

Members Standards Hearing Committee Agenda



1.30 pm Tuesday, 29 June
2021

Council Chamber, Town
Hall, Darlington

**Members and Members of the Public are welcome to
attend this Meeting.**

1. Chair –

To confirm the appointment of Councillor K Nicholson as Chair for the meeting only.

2. Introductions/Attendance at Meeting

3. Declarations of Interest

4. Hearing Documents –

Report of the Investigating Officer, associated documentation and the Independent Person submissions

(Pages 3 - 106)

5. Decision Notice (Pages 107 - 112)

6. To consider the exclusion of the Public and Press :- –

RESOLVED - That, pursuant to Sections 100A(4) and (5) of the Local Government Act 1972, the public be excluded from the meeting during the consideration of the ensuing items on the grounds that they involve the likely disclosure of exempt information as defined in exclusion paragraph 2 of Part I of Schedule 12A of the Act.

NOTES

- a. Would Members please note that some personal details have been redacted from the submitted report. The basis for this is that it reveals information about an individual/contains information about an individual and considering the public interest test it is not in the public interest to disclose it.
- b. In view of (a) above, it may be necessary for discussions to held in the confidential part of the meeting and the press and public should be excluded. If this is the case the following resolution will be passed :-



Luke Swinhoe
Assistant Director Law and Governance

Monday, 21 June 2021

Town Hall
Darlington.

Membership

Councillors Crudass and A J Scott

If you need this information in a different language or format or you have any other queries on this agenda please contact Allison Hill, Democratic Officer, Resources Group, during normal office hours 8.30 a.m. to 4.45 p.m. Mondays to Thursdays and 8.30 a.m. to 4.15 p.m. Fridays email: Allison.hill@darlington.gov.uk or telephone 01325 405997

Case Reference: 94/2020 & 95/2020 Rep

Cllr Pauline Culley

Member Standards Hearing Papers

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Case Reference: 94/2020 & 95/2020

Report of an investigation under Section 28 of the Localism Act 2011 concerning an allegation that Councillor Pauline Culley breached the Code of Conduct.

Investigating Officer – Bethany Symonds, Lawyer (Litigation) at Darlington Borough Council, appointed by Luke Swinhoe, Assistant Director (Law and Governance) and Monitoring Officer for Darlington Borough Council.

DRAFT REPORT DATE: 17th February 2021

FINAL REPORT DATE: 7th June 2021

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Appendix 1 – Decision notices 94/2020 & 95/2020

Appendix 2 - Notes of interview with ‘RT’

Appendix 3 – Transcript of interview with Councillors Curry, Harker and Snedker

Appendix 4 – Transcript of interview with Councillor Culley

Appendix 5 - “Freedom of Expression – Advice Note on the Application of Article 10 of the ECHR and The Councillor’s Code of Conduct”

Appendix 6 – Code of Conduct

Appendix 7 – Update as of 7th June 2021

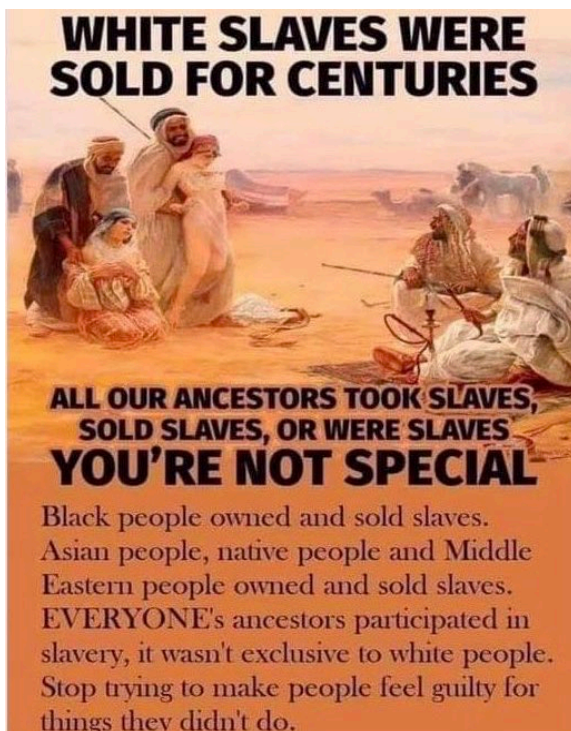
1 Executive Summary

1.1

It is alleged that a Facebook post made by Councillor Culley on or around 6th September 2020 breached the code of conduct. The post was a meme (image) which was posted on its own with no comment or caption attached by Councillor Culley.

1.2

The meme posted is below:



1.3

The Monitoring Officer has received two complaints; one from a member of the public, and the other is a joint complaint by three other Councillors of Darlington Borough Council. In summary, the complainants view this meme as disputing the magnitude of the transatlantic slave trade, and the fact that it created a legacy of discrimination and inequality which still impacts black people in today's society. It is suggested by the complainants that to dispute history, and to underplay the impact it has on minority groups in society, is disrespectful and reflects poorly on Darlington Borough Council.

1.4

It is my conclusion that this matter should be referred to the Standards Committee for hearing, as there is sufficient evidence in respect of potential breaches of the following provisions of the code of conduct:

- a) Paragraph 3 (1) – “you must treat others with respect”
- b) 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”

There is sufficient evidence for this matter to proceed to a hearing, and it will be for the hearing panel to consider that evidence and determine whether there has been a breach.

2 Official details

2.1

Mrs Pauline Culley has been a Member of Darlington Borough Council since 27th May 2014. Cllr Culley represents the Mowden ward and is one of two Councillors who represent the ward.

3 The Code of Conduct

3.1

On 10th May 2018 Darlington Borough Council adopted the current version of the Code of Conduct.

4 Evidence

4.1

RT was interviewed on 21st October 2020. It had been intended to record the meeting so that a transcript could be produced; however on the day of the meeting the record function on Microsoft Teams would not work. I therefore took notes of the meeting which have since been confirmed as accurate by RT.

4.2

Councillors Curry, Harker and Snedker were interviewed jointly on 17th November 2020 online over Microsoft Teams. This interview was recorded and a transcript was produced and circulated to the attendees. Councillor Harker requested some minor corrections to the transcript which have been made. Councillors Curry and Snedker have not commented on the transcript and it is therefore presumed that they are content that it is accurate.

4.3

Councillor Culley was interviewed on Microsoft Teams on 7th December 2020. The meeting was recorded and a transcript has been produced. A copy of the transcript was provided to Councillor Culley on 18th December 2020 with an invitation to comment upon anything she thought was inaccurate or had been misheard. Councillor Culley confirmed by email on 23rd December 2020 that she was content with the transcript.

5 **Summary of the material facts**

5.1

The facts of this complaint are not in dispute. Councillor Culley acknowledges that she posted the meme; however, it is clear is that Councillor Culley has a different view of this post to the complainants. The principal points of the complaints, set out in paragraph 5.7, were put to Councillor Culley in her interview and were disputed by her.

Background

5.2

The Monitoring Officer has received two complaints regarding a post on the Facebook page of Councillor Culley.

5.3

Cllr Culley has two Facebook profiles; one is a personal profile which she uses to connect with her friends and people that she knows, and the other is a profile under the name of 'Pauline Mowden Culley'. The post in question was posted on the latter page.

5.4

Councillor Culley uses her 'Pauline Mowden Culley' profile for public matters and says that she will accept a friend request from anyone who sends her one so long as she believes from their profile that they live in England. Councillor Culley states that she does not know everyone who is her 'friend' on this profile and that she mainly uses the account for liking and sharing other people's posts which she finds interesting. When asked for examples of the content she shares she cited content about animals, gardening, anything that the Council does with the library, and anything regarding the MP. She describes herself as a "prolific liker and sharer".

The post in question

5.5

The post in question was a meme which Councillor Culley appears to have seen on another page/profile, saved as an image and subsequently uploaded to her own profile. I have not seen the original post and Councillor Culley's Facebook profile has now been deleted so I am unable to view the original post. I have therefore only seen a screen grab of the post from which I note that the image appears to have been posted without any comment offered by Councillor Culley.

5.6

The screen grab does not show the date of the post however I understand that this was posted on or around 6th September 2020.

However, it is also noted that Councillor Culley deleted her Facebook account the day after the post as she was receiving abusive comments / messages that she did not want her family to see. In deleting the account it prevented anyone else from seeing the post directly from Councillor Culley's profile. It is arguable that further sharing of the post was not a direct result of Councillor Culley's actions (rather those who screen grabbed it and shared it) and that the subsequent complaint and the publicity that this attracted has resulted in even more people seeing the post.

5.7

At the time of the post, the Black Lives Matter campaign was particularly prominent and gaining considerable news and internet coverage following the death of George Floyd on 25th May 2020. There were public protests, both in the UK and globally, in the summer of 2020 and statues commemorating historical figures with links to the slave trade were vandalised across the UK. The vandalism of the statues also gained considerable news coverage and caused significant discussion online. The panel may wish to consider this background when considering the impact of Councillor Culley's decision to post the meme.

5.8

The details of the complaints are discussed below, however for the purposes of assisting the panel in their decision making I have attempted to summarise the complaints below:

- 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

- c) The post by Councillor Culley reflects poorly on Darlington Borough Council as an organisation that is ignorant to the issues affecting black people

In my view this is an accurate summary of the issues raised by the complainants.

6 Analysis of evidence obtained in interview

Detail of the complaint by RT

6.1

The first complaint is from a member of the public, 'RT', who does not live or work within Darlington but reports that she saw the post on Facebook and felt strongly enough to complain to Darlington Borough Council.

6.2

Whilst RT does not live or work in Darlington she is connected to the area as she lives within the Tees Valley (Middlesbrough). It is noted that despite having other demands on her time, RT felt strongly enough to find time to submit a complaint, liaise with me via email, take part in a Microsoft Teams interview and subsequently spend time reviewing my notes of our meeting. RT has confirmed that she would be willing to attend a hearing to discuss these matters further. Having discussed the matter with RT I cannot see that she has any other motivation for making a complaint other than to raise her genuinely held concerns about the implications of this post. The fact that she has given considerable time and effort to this complaint, without having any other motivation and despite having other demands on her time, indicates the strength of her concerns about this matter.

6.3

RT raised a number of concerns which are detailed in full in the notes of my interview with her. One of her concerns was that although the meme may be factually correct in that there have historically been slave trades where white people were the victims, she interprets the meme as implying that the slave trading of white people was equivalent to the transatlantic slave trade. RT further makes the point that the slave trading of white victims was not equal to the transatlantic slave trade. This is evident in the fact that slave trading of white victims was not global and industrialised in operation and further have not left a legacy of institutional racism in the same way as the transatlantic slave trade. Having considered RT's evidence, her

concern is that the meme incorrectly implies that all slave trades were equal in magnitude and in doing so it undermines the magnitude of the transatlantic slave trade. It will be a matter for the panel to determine whether it agrees with RT's interpretation of the meme.

