whatsapp is widely considered social media given its obvious characteristics (indeed multiple sources are available online that confirm this), and therefore comes under the provisions of the definition in Appendix K of the Council's Constitution, Social Media Protocol for Councillors, updated January 2018. Whatsapp is clearly a social media platform with networking and community-building capabilities, allowing you to customise and identify yourself to others and participate in discussion. As such, it again falls within the realms of "social media" which by the council's own admission has a broad meaning in Appendix K:

“It is difficult to give definitive advice on the application of the Code of Conduct to social media use and there is developing case law in this area. However, if you use a social media platform where you identify yourself or can otherwise be identified as a Councillor, either in your profile or otherwise, there is a strong likelihood that you will be regarded as acting in your Capacity as a Councillor.”

Clearly, Cllr Mackinnon’s comments meet the provisions of this protocol. He is obviously identifiable as a councillor, participating in a group of councillors and candidates, and moreover is a portfolio holder. His comments were not made under anonymity. Indeed, his identity was clear enough for the police to contact a number of councillors following concern from members of the group.

It is unclear at this time whether Cllr MacKinnon was using his council-issued equipment to participate in the conversation; if this could be established definitively, I suggest it puts an even more serious complexion on the issue. However, even if this is not the case, the matter is still extremely serious and has caused a great deal of upset.

Appendix H – Councillor Code of Conduct

4.1 a) – councillors must treat councillors... 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 conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.

I would be fascinated to learn how Councillor Mackinnon’s behaviour could possibly have escaped the scope of these provisions. He has clearly treated me with an absence of respect on more than one occasion, he has engaged in behaviour which can clearly be regarded as bullying or intimidation (see below), and the subsequent release of this material to the public has clearly brought the council, and his office, into disrepute

Definitions (Appendix 2)

(My emphasis)

‘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.)”

This clearly meets the definition laid down by the council of bullying or intimidating behaviour.

It appears that I am seen by Councillor MacKinnon as a legitimate target for what appears to be an ongoing campaign of harassment. It is disappointing that members of this group of Conservative councillors and candidates were prepared to join in with this abuse.

The Nolan Principles

Again, emphasis mine. I believe these are the principles which have been failed by Cllr Mackinnon's behaviour.

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.

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.

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.**

Further Points

Councillor MacKinnon is a senior, serving Conservative member of the executive. He is of a high profile having presented the council budget less than a month before, and holding live chats with members of the public as part of the consultation effort. He was in a group speaking with other councillors BUT ALSO inexperienced individuals who aspire to join the party's ranks as councillors. The published screenshots show no leadership and show no respect for me. The screenshots paint a vivid picture of an environment in which new candidates are introduced to behaviour by Cllr MacKinnon that directly encourages disrespect and violent rhetoric as part of the culture of the group. The Nolan Principles clearly state that councillors should not behave improperly and ON ALL OCCASIONS avoid the appearance of such behaviour.

It has been alleged that this is just "humour". I find this astonishing, and am absolutely unable to see the joke. I am not alone.

Two serving MPs have been murdered in the course of their duties. The atmosphere in the country is already febrile and divided. That anyone would "joke" about "choosing violence" is deeply concerning and reprehensible.

In addition, I understand there has been a suggestion by the Conservative groups that this is either political “dirty tricks” by opposition parties. I reject that entirely as the messages are from a Conservative group and published by an independent newspaper.

It’s also telling that these “high spirits” were of such a nature that they caused enough concern for a member of the group to seek police advice.

We do not have the full transcript of what else was in the WhatsApp chat, only a very partial cross- section of its contents, but it hardly instils confidence in the behaviour of councillors in the rest of the discourse, nor does it reflect well on the council.

Debate Not Hate

In October of last year, Cllr Doherty introduced a motion to council, which passed, that proposed to adhere to a convention of “debate not hate” in line with the LGA campaign of the same name.

All of the council – including Councillor Mackinnon - were therefore signatories to this campaign as I understand it.

Timing and expected response

I would appreciate it if this complaint could be addressed in a timely manner. The previous complaint about Councillor MacKinnon's behaviour to me took over 6 months to resolve which was unacceptable.

Evidence base

I have included the watts app conversation and screen shots of messages from councillors within the conservative group along with media reports and public reaction on social media including but not limited to Burghfield and Mortimer Facebook comments.