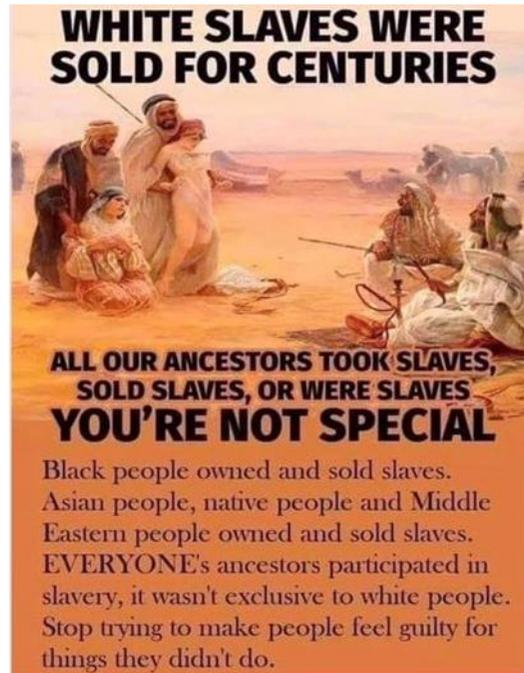


Darlington Borough Council – Decisions taken by the Members Standards Hearing Committee on Tuesday, 29 June 2021

Agenda Item No	Topic	Decision
MSH3	Investigation Report Ref 94 and 95/2020	<p style="text-align: center;"><b><u>Decision Notice</u></b></p> <p><b>Case Reference 94/2020, 95/2020, Councillor Mrs Pauline Culley</b></p> <p><b>FINDING OF NO BREACH OF THE CODE OF CONDUCT</b></p> <p><b>Hearing of the Member Standards Hearing Committee of 29th June 2021.</b></p> <p><b>Members:</b>            Councillor Kevin Nicholson (Chair)            Councillor Paul Crudass            Councillor Andy Scott</p> <p><b>Monitoring Officer:</b> Luke Swinhoe, Assistant Director, Law and Governance <b>Investigating Officer:</b> Beth Symonds, Lawyer (Litigation)</p> <p><b>Summary</b></p> <p>The Member Standards Hearing Committee considered the case following a complaint from a member of the public (who has requested to remain anonymous – referred to as RT) made on 6 September 2020 and a jointly submitted complaint made by Councillor Curry, Harker and Snedker made on 23 September 2020.</p> <p>The case concerned a meme ('you're not special') that had been shared by Cllr Mrs Culley on her Facebook page on or around 6 September 2020.</p>

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		<p>Cllr Mrs Culley is and was at the material time a member of Darlington Borough Council.</p> <p>The Monitoring Officer carried out an assessment of the complaints and on the 8 October 2020 appointed the Investigating Officer to carry out an investigation. The initial Investigation Report, date 17 February 2021 was circulated, but following representations from Cllr Mrs Culley further work was done and the final report dated 7 June 2021 was produced.</p> <p>The complaints were heard by the Member Standards Hearing Committee on 29th June 2021 who unanimously made a finding of no breach of the Code of Conduct.</p> <p><b>The Complaint</b></p> <p>This is about the post that was shared by Cllr Mrs Culley (reproduced below)</p>
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The complaint that was considered (as set out in the Investigation Report) was that:

- a) The post by Councillor Culley undermines and / or denies that the transatlantic slave trade has created a legacy of discrimination towards black people, and contributes to the dissemination of misleading information about historical slave trades at a time when there is a global social discussion about slave trades and how they contributed towards institutional racism
- b) The failure of a Council member to recognise the discrimination that black people face could result in members of the public believing that the Council does not recognise problems experienced by black people; this potentially isolates black people from their Council and may discourage black people from accessing Council services