6.4

RT makes the point that as a public figure within Darlington, and as a member of the Council, Councillor Culley is in a position to raise awareness of institutional racism and use her position to try and dismantle that where possible. RT believes that Councillor Culley's post makes it clear that she is not prepared to acknowledge that black people suffer any discrimination as a legacy of the transatlantic slave trade and further, that it could incite other people not to engage with those issues either. It will be a matter for the panel to determine whether it agrees or disagrees with RT's assessment of the situation.

Complaint by Councillors Curry, Harker and Snedker

6.5

The second complaint was jointly submitted by Councillor Curry (Liberal Democrat Party), Councillor Harker (Labour Party) and Councillors Snedker (Green Party) as the local leaders of their respective parties. All three report that in submitting their complaint they were acting on behalf of their own concerns, but also on the concerns of others within their party who had contacted them to discuss the post.

6.6

I have noted that Councillor Culley stated in her interview a belief that the motivation for the complaints submitted by Councillors Curry, Harker and Snedker is political. Having interviewed them my impression was that they held genuine concerns about the implications of this post and that they had thought very carefully about this issue before raising it. This is supported by the fact that their complaint was submitted on 21st September 2020 some two weeks after the post.

6.7

In my interview with Councillors Curry, Harker and Snedker it was explained to me by Councillor Harker that he had contacted Councillor Heather Scott and Peter Gibson MP to "*privately*" raise his concerns however did not receive a response. Councillor Harker explained that he "*didn't see any sense of Pauline or the wider Conservative Party accepting that that*

image is wrong” and therefore made the decision to submit a complaint to the Monitoring Officer. Considering this, and the two weeks that elapsed before the complaint was submitted, it would be reasonable for the panel to infer that that a complaint would not have been submitted had Councillor Harker received a response from Councillor Scott or Mr Gibson that he considered to be satisfactory. There does not appear to be any particular evidence to support the idea that this is simply being used as an opportunity to submit a formal complaint against a member of another political party.

6.8

Councillor Snedker stated in interview that a number of his party members were “*appalled*” by the post, and when asked to expand upon the reasons for this he raised a concern that the post would “*downplay the effects*” that slavery had on black people over a long period of time. He went on to say that the post appeared to be saying that other ethnicities have been the victims of slavery too, and therefore the suffering of black people was insignificant. Councillor Snedker then commented that there was a concern that Councillor Culley would not be seen as someone you could approach about issues of discrimination following this post.

6.9

Councillor Snedker expanded that there was a concern that Councillors in general, and the Council as an organisation, would be seen as less approachable about race equality issues.

6.10

Councillor Harker expressed his view that the meme attempts to minimise the Black Lives Matter movement and disregards the fact that the transatlantic slave trade was the industrialisation of slave trade in a way which was unprecedented. According to Councillor Harker, the post undermines the issues facing black people as a result of the transatlantic slave trade. He continues to say that the term “*you’re not special*” is “*a horrible expression to use to try and dismiss something as having, of no importance*”.

6.11

When asked to discuss whether there were any reputational impacts of this post, Councillor Curry raised a concern that the general public may not understand the dynamics of the Council and may believe that an opinion expressed by one Councillor is the opinion of all Councillors. She went on to say that “*people of ethnic minorities may not feel that it’s safe to come to the Council for any issues or complaints because they feel that we take that sort of stance*”. Councillor Harker later expressed his own concerns of this nature.

6.12

Councillor Harker also expressed a concern that as Councillor Culley is a member of the Council this may reflect on the Council as a whole and its officers.

6.13

Councillor Snedker commented that there are people in society who feel that the slave trade was insignificant or is excusable given the time that has elapsed since. He views Councillor Culley's posting of this meme as adding legitimacy to those views, and says he feels that it damages the reputation of the Council to have those views repeated by a Councillor.

Response by Councillor Culley

6.14

I used Councillor Culley's interview as an opportunity to ask her to explain her interpretation of the meme and why she posted it. Councillor Culley was initially not willing to offer her own interpretation of the post as she did not believe it was relevant, and simply stated that she had posted it because she thought it was interesting and wanted to know what other people's opinions on it were.

6.15

Councillor Culley also pointed out that she did not 'like' the post, and that she only shared it.

6.16

Councillor Culley was very reluctant to give her opinion on the post and insisted that she had only shared it to get other people's opinions. I asked Councillor Culley if sharing the post was an expression of her own opinion, and her response was that she hadn't said whether she liked or disliked the post and had never confirmed what her personal opinion of the post was.

6.17

I then put to Councillor Culley the main concerns raised by the complainants, and to allow her the opportunity to respond to and address those concerns.

6.18

When asked whether she could respond to RT's complaint that the meme undermines the severity of the transatlantic slave trade by comparing it to other instances of slavery, Councillor Culley's response was:

"Well that is her opinion... It was a point of view and if she's, if she's saying that it's undermined it that's her opinion. There are numerous other opinions saying the exact opposite to her"

6.19

When asked about whether the post undermines the ongoing discrimination faced by black people as a legacy of the transatlantic slave trade her response was:

"Does it?"

When pressed further for her opinion on this, she remarked:

"You're back to that's their opinion and... And from, just we're back to the comments in The Echo. They all had a different opinion to the one that the opposition Members and this member of the public have had. They are all a completely different view of that post so do you go with the majority or the minority of views on that particular post. I don't know. I suppose that's what you have to work out whether you're going to go with the majority or a minority"

6.20

I asked Councillor Culley if it was the case that her post had been misunderstood, and that she was simply starting a discussion about this issue rather than expressing an opinion. Councillor Culley's response was:

"Very possibly. Possibly. Because yes I suppose if they've seen me share it but I have never commented on it. I've just shared, I shared it. Whether it's, I mean, and it's, it's somebody's opinion whether it's racist or it's inciting hatred or all the rest of the things. I don't know. I don't know. I don't, I don't think it's racist. I don't think it's offensive. I don't think it incites hatred and I don't think it's inflammatory... And neither do the people who have commented. It's not. The post itself is not racist. That's why I don't understand why we've ended up here"

Given that Councillor Culley had previously declined to offer an opinion on the post, I asked her if she wanted to say anything further on this and her response was:

“It’s a, well it’s a factual, it’s just a fact. What’s written on it is a fact and I don’t think any of the things that I’ve, that they say it is but other people may think that. It was not my opinion. I have never said anything about that post”

6.21

When asked about whether the post could discourage black people from accessing Council services, Councillor Culley’s response was:

“why would that stop anybody who needed help from contacting the Council. You’re back to then saying that it’s racist. You’re back to that. That’s their view. It’s not my view that it’s racist”

6.22

To assist the panel I have attempted to summarise Councillor Culley’s responses to the complaints below:

- a) Councillor Culley states that she did not endorse the post, and simply wanted to start a discussion about this.
- b) Councillor Culley believes that the post is not racist or offensive.
- c) In any event, Councillor Culley believes she is within her rights to post this meme regardless of whether others are offended. The basis of her belief is that people will always have different views / interpretations of things, and people will always be offended by things, and there is nothing wrong with that.
- d) Councillor Culley states that this issue was reported in the Northern Echo and that many people commented on the article and were clearly not offended by the post, further supporting her point that there will always be a variety of opinions.
- e) Councillor Culley believes that the complaint by Councillors Curry, Harker and Snedker is politically motivated.

7 Further analysis of the potential breaches of the Code of Conduct

7.1

DBC's Code of Conduct for Members states at paragraph 2 (1) (b) that it will only be applicable if Councillor Culley was acting, claiming to act or giving the impression that she was acting within her capacity as a member of the Council at the time of the material incident, and I therefore considered this as an initial issue.

Councillor Culley uses the name 'Pauline Mowden Culley' in reference to her ward, and also acknowledges that she uses the page to share public information in relation to issues and events in Darlington. It is also relevant that Councillor Culley has a separate page which she only uses to keep in touch with people she knows, however the page under the name of 'Pauline Mowden Culley' is specifically for members of the public whom she does not know.

Considering this, it is likely that Councillor Culley was acting within her capacity as a member of the Council when posting the meme.

7.2

There is potentially a breach of the following two paragraphs of the code of conduct:

- a) **Possible breach of paragraph 3.1** – given the unsophisticated nature of the meme and the brevity of the wording it is not particularly clear the point that it is trying to make. I would suggest that it is open to the panel to consider how they wish to interpret the post, and in my investigation I have identified two possible interpretations which are:
 - i) That the meme is factually correct in saying that white slaves were sold for centuries and that everyone's ancestors participated. The statements about the apportionment of guilt and the "you're not special" quote are simply saying that slavery was common to all our ancestors irrespective of racial background; or
 - ii) That the meme wrongly conflates the transatlantic slave trade with the trading of white slaves. It is factually correct that the transatlantic slave trade was distinct from other slave trades in terms of its volume, the suffering that it caused and the resultant legacy of white supremacist views and discrimination towards black people. This is the interpretation suggested by the complainants.

If this latter interpretation is adopted, the panel would not be unreasonable in concluding that the meme undermines the cultural significance of the transatlantic

slave trade, and the resultant discrimination and inequalities, at a time when Black Lives Matter protests are ongoing to protest against those inequalities. In those circumstances it is likely that the posting of the meme by Councillor Culley would be a failure to treat black people with respect.

- b) **Possible breach of paragraph 5** – if the meme is interpreted by the panel in accordance with paragraph 7.2 (a) (ii) above, and the panel determines that the posting of the meme was a failure to treat black people with respect, then it logically follows that there has been a breach of paragraph 5 of the code of conduct. A finding that a Councillor’s social media post was disrespectful to black people is undoubtedly damaging to the reputation of the office of Councillor, and to the Council itself.

Determining whether these provisions of the code of conduct have been breached is an issue for the panel and will likely depend on the panel’s interpretation of the meme. If the panel adopt the interpretation in paragraph 7.2 (a) (ii) above, it is likely that the post was in breach of both paragraph 3.1 and 5 of the code of conduct.

Article 10: Freedom of expression

7.3

Councillor Culley, under Article 10 of the European Convention on Human Rights which has been incorporated into domestic legislation, has a right to freedom of expression. That includes the right to hold opinions and to share them. On the face of it, any finding by the panel that Councillor Culley’s post has breached the Code of Conduct would be a restriction of her Article 10 rights to share her opinion.

