# Written Decision of West Berkshire Council's Advisory Panel

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| **Date of the Advisory Panel:** | 25 June 2024 |
| **Reference Number:** | NDC06/23 |
| **Member who this Decision relates to:** | Councillor Ross Mackinnon |
| **Person who made the original allegation:** | Mr Steve Masters |
| **Authority:** | West Berkshire Council |
| **Chair of the Advisory Panel:** | Mike Wall (Independent Person) |
| **Other Members of the Advisory Panel:** | Lindsey Appleton (Independent Person), Councillors Jane Langford, David Marsh and Geoff Mayes |
| **Apologies:** | Councillors Carolyne Culver and Joanne Stewart |
| **Declarations of Interest:** | Anne Budd declared a personal interest in the item by virtue of the fact that she was acquainted with the Complainant as they were fellow councillors on Hamstead Marshall Parish Council.<br><br>Lindsey Appleton declared that she was on the Initial Assessment that considered this complaint. However, she would remain completely independent on the matter.<br><br>Councillor Langford declared a personal interest in the item by virtue of the fact that the Subject Member was her political group Leader (Conservative Group).<br><br>Councillor Marsh declared a personal interest in the item by virtue of the fact that the Complainant was formerly a fellow Green Party Councillor on West Berkshire Council. Additionally, they were both members of Newbury Town Council. |

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| | As these interests were personal and not prejudicial they were permitted to take part in the debate. |
| **Monitoring Officer:** | Nicola Thomas (Deputy) |
| **Investigator:** | Richard Lingard |
| **Clerk of the Advisory Panel:** | Stephen Chard |
| **Date Decision Issued:** | 3 July 2024 |

## Summary of the Original Complaint

It was alleged that the Subject Member engaged in disrespectful, bullying and intimidating behaviour by referring to the Complainant as a "poisonous little toad" and referring to "choosing violence" in reference to the Complainant in a WhatsApp chat.

## Outcome of the Initial Assessment

The complaint which was received on the 23 March 2023 was initially assessed on 13 April 2023 by the Deputy Monitoring Officer and Independent Person (Lindsey Appleton) of West Berkshire Council.

In considering the Complaint, the Deputy Monitoring Officer in consultation with the Independent Person had regard to the West Berkshire Council Code of Conduct, LGA guidance, the Social Media Protocol, the information submitted by the Complainant, and the response by the Subject Member.

It was concluded that the use of the phrase "poisonous little toad" was personal, disrespectful, and inappropriate language towards a fellow councillor, and may constitute a breach of the Code of Conduct and the Nolan Principle of Respect for Others.

On references to violence, the Panel accepted the Subject Member's clarification that "choosing violence" was intended to be an online metaphor, and concluded that the provided screenshots did not provide sufficient context to determine if a breach of the Code of Conduct had occurred.

The Panel concluded that an informal resolution would be sought with the Subject Member asked to issue an apology to the Complainant.

However, as the apology was not forthcoming, the matter has been fully investigated by an independent investigator.

## Conclusion of the Independent Investigator

Mr Richard Lingard was appointed to undertake the investigation on behalf of the Monitoring Officer. He considered the same information made available at the Initial Assessment stage and interviewed the following people as part of the investigation:

- Mr Steve Masters (then Councillor Masters) (Complainant)
- Councillor Ross Mackinnon (Subject Member)

Mr Lingard also interviewed three further people at the request of Mr Masters. Councillor Carolyne Culver and two former councillors, both of whom asked to remain anonymous.

Mr Lingard's draft report was shared with the Subject Member and the Complainant, and further comments were invited. These comments were incorporated into the final report.

In summary, Mr Lingard's findings are as follows:

(a) 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 West Berkshire Council Code of Conduct:
'4.1 Councillors and Co-Opted Members must:
(a) Treat councillors, co-opted members, officers, members of the public and service providers with courtesy and respect.'

(b) 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:
'4.2 Councillors and Co-Opted Members must not:
(f) Conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.'

(c) While he regarded Cllr Mackinnon's gratuitous insult aimed at Mr Masters as childish and totally inexcusable, Mr Lingard did not consider that of itself it amounted to a breach of Paragraph 4.2(e) of the Code of Conduct:
'4.2 Councillors and Co-Opted Members must not:
(a) Engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation.'

## Views of the Advisory Panel

A summary of the Advisory Panel's discussions is provided below to aid the Governance Committee's deliberations:

In respect of point (a), the majority of the Panel concurred with the findings of the Investigator. While the WhatsApp group was private, this was considered irrelevant as the information had been leaked.

In respect of point (b), the Panel concurred with the findings of the Investigator. They considered that Councillor Mackinnon was acting in his capacity as a Councillor when he made the WhatsApp post and felt that the majority of people would consider that the phrase 'choosing violence' meant aggression and not a metaphor linked to a television programme.

In respect of point (c), the Panel concurred with the findings of the Investigator. A Panel member did however consider that the actions of Councillor Mackinnon amounted to a form of bullying.

One panel member felt it was important to note that the insult aimed at Mr Masters was said about him and not to him.

The Panel did not identify any areas of the Investigator's report that required further clarification.

However, one Panel member held the view that the investigation would have benefited from additional witness interviews. I.e. others on the WhatsApp group. However, the majority of the Panel members felt this was a disproportionate use of resource.

The Panel recommended that the following people be invited to attend the Governance Committee where the matter will be determined:

1. Investigator
2. Complainant
3. Subject Member
4. Monitoring Officer

The Advisory Panel did not make any recommendations should the Governance Committee concur with the finding that a breach of the Code of Conduct has occurred.

## 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