		<p>c) The post by Councillor Culley reflects poorly on Darlington Borough Council as an organisation that is ignorant to the issues affecting black people</p> <p><b>Relevant Sections of the Code of Conduct</b></p> <p>Paragraph 2 (1) - “you must comply with this Code whenever you: (a) conduct the business of the council (which, in this Code includes the business of the office to which you are elected or appointed);or (b) act, claim to act or give the impression that you are acting as a representative of the Council, and references to your official capacity are construed accordingly”</p> <p>Paragraph 3 (1) - “you must treat others with respect”</p> <p>Paragraph 5 - “you must not conduct yourself in a manner which could reasonably be regarded as bringing your officer as a member or the Council into disrepute”</p> <p><b>Factual matters</b></p> <ol style="list-style-type: none"><li>1. At the material time Cllr Mrs Culley had a private Facebook page and a public Facebook page. Cllr Mrs Culley’s ‘public’ Facebook profile was Pauline Mowden Culley Facebook. Cllr Mrs Culley represents the Mowden Ward of Darlington.</li><li>2. Cllr Mrs Culley reposted the meme on her ‘public’ Pauline Mowden Culley Facebook profile – around 6 September 2020</li><li>3. Cllr Culley did not ‘like’ the post or add any comment when reposting the meme.</li><li>4. The post was removed after a day of being displayed and the Facebook account taken down</li></ol>
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		<p><b>Consideration of the Code of Conduct</b></p> <p><u>Official Capacity</u></p> <p>The first question for us is whether the Code of Conduct applied. Not everything a member does is subject to the Code of Conduct.</p> <p>Paragraph 2(1)(b) of the Code of Conduct is relevant. This concerns situation when while a member is not carrying out a formal council role or council business, they are nonetheless deemed to have been acting in an official capacity.</p> <p>The use of Mowden is relevant on the Facebook profile. This is Cllr Mrs Culley’s Ward. The Facebook page was also public facing. Cllr Mrs Culley acknowledges that she used this Facebook page for some posts that relate to her role as a Councillor. In doing this she is putting herself forward as a ward Councillor.</p> <p>The meme was shared against the backdrop of public debate and demonstrations that had taken place in 2020 about racism and slavery, including concerns about the continued appropriateness of some statues and street names and ongoing legacy/discrimination issues.</p> <p>The meme was a statement about a matter of national/ international and local debate/and differing views and opinions. It can be seen as a political statement.</p> <p>In sharing it Cllr Mrs Culley, shared it to an audience which will have included people who would be following because she is an elected member.</p> <p>Being reposted by an elected member on the ‘Mowden’ profile we think that it done by Cllr Mrs Culley in her official capacity and the Para 2(1)(b) of the Code of Conduct applies.</p> <p><u>Interpretation of the meme</u></p>
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		<p>While some of the statements made in the meme are correct historically – the statement ‘ You’re not Special’ is problematic. It is a superficial statement and it could be said that it fails to adequately consider the true scale and impact of slavery on different groups.</p> <p>The sharing of the meme by Cllr Mrs Culley was in our view ill-judged and the ‘you’re not special statement’ was we think, offensive.</p> <p>Potentially this could give rise to a finding of a failure to treat with respect and also bringing the office of Councillor or the Council into disrepute.</p> <p>We are however aware that we need to consider freedom of expression. In particular Article 10 of the European Convention of Human Rights. A finding of a breach of the Code of Conduct could potentially interfere with Cllr Culley’s Freedom of Expression and if this is the case it must be justifiable to do so.</p> <p>In a democratic society Freedom of expression is an important right. It is also the case that enhanced protection is afforded to political expression.</p> <p>This does not just have to be about the particular role to which a member is appointed but could be wider – about public affairs/debate.</p> <p>As indicated earlier the meme that was shared was about a matter of public debate/interest – arising against the backdrop of the issues raised during 2020 about racism and slavery. The repost can be seen as a political statement – and made by an elected member. We view this as political speech with enhanced protection for freedom of expression.</p> <p>Freedom of expression is not however an absolute right and even the enhanced protection afforded to political speech would not be available for grossly offensive statements or statements that amount to hate speech.</p>
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		<p>While we do consider the meme offensive, we do not think that it is of a level to be considered as grossly offensive or to amount to hate speech.</p> <p>It is relevant that the meme is not specifically directed towards any particular person or group. Neither does it mention the transatlantic slave trade.</p> <p>It is also right to point out that Cllr Culley did not add any comments to what she shared or indicate that she was liking what was shared. It was also only viewable on Cllr Mrs Culley’s Facebook page for a short time before being removed.</p> <p>In the circumstances and considering that we find the sharing of the meme was within the limits of freedom of expression, we do not consider that there was a failure to treat with respect under paragraph 3 of the Code of Conduct</p> <p>Considering the issue of disrepute, given the view that we have arrived at about freedom of expression, we do not consider that the office of Councillor or the Council was brought into disrepute under paragraph 5 of the Code of Conduct.</p> <p><b>Decision</b></p> <p>We do not find that Cllr Mrs Pauline Culley broke the Members Code of Conduct.</p> <p><b>Supplementary Matters</b></p> <p>It is recommended that additional guidance to be made available to all members about the use of social media. In addition, it is recommended that a review be undertaken with a view to update the Code of Conduct to reflect the rapid changes in social media platforms.</p> <p><b>Dated 1st July 2021</b></p>
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		Councillor Kevin Nicholson Councillor Paul Crudass Councillor Andy Scott.  <b>Member Standards Hearing Committee</b>
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