7.4

However there are some circumstances when taking action to restrict or interfere with someone’s Article 10 rights is lawful and justified. Those circumstances are set out in paragraph 2 of Article 10. It is pertinent to consider whether a finding by the panel of a breach of the Code of Conduct would be a permissible interference with Councillor Culley’s Article 10 rights.

Article 10 (2) says that a person’s freedom of expression can be restricted if the restriction is prescribed by law *and* is one or more of the following:

1. Necessary in a democratic society – it would not be unreasonable for the panel to rely on this provision to justify the restriction as the Council, in adopting the Code of Conduct, are ensuring that standards do not fall below a minimum level
2. In the interests of national security, territorial disorder, or crime – this would not be a relevant consideration for the panel in this instance
3. For the protection of health or morals – it would not be unreasonable for the panel to rely on this provision to justify the restriction on the basis that it may be immoral to underplay culturally significant events and fail to recognise racial inequality
4. For the protection of the reputation or rights of others – it would not be unreasonable for the panel to rely on this provision to justify the restriction due to the potential for reputational damage to both the office of councillor and to the Council (as discussed at paragraph 7.2 (b))
5. For preventing the disclosure of information received in confidence – this would not be a relevant consideration for the panel in this instance
6. For maintaining the authority and impartiality of the judiciary – this would not be a relevant consideration for the panel in this instance

The restriction is prescribed by law as The Localism Act 2011 requires local authorities to adopt a Code of Conduct and to have arrangements in place to enable alleged contraventions to be investigated and to be adjudicated. In addition, it is arguable that at least three points of the above six could be relied upon by the panel to justify restricting Councillor Culley's Article 10 rights by finding that the post breached the code of conduct (note that only one needs to be made out for the restriction on freedom of expression to potentially be lawful).

Extended freedom of expression for politicians

7.5

If the panel reach the decision that Councillor Culley's post was a breach of the code of conduct, it is likely that would be a prima facie restriction on her Article 10 rights but that the restriction would be justified under Article 10 (2).

It is then necessary to consider whether Councillor Culley, given that she is a politician, is afforded an extended freedom of expression beyond that which is afforded to her by Article 10.

Ultimately, the case law and guidance suggest that Councillor Culley's post *might* be protected if the post was of a political nature. The issue for the panel to determine is whether or not the post was of a political nature, and therefore whether it qualifies for enhanced protection.

The panel can use the guidance and case law to help them make their decision but ultimately each case turns on its own facts and the panel will need to consider the individual circumstances of this case.

7.6

It may be helpful for the panel to consider the case of *R (Calver) v Adjudication Panel for Wales (2012) EWHC 1172*, in which it was established that the comments that a politician made within the "*political sphere*" were entitled to an enhanced level of protection from Article 10.

The court found in *R (Calver)* that comments made online by a Councillor which criticised the way in which Council meetings were run and the competencies of other politicians at those meetings, fell within the "*political sphere*" and therefore attracted the additional protection for freedom of expression which is afforded to politicians.

This decision was made despite the tone of some comments being sarcastic and/or unpleasant towards other politicians, and the judgment states that comments made were not "*purely personal abuse*" and most of them related to the Council's actions. The court also decided that "*it is necessary to bear in mind the traditions of robust debate, which may include some degree of lampooning of those who place themselves in public office, when deciding what constitutes the "respect and consideration" required by the Code*".

7.7

The panel should give consideration to whether the message communicated by the meme was sufficiently political in nature to fall within the political sphere. It would be open to the panel to determine that the meme was within the "*political sphere*" on the basis that:

- a) The post was likely in response to the current affairs in the news at the time
- b) The post was made on Councillor Culley's public Facebook page which identifies her as a politician

7.8

However a decision that the meme was not within the “*political sphere*” would also be reasonable given that:

- a) The meme was not specifically linked to the Council or other politicians
- b) The wording on the meme is brief and the message of it is unclear, therefore any political message is undeveloped and has to be implied
- c) Councillor Culley says that she was not posting it because it was a reflection of her beliefs

7.9

In *R (Calver)* the judgment goes on to state that it was relevant that the comments which were alleged to be disrespectful had been directed at other politicians who are expected to have a thicker skin, and therefore the nature of the comments did not prevent them from falling within the “*political sphere*”. This is an important point, and the panel should give consideration to the fact that, if the posting of this meme was indeed found to be disrespectful, then it is disrespectful towards members of the public rather than being directed at other politicians as was the case in *R (Calver)*. The panel should consider how this impacts their views in relation to whether the post was within the “*political sphere*”.

7.10

R (Calver) is helpful in clarifying that the interpretation of comments made within the “*political sphere*” is broad, and the panel need to weigh up whether in posting the meme a political point was being made by Councillor Culley.

7.11

“*Freedom of Expression – Advice Note on the Application of Article 10 of the ECHR and The Councillor’s Code of Conduct*” is issued by Standards Commission for Scotland. This applies to local government politicians in Scotland but is helpful guidance in this instance. This guidance makes clear that in a political context there is an extended tolerance and a wider freedom of speech. However it is also clear that politicians should be able to make political points in a manner which is not offensive or abusive.

It is clear that the guidance is designed to protect politicians who are making political statements or proposing policy which some people might find shocking, offensive or damaging.

7.12

If the panel determines that the post was disrespectful and a breach of the Code of Conduct, it may be helpful for them to then consider this guidance and reach their own view on whether the guidance is intended to afford protection to politicians who share content on social media which has been found to be disrespectful to members of the public.

7.13

Ultimately, the question for the panel to consider is whether Councillor Culley was making a political point in posting the meme. If the panel determines that this was a political point, it is likely that the meme falls within the “*political sphere*” and is therefore protected under the wider freedom of expression rights that are afforded to Councillor Culley as a politician.

8 Issues for consideration by the panel

The panel is asked to determine whether the following provisions of the Code of Conduct for Members have been breached:

- a) Paragraph 3 (1) – “you must treat others with respect”
- b) 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”

To assist in decision making, the panel may find it helpful to consider the following issues:

- a) What is their interpretation of the meme; specifically, do they agree with the complainants’ interpretation?
- b) Does there appear to be a breach of provisions 3(1) and 5 of the Code of Conduct?
- c) If so, would upholding a breach of the Code of Conduct be a restriction on Councillor Culley’s Article 10 rights to freedom of expression?

- d) If so, could such a restriction be justified in accordance with Article 10(2), taking in to account the matters discussed in paragraph 7.4 of this report?
- e) Taking in to account the issues raised in paragraphs 7.7 and 7.8 of this report, and the appended Standards for Scotland guidance, does the post fall within the “*political sphere*” and therefore attract enhanced protection under Article 10?

If the answers to questions ‘b’, ‘c’ and ‘d’ are yes, but the answer to question ‘e’ is no, then it would be logical for the panel to determine that provisions 3.1 and 5 of the code of conduct have been breached.

If the answers to ‘b’, ‘c’ ‘d’ and ‘e’ are all ‘yes’ then it follows that there is no finding of a breach of the code of conduct. However these are ultimately decisions for the panel to determine.

9 Recommendation

It is my conclusion that there is sufficient evidence to support the complainants’ views that in posting that meme Councillor Culley breached the code of conduct. My recommendation is that this matter should proceed to a hearing so that the panel can consider, and determine, whether there has been a breach of the following provisions of the code of conduct:

- a) Paragraph 3 (1) – “you must treat others with respect”
- b) 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”

DECISION NOTICE: REFER FOR INVESTIGATION

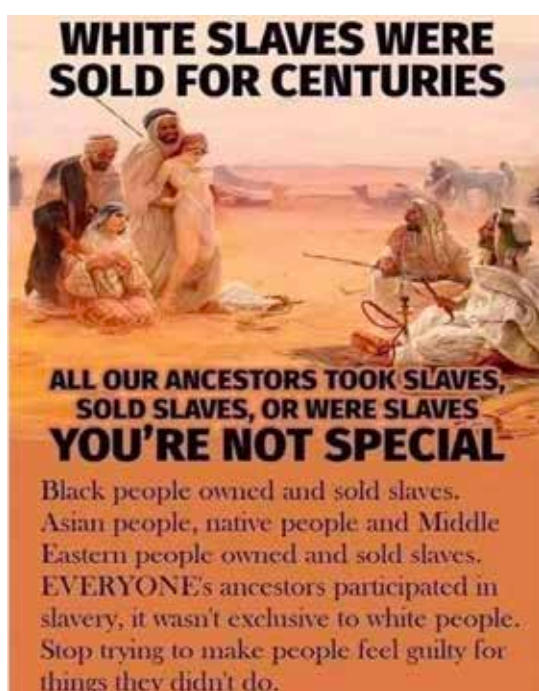
Reference 94/2020

Complaint

On 6 September 2020 a complaint was received from RT about the conduct of Councillor Mrs Pauline Culley, a member of Darlington Borough Council.

Brief facts

The complaint concerns a graphic that Cllr Mrs Culley reposted onto her Facebook page, as per the below image:



Cllr Mrs Culley has two Facebook pages, one which is more private and personal and one which is for wider conversations (which is in the name of Pauline Mowden Culley). It was posted onto the Pauline Mowden Culley Facebook page

RT says that the post is 'online racism and incitement to racial hatred. She posted online an offensive and inflammatory statement about historic slavery with reference to the current Black Lives Matter movement.'

Contact with the subject member

Cllr Mrs Culley advised me that after seeing the post on Facebook she reposted it on her Facebook page (the public page which does indicate she is a councillor - she also has a second more private Facebook page). Cllr Mrs Culley said there was some blurring between what she posts on the public page – some of it was more about official Council things and other posts more general or not about the Council at

all. Cllr Mrs Culley did not feel she was reposting the material as a councillor (as it was not about the council or her role as a councillor).

Cllr Mrs Culley told me that she thought the post was interesting which was why she had re-posted it. She felt that there was a freedom of speech issue.

Cllr Mrs Culley recognised that some people may be offended, but said that people get offended by all sorts of things. Cllr Mrs Culley did not believe that she had done anything wrong or that she should have to apologise for.

Relevant provisions of the Code of Conduct

There are a number of issues to be considered:

1. Does the Code of Conduct apply?

The graphic was reposted onto the page used for public facing posts some of them council related. The name of Councillor Mrs Culley's ward (Mowden) is part of the title of the page and it is mentioned that she is a councillor.

