

1st November 2019

COMPLAINT DECISION NOTICE

COMPLAINT REFERENCE: COUNCILLORS LARCOMBE, T O'FLYNN, L O'FLYNN, DAVIES, THOMPSON, BARNES-TAYLOR
DECISION: NO BREACH OF THE CODE OF CONDUCT

Power to determine the Complaint

This Code of Conduct complaint against Datchet Parish Councillors Larcombe, T.O'Flynn, L.O'Flynn, Davies, Thompson and Barnes-Taylor (the "Subject Members") has been determined under Part 7A of the Royal Borough of Windsor and Maidenhead's Constitution, and specifically the 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.

The Complaints

There were two complainants with regard to the same issues against Cllrs. Thompson and Davies. One of the complainants also complained against Cllrs. Larcombe, T'O'Flynn, L.O'Flynn, and Barnes-Taylor. As a result of the similarities of the two complaints, both complainants agreed that their complaints could be combined, as they related to the same allegations. The complaints were received on 28th March 2019 and 3rd April 2019. Clarification led to a delay to taking them forward. The Subject Members were finally informed of the complaints in early May 2019. I was given a great deal of help by my colleague, Ms. Jennifer Lee, Senior Solicitor at Wokingham Borough Council, both at the initial stage, and with the investigation.

The background to the complaints is that there has been a long standing disagreement between the trustees of the Datchet Recreational Centre Charitable Trust ("DRCCT") with regard to management of the Village Hall, and Members of Datchet Parish Council. The two complainants were trustees of DRCCT (The "Trustees"). Tensions between the two groups have increased in recent years and this is not the first Code of Conduct complaint received in association with this issue. The complaints were as follows:

1. A letter dated 26th February and broadsheet of questions from the Subject Members with regard to DRCCT accounts made allegations of financial impropriety against the Trustees. The complainants said that there was no substantive evidence to back up their allegations and was unauthorised by Datchet Parish Council. They also say this was a structured campaign to derail an agreed process

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to try to determine a way forward for Datchet Parish Council and the Village Hall Management Committee.

2. An anonymous letter making spurious allegations against the management of the DRCCT was sent which the complainants believed was drafted by one or all of the Subject Members
3. The Subject Members failed to acknowledge that they had in fact had a response to the questions they had set out in the broadsheet by one of the complainants.
4. An email sent from Cllr Thompson to one of the complainants on 18th March 2019 was allegedly insulting and threatening
5. Email correspondence from Cllr Davies to one of the complainants on 13th and 18th march 2019 was also allegedly insulting and threatening.

The complainants alleged that the Subject Members breached paragraphs 9 and 10 of Datchet Parish Council's Code of Conduct as follows:

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.

In view of repeated Code of Conduct complaints about this matter, I asked for an independent investigation into the issues under para. 4, Appendix 4. I consulted Mr. Peter Hills, one of the Royal Borough's Independent Persons, and he agreed that an independent investigation was appropriate.

The investigation was conducted by Ms. Jennifer Lee, a Senior Solicitor employed by Wokingham Borough Council, where she is also Deputy Monitoring Officer. Her investigation report can be summarised as follows.

With regard to the letter dated 26th February, and broadsheet of queries about the DRCCT accounts, the response from Subject Members were that they did not make any allegations but merely wanted answers to their questions about the accounts. Their responses indicated a growing frustration at what they perceived as a failure by DRCCT to provide information. There was also a dispute about who the trustees were. Whilst the complainants accepted that the Subject Members were entitled to ask questions, the issue appeared to be the manner in which those questions were asked, and the associated insinuations made. However, in the opinion of the independent investigation, this did not amount to bullying or intimidation, or a failure to treat the complainants with respect.

All subject members denied having anything to do with the anonymous letter, and there was no realistic way to prove who was responsible for it. There was therefore no sufficient evidence to suggest the Subject Members were the authors of it.

With regard to the complainant's point that the Subject Members had failed to acknowledge the response given to them to their queries by one of the complainants, the investigation officer found that this was correct, but it was not done maliciously. On that basis, the investigating officer found there was no evidence of bullying or harassment by the Subject Members, nor that it demonstrated disrespect.

With regard to the email sent by Cllr Thompson to one of the complainants dated 18th March 2019, Cllr Thompson responded by saying that it was not reasonable to respond within the time available in a concise way, and that he did not consider the response rude. The investigating officer found it to be written in a way which was argumentative and not particularly friendly, but understandable within the context of the relationship between the

Subject Member and the complainant. She did not therefore find that it amounted to bullying or disrespect.

Finally, with regard to the email sent by Cllr Davies to one of the complainants on 13th and 18th March 2019, Cllr Davies responded by saying that she was simply replying to the complainant with regard to his accusations against Cllr Thompson (regarding the anonymous letter), which she considered were disrespectful. The Investigating officer found that the tone of her emails were not politely written, and that they were fairly inflammatory and argumentative. However, in the context of the now significantly poor relationships between her and the complainant, and the fact that none of the correspondence between them was particularly pleasant in tone, she did not consider the emails amounted to bullying or intimidation, or a failure to treat the complainant with respect.

Under para. 5 of Appendix 4, if an investigation finds no evidence that the Subject Members have failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with one of the Council's Independent Persons and the Chairman of the Employment and Members Standards Panel, shall make a decision of no further action. Accordingly, after consulting Mr. David Comben, one of the Council's Independent Persons, and Cllr. Samantha Rayner, who both agreed with the Investigation Officer's conclusion, **I find that Cllrs. Larcombe, T.O'Flynn, L.O'Flynn, Davies, Thompson and Barnes-Taylor did not act in breach of paragraphs xi) or x) of Datchet Parish Council's Code of Conduct.**

Notification of Decision

My decision has been sent to the complainants and all Subject Members. I have requested that the clerk to Datchet Parish Council publish this decision on their webpage for a period of 3 months, as required by Appendix 4.

There is no further right of appeal. Anyone dissatisfied with this decision may however write to the Local Government and Social Care Ombudsman, provided they themselves are not a Councillor.

Mary Severin
Monitoring Officer

1st November 2019