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21st January 2018

COMPLAINT DECISION NOTICE

**COMPLAINT REFERENCE: COUNCILLOR MONICA DAVIES
DECISION: NO BREACH OF THE CODE OF CONDUCT**

Power to determine the Complaint

This Code of Conduct complaint against Cllr. Davies has been determined under Part 7 of the Royal Borough of Windsor and Maidenhead's Members' Code of Conduct complaints process, Appendix 4.

I assessed the complaint under paragraph 3 of Appendix 4, and considered that the criteria stated in that paragraph was met with regard to accepting the complaint. Under paragraph 4 of Appendix 4, I consulted the views of Mr. Peter Hills, the Royal Borough's Independent Person.

The Complaint

This Code of Conduct complaint was brought by Mr. A. Needham, Cllr. Ian Bacon and Cllr. Harry Clasper. Their complaint centred on what was said in an email sent by Cllr Davies to Fiona Cryle on 17th September 2018. Ms. Cryle is the Chair of the Datchet Neighbouring Planning Group and she and Cllr. Davies have a shared interest in environmental matters. Cllr. Davies' email to Mrs. Cryle made a serious but unfounded accusation about the Trustees of Datchet Recreational Centre Charitable Trust, a registered Charity. She also criticised the work of the Village Hall Management Hall Committee in the running of the Village Hall. She made disparaging comments about the Chair of Datchet Parish Council and another Member of Datchet Parish Council, the latter being accused of bias and lack of impartiality for which she had no evidence. Finally she made further disparaging remarks about Datchet Parish Councillors generally

This is not the first time Cllr. Davies has had a complaint made against her for the same behaviour. She was accused on two other occasions and was found in breach of the Code of Conduct for similar reasons. The first decision was made in December 2017 with regard to false accusations about Datchet Recreation Centre Charitable Trust and the Village Hall Management Committee in a series of emails to Councillors. The second decision was made in June 2018 with regard to false accusations about fellow Councillors in Social media. In this latest complaint, Mr. Needham referred to the Parish Council Minutes of Monday 13th August which demonstrated yet more unceasing, unsubstantiated attacks on Members of the Village Hall Management Committee.

The complaints for this third complaint alleged that Cllr. Davies had breached the following paragraphs of the Parish Council's Code of Conduct, which were:

- viii) *You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.*
- ix) *You must not act in a way which a reasonable person would regard as bullying, or in any way which is intimidating to others.*
- x) *You shall behave in such a way that a reasonable person would regard as respectful.*

Analysis

Cllr. Davies sought advice from Mr. David Comben, the Royal Borough's Independent Person, as she was entitled to do under para. 7 of the Royal Borough's complaints process.

Cllr. Davies knew Mrs. Cryle because she was a Member of Datchet Parish Council until 2015. She and Mrs. Cryle have a shared interest in environmental issues from some years ago. She does not however currently have a role related to this interest in her capacity as Councillor. There is a representative of the Parish council for the London Authorities Aircraft Noise Council, (LAANC), for example, an organisation set up in the 1960's as an umbrella local authority organisation representing the interests of residents around Heathrow in respect of environmental issues connected with the airport. Cllr. Davies was, at some point, a council representative of that organisation but is no longer so. Cllr. Davies has made it clear to Mrs. Cryle therefore that communications between them about environmental matters were to be regarded in her capacity as a private individual, and not as a Parish Councillor. Cllr. Davies demonstrated this to me by showing me an email she sent to Mrs. Cryle in July 2015 in which she asked that they met as private individuals with regard to their mutual interest, and not with Cllr. Davies in her capacity as a Councillor.

On 11th September 2018 Mrs. Cryle emailed Cllr Davies referring her to an air pollution monitor which she had mentioned the evening before at a meeting. Mrs. Cryle asked Cllr. Davies if she knew who had put it there and who was responsible for it. Cllr Davies' reply is the source of this complaint. She told Mrs. Cryle that the air pollution monitor was the property of the environment agency and that the information about it came via the LAANC. She explained that the representative of Datchet Parish Council for the LAANC was another Councillor who, she said, did not attend all LAANC meetings. She explained that she had a good relationship with other members of LAANC in her personal capacity who keep her informed of environmental changes. She reiterates to Mrs. Cryle that her contacts with regard to this are personal to her. She then went on, in that email, to make serious accusations which are now the subject of this complaint. She finished the email by expressing concern about 360 new homes being built in the area and the pollution in the area, suggesting an air pollution monitor should be placed by the motorway. She said 'there is nothing to stop you placing a few there yourself, I might join you...'