The Code of Conduct governs the conduct of members acting in their official capacity. This has two aspects – conducting the business of the council, but also acting or claiming to act or giving the impression of acting as a representative of the council. It could not be said that Cllr Mrs Culley's shared the post as part of the business of the Council. However, there is a case for saying that the post was made in Cllr Mrs Culley's official capacity as a Ward Councillor (giving the impression of acting as a representative of the Council). She had reposted this to her public 'Mowden' Facebook page – the page where people follow her as a ward councillor.

So potentially the post could be seen as done by Cllr Mrs Culley when acting in her official capacity.

2. What are the relevant provisions of the Code of Conduct?

RT has complained that the post is 'online racism and incitement to racial hatred.' Aspects of this are a more a matter of criminal law and beyond the Code of Conduct. The relevant provisions Members Code of Conduct, in my opinion are:

Respect – You must treat others with respect.

Disrepute – doing anything which could reasonably be regarded as bringing your office as a member or the Council into disrepute.

Respect – in this case the complainant is not saying that she has been personally subjected to conduct that could amount to a breach of the Code of Conduct. The complainant is making a more general point in relation to people with a BAME background. There is no reason why a complaint could not be considered on this basis.

In considering the graphic, it will be the case that the further in time you go back, the greater the likelihood that slavery will have been part of life (irrespective of cultural, social or racial backgrounds). However, for most people who are white, the connection today to the slave trade is distant and remote. For many black people this is far less the case and they will have an awareness of their families connection to forebears who were slaves. After slavery was abolished black people continued to face discrimination in colonial times. The issue of race and discrimination continues to be part of daily experience for many black people in ways that do not affect white people.

There is a case for saying that the post appears to fail to understand this legacy. Some people are likely to find it offensive, particular people with a BAME background. Potentially there is a case for failure to treat with respect.

Disrepute – the meaning of disrepute involves concepts like causing shame, dishonour, ignominy, humiliation, discredit and so on. There needs to be a connection between the conduct and negative association to the office or to the Council.

There is a case for saying that by reposting the graphic, that this could to some extent discredit Cllr Mrs Culley, in her role as a Councillor at least in the eyes of some people. It could make it more difficult residents of her ward (more particularly those from a BAME background) from wanting to raise matters with her or to feel that she can adequately understand them or represent their interests.

Under the Equality Act 2010 the Council has a duty to have regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

The duty to foster good relations involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

There is a case for saying that the Facebook repost could to some extent discredit the Council as it could make it more difficult for the Council to be seen as an organisation that is fully committed to the public sector equality duty – in particular the fostering of good relations.

3. Freedom of Expression

The rights to be able to express their views and opinions is underpinned by freedom of expression (Article 10 European Convention of Human Rights).

There is a wide margin of what is considered to be permissible in terms of the views expressed by politicians. This can include allowing a degree of immoderate, offensive, shocking, disturbing, exaggerated, provocative, controversial, colourful, emotive, non-rational and aggressive expressions, that would not be acceptable outside that context.

The right to freedom of expression is not, however, an absolute right and is subject to limitations, which would need to be justifiable and compatible with human rights caselaw. Restrictions may be imposed to ensure that the conduct of public life at the local government level, including public debate, does not fall below a minimum level so as to endanger public confidence in democracy.

Any potential finding that there has been a breach of the Code of Conduct obligations, must be balanced against whether there is an interference with freedom of expression rights and if so if whether that interference is justifiable.

Analysis

Potentially there is a case for saying that the duty to treat people with respect has been broken.

Potentially there is a case for saying that the conduct has brought the members position as a Councillor into disrepute and/or the Council into disrepute.

In summary there is the potential that there could be a finding of a breach of the Code of Conduct.

Freedom of expression rights – there is a freedom speech right here – the right to share views that some people may disagree with or that could offend.

There is also an argument that there could be a justifiable case for interference with the right of freedom of expression. I accept that there can be differing views about this. In this regard I have taken into account the views of the Independent Person.

Independent Person

The Independent Person considers, given the Facebook page that was used to post the graphic, that it was something done by Cllr Mrs Culley in her official capacity.

The Independent Person was very concerned about the tone of the post which she considers seeks to minimise or deny the impact of slavery against Africans during the colonial era and its ongoing legacy on the lives of BAME people.

Given the offence that it could cause, the Independent Person considers the post is capable of breaching the obligation to treat others with respect and is capable of bringing the council into disrepute by failing to observe the statutory duty to foster good relations under the Equality Act 2010. On the question of public interest the Independent Person concludes that the case should be investigated.

Decision

I have reviewed the complaint in line with the Council's 'Arrangements for dealing with complaints against Members' which came into effect from 1 May 2014.

I have considered the facts available to me and taken into account the opinion of the Independent Person before reaching my decision.

While I recognise that resources are more limited at this moment in time (Covid 19) it would appear that the amount of fact finding will be limited given the nature of the complaint. My view is that it is in the public interest for there to be a formal investigation of the complaint.

I would point out that at this stage that it is not being suggested that there has been a breach of the Code of Conduct, only that there is the potential for such a finding.

Appointment

I am appointing Bethany Symonds (Principal Lawyer, Litigation) to carry out an investigation of the complaint.

Terms of reference

Under the s.28(6) of the Localism Act 2011 Darlington Borough Council may make arrangements for allegations to be investigated and decisions about those allegations to be made. In order to carry out this role on 20 March 2014 the Council approved a procedure for handling complaints which came into effect on 1 May 2014 and this is set out in the Council's Procedure for Handling Complaints Against Members.

**Luke Swinhoe,
Assistant Director, Law and Governance
Monitoring Officer
8 October 2020**

DECISION NOTICE: REFER FOR INVESTIGATION

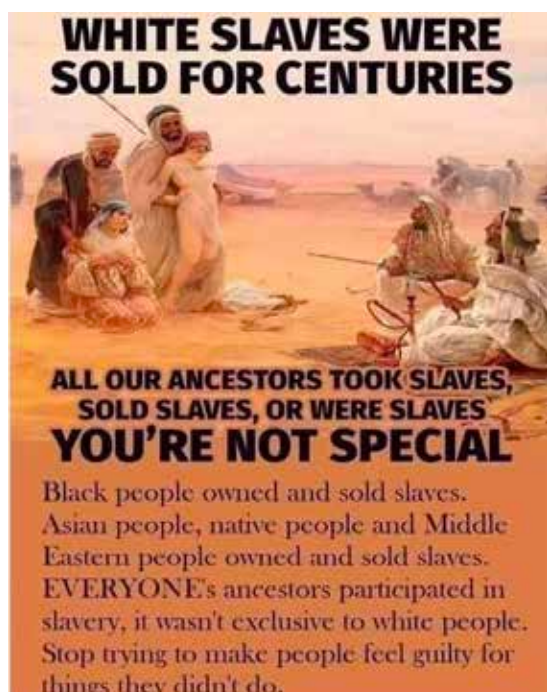
Reference 95/2020

Complaint

On 21 September 2020 a complaint was submitted by Councillor Steve Harker, Councillor Anne-Marie Curry and Councillor Matthew Snedker, about the conduct of Councillor Mrs Pauline Culley, a member of Darlington Borough Council.

Brief facts

The complaint concerns a graphic that Cllr Mrs Culley reposted onto her Facebook page, as per the below image:



Cllr Mrs Culley has two Facebook pages, one which is more private and personal and one which is for wider conversations (which is in the name of Pauline Mowden Culley). It was posted onto the Pauline Mowden Culley Facebook page

The complainants say that the post is grossly offensive and that the conduct of Cllr Mrs Culley contravenes the Code of Conduct by bringing the member or the council into disrepute.

Contact with the subject member

Cllr Mrs Culley advised me that after seeing the post on Facebook she reposted it on her Facebook page (the public page which does indicate she is a councillor - she also has a second more private Facebook page). Cllr Mrs Culley said there was some blurring between what she posts on the public page – some of it was more

about official Council things and other posts more general or not about the Council at all. Cllr Mrs Culley did not feel she was reposting the material as a councillor (as it was not about the council or her role as a councillor).

Cllr Mrs Culley told me that she thought the post was interesting which was why she had re-posted it. She felt that there was a freedom of speech issue.

Cllr Mrs Culley recognised that some people may be offended, but said that people get offended by all sorts of things. Cllr Mrs Culley did not believe that she had done anything wrong or that she should have to apologise for.

Relevant provisions of the Code of Conduct

There are a number of issues to be considered:

1. Does the Code of Conduct apply?

The graphic was reposted onto the page used for public facing posts some of them council related. The name of Councillor Mrs Culley's ward (Mowden) is part of the title of the page and it is mentioned that she is a councillor.

The Code of Conduct governs the conduct of members acting in their official capacity. This has two aspects – conducting the business of the council, but also acting or claiming to act or giving the impression of acting as a representative of the council. It could not be said that Cllr Mrs Culley's shared the post as part of the business of the Council. However, there is a case for saying that the post was made in Cllr Mrs Culley's official capacity as a Ward Councillor (giving the impression of acting as a representative of the Council). She had reposted this to her public 'Mowden' Facebook page – the page where people follow her as a ward councillor.

So potentially the post could be seen as done by Cllr Mrs Culley when acting in her official capacity.

2. What are the relevant provisions of the Code of Conduct?

In my opinion, the relevant provisions Members Code of Conduct, are:

Respect – You must treat others with respect.

Disrepute – doing anything which could reasonably be regarded as bringing your office as a member or the Council into disrepute.

Respect – in this case the complainants are not saying they have been personally subjected to conduct that could amount to a breach of the Code of Conduct. There is a more general point in relation to people with a BAME background. There is no reason why a complaint could not be considered on this basis.

In considering the graphic, it will be the case that the further in time you go back, the greater the likelihood that slavery will have been part of life (irrespective of cultural, social or racial backgrounds). However, for most people who are white, the

connection today to the slave trade is distant and remote. For many black people this is far less the case and they will have an awareness of their families connection to forebears who were slaves. After slavery was abolished black people continued to face discrimination in colonial times. The issue of race and discrimination continues to be part of daily experience for many black people in ways that do not affect white people.

There is a case for saying that the post appears to fail to understand this legacy. Some people are likely to find it offensive, particular people with a BAME background. Potentially there is a case for failure to treat with respect.

Disrepute – the meaning of disrepute involves concepts like causing shame, dishonour, ignominy, humiliation, discredit and so on. There needs to be a connection between the conduct and negative association to the office or to the Council.

There is a case for saying that by reposting the graphic, that this could to some extent discredit Cllr Mrs Culley, in her role as a Councillor at least in the eyes of some people. It could make it more difficult residents of her ward (more particularly those from a BAME background) from wanting to raise matters with her or to feel that she can adequately understand them or represent their interests.

Under the Equality Act 2010 the Council has a duty to have regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

The duty to foster good relations involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

There is a case for saying that the Facebook repost could to some extent discredit the Council as it could make it more difficult for the Council to be seen as an organisation that is fully committed to the public sector equality duty – in particular the fostering of good relations.

3. Freedom of Expression

The rights to be able to express their views and opinions is underpinned by freedom of expression (Article 10 European Convention of Human Rights).

There is a wide margin of what is considered to be permissible in terms of the views expressed by politicians. This can include allowing a degree of immoderate, offensive, shocking, disturbing, exaggerated, provocative, controversial, colourful,

emotive, non-rational and aggressive expressions, that would not be acceptable outside that context.

The right to freedom of expression is not, however, an absolute right and is subject to limitations, which would need to be justifiable and compatible with human rights caselaw. Restrictions may be imposed to ensure that the conduct of public life at the local government level, including public debate, does not fall below a minimum level so as to endanger public confidence in democracy.

Any potential finding that there has been a breach of the Code of Conduct obligations, must be balanced against whether there is an interference with freedom of expression rights and if so if whether that interference is justifiable.

Analysis

Potentially there is a case for saying that the duty to treat people with respect has been broken.

Potentially there is a case for saying that the conduct has brought the members position as a Councillor into disrepute and/or the Council into disrepute.

In summary there is the potential that there could be a finding of a breach of the Code of Conduct.

Freedom of expression rights – there is a freedom speech right here – the right to share views that some people may disagree with or that could offend.

There is also an argument that there could be a justifiable case for interference with the right of freedom of expression. I accept that there can be differing views about this. In this regard I have taken into account the views of the Independent Person.

Independent Person

The Independent Person considers, given the Facebook page that was used to post the graphic, that it was something done by Cllr Mrs Culley in her official capacity.

The Independent Person was very concerned about the tone of the post which she considers seeks to minimise or deny the impact of slavery against Africans during the colonial era and its ongoing legacy on the lives of BAME people.

Given the offence that it could cause, the Independent Person considers the post is capable of breaching the obligation to treat others with respect and is capable of bringing the council into disrepute by failing to observe the statutory duty to foster good relations under the Equality Act 2010. On the question of public interest the Independent Person concludes that the case should be investigated.

Decision

I have reviewed the complaint in line with the Council's 'Arrangements for dealing with complaints against Members' which came into effect from 1 May 2014.

I have considered the facts available to me and taken into account the opinion of the Independent Person before reaching my decision.

While I recognise that resources are more limited at this moment in time (Covid 19) it would appear that the amount of fact finding will be limited given the nature of the complaint. My view is that it is in the public interest for there to be a formal investigation of the complaint.

I would point out that at this stage that it is not being suggested that there has been a breach of the Code of Conduct, only that there is the potential for such a finding.

Appointment

I am appointing Bethany Symonds (Principal Lawyer, Litigation) to carry out an investigation of the complaint.

Terms of reference

Under the s.28(6) of the Localism Act 2011 Darlington Borough Council may make arrangements for allegations to be investigated and decisions about those allegations to be made. In order to carry out this role on 20 March 2014 the Council approved a procedure for handling complaints which came into effect on 1 May 2014 and this is set out in the Council's Procedure for Handling Complaints Against Members.

**Luke Swinhoe,
Assistant Director, Law and Governance
Monitoring Officer
8 October 2020**

Investigation reference: 94 & 95/2020

Bethany Symonds' ('BS') note of meeting with 'RT' on 21st October 2020

BS initially asked RT how she came across the post. RT comments that she is not sure – she doesn't know Cllr Culley personally and lives in Middlesbrough so wouldn't have been following her page for local information. RT thinks she must have seen it shared somewhere, or seen the Northern Echo article shared on Facebook, and clicked on it.

RT comments that she felt immediately the need to complain but couldn't immediately find out how to do it – RT reflects that in a restaurant if a waiter said something racist you would speak to the manager but in this instance it wasn't immediately clear who Cllr Culley would be accountable to.

RT says she reflected on this and decided the Council was the most appropriate organisation to complain to. RT commented that she wanted to bring this to the Council's attention as presumably the Council wouldn't know unless someone complains. RT comments that she was surprised at the response from the Council; she is glad it's being investigated but had expected a response to her complaint saying there had been lots of other complaints and that Cllr Culley was no longer in post. RT was shocked that Cllr Culley was still in post at the time of the meeting.

BS asked RT to outline her interpretation of the post and why she felt inclined to make a complaint. RT commented that the first thing she noted was the image and that she takes objection to the depiction of BAME men with beards holding semi-naked white women in that way. RT commented that there is a lot of Islamophobia in society and that image is probably unhelpful, offensive and unnecessary.

RT expanded that the text of the image really tries to undermine the transatlantic slave trade that went on for centuries, by saying that there were other slave trades in which white people were the victims. RT said that this may be factually true but that she objects to the implication that these were equal to the transatlantic slave trade (TAST). RT comments that the TAST went on for centuries, was very well organised and it was mainly white people and western countries which profited from this. As a result, says RT, there is a legacy of institutional racism against BAME people which is still present in society today and the post is an attempt to undermine that or deny that it exists.

RT notes that any instances of slavery where white people were the victims were not on the same scale as the TAST which was unique and has long lasting consequences which this post undermines.

RT offers a comparison of the TAST to the holocaust and suggests that discrediting the TAST is the equivalent of discrediting the holocaust by suggesting that Jews "aren't special" because there have been other genocides where people of other religions have been murdered. RT makes the comparison to somebody who might say "well the Jews

aren't special because people of all religions have been murdered". RT commented that of course there are other examples of genocide and bad things happening to white people, but the point is that the TAST has left a legacy that is still causing a problem today. RT interpreted the post as seeking to deny this by saying "you're not special". RT's view is that the wording, and the meaning behind it, is 'horrific' and 'clearly racist'.

BS asked RT to comment on whether the recent BLM campaign has had any impact upon her views of this post. RT comments that the post is very ignorant towards the BLM campaign; the point of the BLM campaign is not about the slave trade as the campaigners probably assumed that everyone accepts the severity of the TAST.

RT says that the point of the BLM campaign is to highlight the institutional racism that has been left as a legacy of TAST, and asks people to look at ways in which they are complicit in that.

RT states her belief that Darlington Borough Council as a public authority is responsible for setting the example on institutional racism in Darlington, and expands that Cllr Culley can either overlook prejudice and contribute to institutional racism continuing by disputing that such prejudice exists, or she can use her position to try and dismantle it. RT believes that Cllr Culley is choosing the former.

RT interprets the post to be suggesting that BAME people and/or BLM campaigners are making non-BAME people feel guilty. RT comments that this wording is emotive, and tries to reject any dialogue about racism with the statement of "don't make me feel guilty". RT feels that this is worrying.

RT expanded that in her view not only is this post undermining the severity of the TAST and therefore suggesting there is nothing historically for BAME groups to be angry about, but it also suggests there is no institutional racism to dismantle. RT's view is that this post tries to influence others in to thinking that there is nothing unique about the TAST, and there is no historic legacy that needs to be dismantled.

RT's view is that the notion of white prejudice is hard for people to accept, and that a lot of people are looking for a way out of it; perhaps the post is a way of rejecting white prejudice because it is too uncomfortable to accept. RT says that she is shocked at the attitude of someone in public office and thinks this is inciting people not to engage with the issues faced by BAME communities, and therefore allowing those issues to continue.

RT also outlines a concern that the words in the image are so quoteable; she feels that this could easily be quoted casually by people and contribute to the spreading of historically inaccurate information.

BS asked RT to comment on whether the post has any reputational impact upon the Council. RT states that this post reflects extremely badly on the Council. RT believes that

Cllr Culley is entitled to her own personal beliefs, but that the Council should show that it doesn't agree. RT states that she is not BAME however she is still offended and so can't imagine how a BAME person would feel if it was their Cllr who posted this.

RT expanded that in her opinion this post shows contempt for BAME people in the area, and that the Council are supposed to care about them. RT acknowledges that she cannot speak for BAME people, but that it seems obvious to her that this kind of post being allowed would make it harder for BAME people to access their Council services.

RT acknowledges that she is not personally affected by racism and prejudice and therefore cannot know how this post would make her feel if she were. However, she feels this may make it easier for her to raise her objections to the post and less distressing for her to discuss them.


RT comments that if all Cllr Culley is asked to do is offer an apology and there are no proper repercussions then this paints a very bleak picture; she reiterated that she can't believe Cllr Culley has retained her position thus far and says that it reflects terribly on the Council if nothing is done.

RT mentions that Cllr Culley has previously posted along the lines of 'Black Labs Matter' and that although she finds that post to be rude and offensive she feels that this post is 'outrageous'.

BS explained to RT that Cllr Culley is elected by the people in her area, and asked RT to consider if that means she should be able to post her views freely online. RT commented that there should be some limit on this and protection from people undermining racial issues and being offensive. RT pointed out that Cllr Culley has chosen to take on public office, and RT comments that its widely accepted that in some jobs you can't do certain things. RT uses the example of her husband being a vicar and says that there could be instances where his private life might impact on his employment or gain local press attention.

RT feels that Cllr Culley can have discretion over her personal Facebook page but points out that this post was made on a public page.

I, RT, confirm that this document is an accurate record of the comments I made to Bethany Symonds on 21/10/2020.

Signed.....