In order to make a decision about this complaint, I need to ask the question: Was Cllr. Davies acting, or seen to be acting as a Councillor when she wrote the email to Mrs. Cryle on 17th September 2018? S27(1) of the Localism Act 2011 obliges Parish and Borough Councils to promote and maintain high standards of conduct by their Members. At s27(2) is says:

'In discharging its duty under s27(1) a relevant authority must, in particular adopt a code dealing with conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.' (my underlining)

This section reflects case law. The courts have held that if legislation had intended for the Code of conduct to apply to Councillors even when acting in their personal capacity, it would have to expressly say so, since there are implications on their human rights as individuals, which I deal with below. It follows that if a Member is not acting in their capacity as a Councillor, no part of the Code of Conduct can apply. This is the case even when there can be little defence against that accusation, as is the case here.

It is, of course, not the case that a Councillor can exclude themselves from complying with the Code of conduct by simply saying that they are acting in their private capacity, each time they are accused of breaching the Code of Conduct. It would depend on the circumstances. In this case, Cllr. Davies has demonstrated that she intended her email to Mrs. Cryle to be taken as from her as an individual, and not a Councillor, despite the fact that she referred to issues which she acquired in her capacity as a Councillor. Cllr. Davies has a shared interest in environmental matters with Mrs. Cryle which were not related to her role as a Councillor. She was clearly not conducting Council business in that personal email. She has demonstrated a historical interest in the LAANC and environmental issues generally.

She has clearly made unwanted remarks about others, but she also has the protection of Art 10 of the European Convention of Human Rights which says that:

'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.....'

On that basis it would appear that she was not acting as a Councillor when she made the remarks which are the subject of this complaint. It may have been different if she had made those remarks in a social forum by discussing council business generally, by way of informing the general public about her work as a Councillor; however this was a private email.

To check the position, I further researched caselaw on this issue, since this subject is not an easy one. There is a relatively recent case, R. (on the application of Lewis Malcolm Calver v Adjudication Panel for Wales [2012] EWHC 1172 where the facts are very similar to this complaint. In that case, a Councillor set up his own website and made personal snide remarks about the integrity of his fellow Councillors and others. He also referred to Council business in those posts. The appeal to the High Court in Wales against a decision to hold the Councillor concerned in breach of his Council's Code of Conduct was overturned. The summary of this case says:

"In light of the strength of the right to freedom of expression and the fact that the majority of comments posted by a councillor on his website were directed at other councillors, a decision by the Adjudication Panel of Wales that those comments broke the local authority code of conduct was a disproportionate interference with his rights under the European Convention on Human Rights 1950 art.10.

There is significant debate on the balance between a Member's Art 10 rights, and the extent to which a Member is acting in their official capacity. As stated in this case, the area does not provide the decision maker or the court 'with bright lines'. Cllr. Davies' remarks are seriously damaging to the reputation of those people she targets, and for which she has never provided evidence. However, taking into account the evidence I have

been provided with, and caselaw, I have to conclude that this is not something that the Code of Conduct regime can deal with.

Decision: For the reasons above, I consider that Cllr. Davies did not act in breach of paragraphs viii), ix) or x) of Datchet Parish Council's Code of Conduct.

Notification of Decision

My decision has been sent to Cllr. Monica Davies, the complainants and the clerk to Datchet Parish Council.

Under Part 7 Appendix 4 of RBWM's complaints procedure there is no further right of appeal. Anyone dissatisfied with this decision may however write to the Local Government Ombudsman. Further details are on the Local Government Ombudsman's website. Please note that Councillor complainants are unable to use this service.

Mary Severin
Monitoring Officer

21st January 2018