Dated.....23.11.20

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**INTERVIEW: MEMBER COMPLAINT
REFERENCES 94 & 95/2020**

Date:	17 November 2020
Venue:	Via Teams
Present:	Councillor Anne-Marie Curry (AM) Councillor Stephen Harker (SH) Councillor Matthew Snedker (MS) Bethany Symonds (BS)
Method of Recording:	Digital

Initials of speaker	
BS	Hopefully that has worked. It's come up that we're recording
SH	It has yeah
BS	Excellent so I'll just repeat that this is a discussion as part of the investigation into the Facebook post made by Councillor Culley that's been the subject of a complaint so I'm going to dive straight in and I don't know who wants to begin. I don't know if I want to ask a question and then you just kind of want to respond generally or if you want to take it in turns to answer but I think the first thing that I wanted to speak to you all about was how you came across the post and how it came to your attention
SH	Well I was alerted to it by a party member I seem to recall
MS	Same with me. It was a couple of party members sent it to me as a screen grab. They were appalled to see it and obviously they came to me both as group leader and as the joint vice coordinator of the local party and it wasn't just a whinge. It was yeah we need to do something about this, this is unacceptable so that's how I came to hear about it
BS	Okay and what kind of thing did they say to you when they asked you to look into it. What specifically was it that they felt outraged about

MS	Well the (<i>connection issues</i>) what was obviously an official Councillor account because it had her name and the Ward combined in the title of the Facebook page so it was clearly identifiable as a Councillor speaking out rather than a private conversation between her and her friends in sort of like a private Facebook page and the other one was it seemed to (<i>connection issues</i>) of a move by certain people to downplay the effects that slavery had on black, in particular black and minority ethnic peoples over, you know a huge impact on them over a long period of time and it seemed to be saying that well this has always happened or this has happened to other people as well so it isn't a big thing and the comment that it contained with it don't try and make me feel guilty and that led them to believe that as a Councillor she would, there was a danger that (<i>connection issues</i>) would be seen as not someone you could approach about an issue around discrimination, particularly about race but also the wording that well if something bad has happened to lots of people or it happened at another time it was somehow less
BS	Okay
MS	And that was the concern that a Councillor would be, Councillors in general and the Council as a body would be seen as less approachable, less caring and less likely to take on board complaints from the public about these concerns
BS	Okay thank you and was there one party member that approached you or was it more than one
MS	From recollection it was two but then I, the conversation then moved to a Messenger group of the coordinating group of Darlington Green Party where that, and then so people who hadn't seen it were then brought into the conversation, how we as a party should respond
BS	Okay and so is that kind of, sorry Councillor Harker I interrupted there. Was that kind of the general feeling that that, those feelings that, those opinions that you've just described to me was that the general feeling amongst everybody within your party who was aware of it and who discussed it
MS	Yes there was an awareness that this wasn't, this post, this sort of meme wasn't generated by Councillor Culley but the willingness to share it was,

	<p>and it wasn't the only meme that was going around at that time from a, maybe a sector who were trying to downplay the seriousness of this topic and so they were aware of other memes and the area of society or the area of public life that was propagating and amplifying this message that somehow it wasn't as serious as it really is so yeah that was a general feeling of the party</p>
BS	Thank you
SH	<p>I think for me I mean although I think you know initially it was one person that contacted me again because of you know the world that we live in, social media, WhatsApp groups it became you know very quickly a lot of members were aware of it and I mean I think the thing that struck me, a view that I had when I first looked at it that it's, that on first glance it screams that there's something dodgy about this because the actual pictures themselves reminded me of many images in the past where people try and paint a picture of, you know and it's this classic literature from, you know English literature from the early 50s the expression that was often used swarthy Middle Eastern men that were you know guilty of doing things and to me that image screamed out there's something wrong with this and when you start to read it and think about what he's actually saying it's as Matthew said there's many issues in there that are tangentially referred to and trying to minimise much of what the Black Lives Matter movement is about it sort of ignores the fact that yeah slavery was committed by many different ethnic groups, many different nations over a long period of time but it ignores the fact that in terms of what the American and European slave trade did you know it was industrialisation of slavery in a way that had never ever been seen before in terms of the vast numbers of people that were affected it. It ignores the fact that many of the issues that are facing BAME communities today and specifically African (<i>connection issues</i>) hanging over from (<i>connection issues</i>) of the slave trade despite the fact that it was 200 years ago. It isn't saying that people today have a responsibility for what happened two hundred years ago. It's all about this as the society we live in today. What are we going to do about the prejudices that people face today and as Matthew's saying the fact it says you know, I forgot what the expression was, was it you're not special, is a horrible thing to say in any</p>

	<p>circumstance, particularly with something as gross as slavery to say you know just cos it's happened to someone else you know what are you complaining about is a horrible thing, a horrible expression to use to try and dismiss something as having, of no importance. I think it was trying to, it was just trying to undermine a protest that was taken at the time and minimising the importance of it and minimising why people, should make people feel that it's not significant and they shouldn't do anything about it. A couple of things that Matthew didn't mention that I think were raised with me is this issue about public/private Facebook. Whilst it was probably clear it was posted on a Facebook page that Pauline was using for her Council work, my view and I don't know what the other members said you know that's irrelevant. If you've got a Facebook page and the public can see it doesn't matter whether it's called Councillor Harker's Facebook page or Stephen Harker's Facebook page. If you have those views and they're visible and even if they're not visible it doesn't matter whether you're saying it as a Councillor or you're saying it as a private person to me it's one of those issues it's irrelevant who you're saying it as you know they're abhorrent that you should say it in private or in public. There are things in public life that you can do in private are purely private matters you know. In my mind and many other people who spoke to me this isn't one of them. If you've got those views you've got those views and the second point that was made to me was that whilst Pauline in terms of her Councillor role she's a back bencher and therefore not particularly prominent within the Local Authority. Her role in the wider Conservative Party she does have a significant role in that she's chair of the Southwest Durham Conservative Association so within her own party she's a significant figure and therefore for someone to be posting something like that it has a bigger impact than someone that you know was perhaps just a party member who had no role in public life. It's that that also worried some of the people that I spoke to about you know the influence that she can have in having those views because of her role outside of her role on the Local Authority</p>
BS	Thank you. That's really helpful. Councillor Curry what would you wish to comment on that

AC	Yeah I actually saw the image being shared around Facebook and my concerns was that it was trying to widen what the issue really is at the moment. At the moment it's Black Lives Matter because of the discrimination that's going on in society. Slavery still happens but it's not the issue at the moment people really really care about. It's the discrimination that is causing deaths of many black people or incarceration of black people and I think that it was the wrong time, the wrong place to highlight that sort of thing. You could have, the way she worded it was wrong. If she kind of said history has shown that this has gone, well we've moved on and now there is an issue with discrimination that would, she could have countered it so easily by using that image but I feel that this group of people who were trying to make it, Black Lives Matter a non-campaign had bring it the wrong wrong way and I'm scared that she's part of that group
BS	Thank you. Councillors Snedker and Harker have said that they had complaints from members of their party. Was that the same for you Councillor Curry
AC	No no but a lot of my active members of the party are elderly and probably don't scroll through Facebook a lot. My two fellow Councillors don't use Facebook very much so they probably haven't seen it
BS	I see so did you see the post because you were following or friends with Councillor Culley on Facebook
AC	Somebody who was a friend of mine had seen it and shared it
BS	Lovely thank you. So Councillors Snedker and Harker you've mentioned receiving complaints from people in your party, obviously you've received those and then you felt strongly enough to put in a formal complaint yourselves about that. Does that reflect the feeling within the party or was that, is that your own views that actually this was something that was serious enough to make a complaint yourselves
MS	I think as I already said the conversation was immediately what are we doing about this you know we are a political party. We do have representation within the Council and you know it seems part of our duty of being a Councillor and being a political party is to counter that when we see that happen that you know so the, what can we do and what can you

	<p>as a Councillor do was asked immediately and the, a formal complaint, a check of the constitution and you know a read through as to what the Nolan principles say and what the, what is considered behaviour that is inappropriate was immediately discussed and it was felt that a formal complaint was, well had to be made really so yes that was, that feeling was very strong from the very outset</p>
BS	Thank you
SH	<p>I mean I think for me it was on looking back I think some of the people that had seen it were younger people who you know I know are, have much more clear views, much crystallised views about what they see as wrong, what they see as right and they were in some respects quite outraged at it and I think they contacted me partly out of you know well what can we do about it. I think a feeling you know and I wouldn't have done this but had I not done something about it they would have pursued it themselves separately. I mean what my initial action was actually emailed Heather Scott and Peter Gibson through my Councillor email but emailed to them you know essentially privately to say I've seen this post what are you going to do about it and I never got a response to that email. I think I sent that early September and after having had no response I then spoke, I can't remember the circumstances of that but I clearly spoke to Matthew and Anne-Marie Curry and I possibly said you know I'm going to send a formal complaint in to Luke Swinhoe clearly which you'll have seen and the gist of that was I think saying you know we're not happy with this post and specifically I have tried to contact Heather separately and because I've had no response you know I can't just let it go and the only avenue I've got in a sense is either to contact Luke as a legal person or possibly Paul Wildsmith but we sent that in basically saying we've raised a concern about this and we're unhappy that</p>
BS	Okay
SH	Basically nothing's been said to us about it
BS	Okay thank you. What would you have expected Heather to do about this
SH	<p>I mean it's a very difficult question to answer and for me it's about the level to which you think something is you know especially bad or less so and I think, I think I'll always take the view that someone might post</p>

something being unaware of what they're doing, careless kind of thing and to give someone the opportunity to actually undo what they've done without making a huge song and dance about it which is why initially I emailed Heather because you know in some sense I think the ball's in, the person who's done it it's in their court initially to try and redress what they've done. The post was taken down fairly swiftly. I suspect that was done probably not out of a feeling that there was anything wrong with it but the fact that presumably Heather and I guess Peter was also getting lots of emails from people saying this is outrageous. It certainly needed taking down. I think it certainly needed someone saying something be that Pauline, be that Heather or Peter to actually have some acknowledgment of the fact that what had been posted was wrong. Whether at the time if someone had apologised privately would that have been sufficient possibly but maybe not given the number of people that had seen it cos it's not about punishing someone. It's about for me the fact that what that message said and how much it was undermining other people's good intent the damage that that has done is what I'm more concerned about and I think in trying to undo it the manner in which you're undoing it needs to have something said that actually yes I made an error in posting it but also acknowledging the fact that why it was wrong to post it and be clear about it's conveying the wrong message and making other people think actually it's either okay to say these things or to feel that in this instance the Black Lives Matter movement is of no substance and has no consequence. You know it's that that's more important in my view about getting around what that was doing in terms of undermining the work that people are doing. Sadly the fact that the email wasn't responded to and we're here today formally investigating it pushes it into the extreme of well you know you didn't deal with it in a sensible way at the time. You're digging your heels in not accepting what I would say is a widely accepted message that is wrong and say well I don't see what the problem is, it's okay to offend people which is what I think Pauline has said from the transcript I've read of the preliminary investigation. There comes a point where you think well you know if you're not going to accept that it's wrong you know something greater than just requires an apology is going to be necessary because I don't see any sense of Pauline or the

	<p>wider Conservative Party accepting that that image is wrong and given other people that you know have, not just the conversation we're having today but a number of people that I've spoken to and if you look at social media it's quite clear that most people accept that what that image is really about is (<i>connection issues</i>) as Matt said and to me the evidence is overwhelming in terms of that's what it's about and therefore it was a mistake to post it and if you continue insisting that I don't see what the problem with it is it just gets worse and worse and worse trying to extricate yourself from that situation and what you have to do to do that becomes ever more bigger and you know whether Pauline needs censuring in some sense I don't know but I think it's gone way beyond a quiet apology saying oops sorry I shouldn't have done that, done and dusted</p>
AC	<p>Because of social media being the way it is it's been shared and shared and shared so more and more people have seen it and got angry about it and you know what do we do with that. That anger that offence that's been made against the Black Lives Matter campaign is out there and we don't know how far that has gone because of social media</p>
MS	<p>I mean my feeling on this was that kind of the size of the offence or the audience of the offence dictates the size of the apology or the recompense that needs to be made for it so if you know you say something to someone one on one that's offensive and it's pointed out to you then you know it could be quickly apologised there and then and you can say oh sorry I didn't realise what I said or you know that was a bit crass you know and as the audience gets bigger the apology needs to be bigger but also the person who says it you know your standing in society as that goes up the form of that apology needs to be bigger so as Steve said if it'd been a back bencher Councillor that's different from the Chair of the association and also when we say the size of the apology time, the time lag also has a bearing on this because if you say something, you use a word that's offensive and you're all yep sorry I shouldn't have said that it's soonest mended soonest forgotten kind of thing and it feels very much as if you know the non-reply to the email and the, it seems to be the resistance to acknowledging the offence caused sort of multiplies the offence and it makes me concerned that the hope is that people will</p>

	<p>accept that viewpoint as equally valid because that seems to be the position that's being pushed there by not offering a swift and full apology. That seems to be you know extending the fight to say that this is okay, this is an all right thing to say and it isn't and by coming to this hearing and by having this formal complaint that's us putting a marker down to say no you know this is not acceptable and that's why we would like the formal action taking place. If it had been dealt with earlier, swifter, sooner, fuller then we wouldn't be here now and it's the actions of Councillor Culley that have led us to be here and doing this now I feel</p>
BS	<p>So would I be right in saying that it's not just the post that's the issue it's the response to that</p>
MS	<p>It is now. It is now yes</p>
BS	<p>Okay thank you. Just picking up on something that Councillor Harker said earlier on. You referred to the damage that's been done. Can I ask you to expand please on what damage it is that you think has been done. What do you think is the impact of this post</p>
SH	<p>I mean the post is what it is and we talked about what it means and what it's saying and how invidious it is. I think the issue in terms of today is the fact that this has drifted on is what's been left in the air is I suppose the question is well if someone's insisting that it's fine then people might be thinking well actually they might be right you know perhaps they're right perhaps we're wrong in terms of complaining about it and the longer it takes to resolve that the longer that post is out there with people thinking well actually perhaps it is okay to say these things. Perhaps the messages in there is correct and the people complaining about it are wrong. In my view because that image is, I'll just turn this phone off, in my view cos this image is wrong the longer it hangs around as being an unresolved issue the longer it allows for certain people who are, have those views to say well actually it is right. You know no one's doing anything about it. The person that made the post is saying it's absolutely fine to say it and it's just these people complaining about it kind of thing and to me that's the damage about it, the fact that it's, this process takes a long time allows it to be there in the public domain for people to comment on and to see and it's you know the quicker, if you make an offensive statement or you say something wrong the quicker you sort it</p>

	<p>out the sooner there is clarity around the fact that everybody accepts that what you or someone said was wrong or is damaging in some sense and people then move on. If you wait a long time for that to be resolved then it allows you know as I said people to think well perhaps it is okay, perhaps it's not quite as clear cut as someone is saying and depending on who said it, the more important that person is, the more influence they have that then exacerbates the fact that people will be thinking well actually you know she is a significant person in the past why would she make statements wrong cos people don't do that</p>
BS	Okay
SH	Yeah it's, yeah it's the length of time that it sort of sits there unresolved
BS	Thank you. Councillor Curry do you think this is a reputational issue. Do you think this affects the reputation of the Council this kind of post
AC	<p>I think those people out in the public that don't really understand the dynamics within the Council, the fact that it's a Councillor is she representing all of us as Councillors because some people don't understand that and if they've seen that and seen that a Councillor is saying that is the Council saying that or are all Councillors saying that and there is people out there who think like that we're all wrong, you know the whole Council is in the same boat. Some people don't have a high opinion of the Council and this won't help. This won't help. This will manifest even to more complaints and more problems that people have and the distrust of the Council and I think that we've got to be able to nip it in the bud and it's too late now. We haven't nipped it in the bud. It's going, you know it's still out there</p>
SH	<p>I mean I think on that specific point the answer sort of I think depends on the individual person you're thinking about. There's some people that, you know we're political (<i>inaudible</i>) we spend a lot of time in politics but for most people it's something they get involved with relatively infrequently. They vote occasionally you know they read the newspapers so they don't always take a huge interest in whether politicians are of a particular party or not</p>
AC	Yep

SH	<p>People often just see you know they are a politician, they've said this and it is damaging to all politicians. You know clearly I am heavily involved in politics as we all are here and therefore to me it is significant, it's a person from a political party so yes it is damaging to her party more than it is with others but I'm acutely conscious that you know things that people say reflect on all politicians and to answer your question specifically it does have the potential to reflect on the local authority itself because to some people it doesn't matter that Pauline's of a particular political party. It's the fact that she's a Councillor on the Council saying these things and will make some people think well if she's saying that what do the others on the Council think. Are they of a similar view. You know it will make some people concerned that the people that you know have quite serious responsibilities in terms of governing the Council have views like that and are allowing those views to pervade you know within the Local Authority. What does it mean you know about our staff, do the staff have similar views. It is, it has the potential to cause damage and as we said before the longer it takes to sort out the longer people might be sitting there thinking actually is there a wider problem than just one member having those views</p>
BS	<p>Thank you. Councillor Curry do you wish to comment on that or say anything further</p>
AC	<p>Yeah he said, Councillor Harker said that slightly more eloquently than I did and tried to get the message across. That was the sort of message I was going to say is that we are political. Most people out there are not political. A lot of people will tar us with the same brush and I think it goes beyond just us as Councillors. As Councillor Harker said the Council may actually get damaged by this and I have concerns about that, that people of ethnic minorities may not feel that it's safe to come to the Council for any issues or complaints because they feel that we take that sort of stance and we've got to clearly have a statement going out that it was a personal statement and it does not reflect on any other Council or anybody else from the Council that they don't support this, that stance</p>
MS	<p>For me one of the points is clearly this meme, I didn't only see it on Councillor Culley's Facebook page. You know again as Councillor Harker said there we are politicians. We are involved in that and I do see and</p>

	<p>interact with people who I probably wouldn't want to in normal life but it's part of my duty is to at least listen to people and be aware of what people are saying and so I do see messages and I do hear opinions that are distasteful to me so this meme was shared by people whose position was seen as, could be characterised as far right and to see that message repeated by someone who is in elected office adds legitimacy to that viewpoint because there are people out there who feel that white people are superior to black people. There are people out there who feel that slavery, the slave trade was not as big a deal. It was something that was somehow acceptable or of its time. People who say that you know enslaving people should be seen in context and somehow excused because it happened some time ago and to see an elected politician, you know someone of that status repeating those views adds legitimacy to those views and makes people feel more secure in sharing those views and repeating those views when in fact you know our position should be to limit and delegitimise those views so that's why I feel so strongly that it does damage the reputation of the Council as a whole to have those repeated by a Councillor of that standing</p>
BS	Thank you
SH	<p>And that reminds me, I don't know why it reminds me but it's something that someone said to me at the time with it you know on a smaller level that you know as Councillors one of our responsibilities is working with residents when they've got you know problems, difficulties with the Local Authority and a whole host of things and if a resident sees someone you know one of us posting something like that who is from the BAME community what are they supposed to think, you know can I go to that person and get genuine help when clearly it might appear to them that that particular Councillor has you know a dim view or a poor view of BAME people. You know as Matthew said just now we are, you know we are supposed to help all our residents irrespective of what our political views are or their political views are, we are here to help and therefore as an individual we do need to portray ourselves as people willing to listen to people's problems and issues and if you say something like that you know frankly there's a section of this community that probably wouldn't go to Pauline for help because they'll be sitting there thinking well is she</p>

	<p>genuinely going to help me because if she's got those views she may not be particularly interested in me as an individual so you know it's at all ends of the spectrum in terms of the potential impact it has in terms of her work as a Councillor from (<i>connection issues</i>) resident with a particular issue to conveying a view about what people think this Council is about collectively our views on certain issues</p>
BS	<p>Right that's very helpful thank you. I just want to pick up on something Councillor Snedker said a few moments ago that the post has been reposted by people whose views can be characterised as being far right and that Councillor Culley reposting that has added some legitimacy to that. If and I don't know what Councillor Culley's personal views are but if her personal views are what you would characterise as far right is she not entitled to that legitimacy to that if those are her personal views. As a politician is she able to agree with that</p>
MS	<p>I think we're in the position of looking at the free speech question and this has been characterised is should you be allowed to stand up and shout fire at the top of your voice. Well clearly yes but not in the middle of a crowded theatre when there isn't a fire you know so to say something (<i>connection issues</i>) words we say so is a person allowed to hold the view that white people are superior to black people. Is a person allowed to hold the view that the mass transportation and murder of millions of black Africans was something which was lesser because it happened a while ago and should someone be allowed to hold those views. Of course they should however they're wrong, they're reprehensible, they're divisive and they're dangerous those views and so by saying them you are acting irresponsibly and dangerously and that is the concern here that to repeat those views which are you know of that trope which delegitimises the anguish of what happened to black African people through slavery is dangerous (<i>connection issues</i>) think that being of that status that she is chair of the local Conservative committee and a Councillor. That is why the sharing of those views is something that needs investigating because if the Council as a body behaved in that way, i.e. treating white people better than black people, if the Council decided that treating a group of society poorly but a while ago was okay and didn't want to atone for that</p>

	that would be bad I think to happen and so that is why it reflects poorly on the Council that that's happening
SH	<p>And in addition I think for me it's particularly because the whole point of that meme its origins were in about undermining the Black Lives Matter movement which you know fundamentally is about trying to tackle some of the issues that the BAME community faces in terms of prejudice, lack of opportunity and all that and all those related issues, it was really trying to undermine that and you know it does become very difficult when you say well freedom of speech you are allowed to say what you think yeah but you can cross the line and I think you know the litmus test in a sense is you know what the majority of people think and I would argue the majority of people think from whatever background they are is that in today's society there are certain sections of our society that do not have the same chance in life as others and one of those groups of people is the BAME community and that meme that was posted is trying to undermine the work that's going on to try and redress that and for me you know that's why in this instance it's not something that someone should be saying particularly someone in public office. Yes some people would agree with her. I clearly personally think they're wrong and I would argue that the majority of people in the UK would also say that she's wrong but you know reflecting the fact people have very very diverse views. Many things most people will agree on but that's not still the case that people on the fringes of society have some really really extreme views. We've had a long discussion about whether it's their right to say such things but I think in this instance it was wrong to do it because fundamentally what it was trying to do was to undermine a movement that's about trying to redress inequalities in certain parts of our modern society</p>
BS	Thank you
AC	<p>I think I would add to that it's the fact that she used the Facebook page which was, if it was a personal view then why use a Facebook page which identified her as a Councillor of Darlington Borough Council of Mowden Ward. To me if it's a personal view then it, she should have put it out on her personal page if she had one or had she changed the personal page. It shouldn't have gone out on an official page that she'd classified as being linked to the Council. That was the biggest problem. I don't like</p>

	<p>what she said. I understand that it is factually true but it's not the right time, the right place to do it and it's the fact that she used that page which demonstrates the lack of understanding that it was not a personal, she was putting it out as a Councillor not as a personal person. If she'd put it out on a personal page I don't think, we'd still all have not liked it but we wouldn't have had a claim at all on making this formal complaint. It's because it's on the page that she said was for Mowden Ward you know from Mowden (<i>connection issues</i>) Councillor. That to me is fundamentally she's speaking as a Councillor there</p>
BS	<p>Okay so in</p>
SH	<p>Sorry I think for me I would disagree with part of that. I think this is one of those issues where in my opinion it's not right to have those opinions either as a private person or as a public person because clearly if that's what you believe even, that's what you say in private then it's not unreasonable to think well that's how you're going to conduct yourself in public life and therefore if your view is that you know the BAME community doesn't suffer prejudices in society it means that when someone from that community goes to you for help as a Councillor you're clearly not going to help them because you're probably going to feel well it's okay for them to be suffering inequality because that's what you believe in private. I said earlier there are certain things I think can be made private in our lives as public politicians but there are certain things that clearly cannot and if you have a view about what are people's rights that isn't something that you keep in your private life and not influence your public life. If that's what you believe you're going to do, you're going to believe that, public and private life and the actions that you take will be the same in your public life as in your private life and to me in this instance there's no distinction between whether it was posted privately or publicly. It's what she believes in and that will have an impact potentially in how she behaves in her public role as a Councillor</p>
BS	<p>Okay thank you so to expand on that a little bit more and I appreciate this could be a very difficult question to answer, how much should politicians be able to express their own views even if those views are unpopular</p>
SH	<p>It is a difficult question. You can express your views publicly but there will be consequences to it you know. If someone as an individual person</p>

	<p>expresses a view that someone else finds is intolerant if it's a one to one conversation they may be challenged, they may end up just not being able to agree or disagree, someone may change their views. On the other extreme you know if you're a national politician and you say something that society as a whole doesn't agree with you know there'll be consequences to that and depending on I guess the severity of what you've said, how wide the impact is you know it could be potentially from a mild censure right the way through to someone being forced to stand down from their party you know either resigning if it's a national politician, it's an MP, resigning from their party because the party finds it intolerant so I don't think there's a simple answer because, and we sort of discussed earlier, it depends on the seniority of that person, how much influence they have on society, how significant their role is and what it is that they've said. It's a whole spectrum as to what the consequences is of someone saying something because of that</p>
MS	<p>For me it's, yeah of course it's a difficult, it's a philosophical question about holding a view and speaking that view but for me it comes down to harm because if what you say causes harm then you need to be acutely aware of that and the amount of harm it causes needs to be taken into account which as Steve said is about your standing and your position in public life and to attempt to amplify the message that you know Black Lives Matter isn't a legitimate concern and that the discrimination and disadvantage, national discrimination faced by black people and minority ethnic people is harmful you know because it will distort public policy, it will distort spending, it will distort activity within communities at local government and at a national level if you support and amplify that message and so it causes harm and that's why it should be censored. You know there are laws passed in this country against behaviours that are not physical behaviours that you're not allowed to do on the grounds of discrimination, for example Equalities Act, etc and so there are behaviours that do not directly physically hurt someone but they are proscribed in law and these behaviours may well be based on prejudice and so the holding of a prejudicial view that leads to an action that is prejudicial causes harm and they are quite rightly outlawed and so what we are is we are kind of one link up the chain and that's, it was a really</p>

	good question about holding a view. We're one link up the chain from acting to, to actively discriminate. We are at that point of propagating a message which encourages discrimination and that's why I took offence at it
BS	Thank you. Councillor Curry do you have anything to add to that
AC	No. I do believe that she has the right to speak but not as the, in the role of a Councillor like that. It's wrong. I do believe she has that right to say something. It's up to the Tories to tell her off if she did it in a personal point of view but the fact that she used the page that clearly identified her as a Councillor that to me was totally wrong. Totally wrong. We have to be able to be open and honest with people who come to us and ask for help and she's closing the door on a lot of people in this town
BS	Thank you. My final question, thank you for your time so far. I realise you've been here for a while now but my final question is obviously you've all made it quite clear that you think this post was misguided and inappropriate. Do you all feel confident that this is a breach of the Code of Conduct or do you think it's arguable that it isn't. What's your thoughts on that
MS	I gave a lot of consideration before reporting it. I didn't do it lightly and it's true I discussed it with Steve because I wanted to check I wasn't over-reacting and I felt that that was a possibility that the emotion of seeing this thread and this meme and the reactions of others might have led me to seek a higher level of reaction than was justified but you know having spent time, you know slept on it, I was firm with the conclusion that it did need action as a breach and that's why I agreed to sign the letter and take it to the next level
BS	Thank you
SH	It is a difficult question and as we discussed earlier it's degrees of harm. It's degrees of how influential someone is. It's degrees of how well when someone's challenged the initial reaction is to it (<i>inaudible</i>) and I think if it had been dealt with quickly initially and there'd been some you know even privately amongst members you know shouldn't have done that, that was clearly a mistake I think I still might have said well actually it is, it does need looking at even there as a breach because of its, you know we've

said a lot about it. The positions that we have you know even only as Councillors we are able to influence public opinion. We are able to change how people think. We are able to do things that have consequences in terms of how the local authority works. We are able to change what people think is okay for other people to say so we do always need to be careful what we say and what we do in public and in private because people see us and they take their views on things that we do (*inaudible*) you know national politicians can have a huge influence on what society as a whole believes is an acceptable thing to do or to say and I think with this particular post especially because you know we ended up today with the formal hearing and I think neither Pauline nor Heather nor Peter Gibson which is clearly outside this really did anything to say yeah we messed up here and therefore it's the digging of the heels sort of thing, no no no we're not going to do anything about this or silently saying we're not going to do anything about it that ends up, ramps up the seriousness of what's happened and the fact that you know seemingly no one's saying oops made a mistake, we need to deal with this, we need to redress it somehow. Pauline has been a Member for some time. She does have a significant position in the regional party even though in terms of the Council she's only a backbench Member as the three of us here are today and therefore you know I raised the question not because, I raised the question because I felt something should be done about it but the fact that nothing happened did make me think well actually you know you're not taking this seriously and therefore the question does have to be asked. I think potentially you're breaching the Code of Conduct because it's become a matter where in my view it hasn't been taken seriously that something needs to be done about what happened initially and the longer you take to say yeah I need to do something about this the harder it is to step back from it and so yeah my interpretation of the Code of Conduct, you know there's certain things we shouldn't say, certain things we shouldn't do because of all those things how we influence our local society and I think sadly Pauline has sort of strayed into that area of doing those things because of (a) making the post in the first place, (b) not doing something about it quickly and (3) we've ended up having this formal hearing as a consequence so it's a long rambling answer but I

	think yes you know there has been a breach at the end of the day for a multitude of reasons unfortunately
BS	Thank you. Councillor Curry do you have anything to say on that point
AC	I think we as Councillors are not supposed to do anything that will bring ourselves or the Council into disrepute and the fact that people out there have obviously complained but could also assume that this is the stance of the Council yes I'm afraid, they assume that the Council are not taking this Black Lives Matter campaign seriously because of that meme going out I think it is very very much that we could be harmed as a Council because of it and in that case she has broken the Code of Conduct
BS	Thank you. Before I stop the recording does anybody have anything else that they wish to say on the record
MS	No thank you
SH	I was just looking at the notes I jotted down beforehand. No I don't think I do thank you
BS	Thank you. I'll stop the recording now then

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**INTERVIEW: MEMBER COMPLAINT
REFERENCES 94 & 95/2020**

Date:	7 December 2020
Venue:	Via Teams
Present:	Councillor Pauline Culley (PC) Bethany Symonds (BS)
Method of Recording:	Digital

Initials of speaker	
BS	Well my first question then is, well I wanted to start by asking you about your Facebook page so am I right in thinking that you've got two, one for personal and one for, one is a public page is that right
PC	Yes one's more, yeah one's more public. I have a personal one with people I actually like
BS	Yeah
PC	And then I've got a, yes a more open one
BS	Okay so what do you use the more open one for
PC	Mostly for liking and sharing things so mostly, well I would say 90% so I like and share all sorts of things. Stuff that the MP does. Stuff about bees. Stuff about animals and gardening and anything that the Council ever does with the library. Anything like that
BS	Okay
PC	So I just share things that, that I find interesting that I think might be, might interest others. I very rarely comment on any of the things I share but I just like, well on that site I was a prolific liker and sharer
BS	Okay. I'm just making a couple of notes
PC	Yeah yeah no that's fine

BS	So who, who do you have on that Facebook page. Again is that friends or is it people who live in your Ward, is it people you know or not
PC	Anybody who sent me a friend request
BS	Right
PC	Unless they live in America or out of the country. When I first started it I didn't really know what I was doing so I have a lot of people on there and I was just accepting anybody who sent me a friend request so the people who have been on there a while I have no idea who they are. I've never met them but they would have somehow found me right at the beginning and if they've sent me a friend request like I say unless they live somewhere that is, that isn't England then I tend to just accept whoever they are
BS	Okay and do you have any idea roughly of how many friends you would have on there or how many people would be following you on that page
PC	No
BS	Okay
PC	It's more than my friends though I'll be honest
BS	Right okay. Thank you . Right so I think I've got a good picture of what you use that page now. Okay. So the post in question where did you come across that post
PC	It just popped up on my feed like lots of, because I am a prolific sharer stuff tends to just as I'm flicking through it just appears. All sorts of, the majority of stuff I've shared on there is about the Council and what the Council's doing and then occasionally stuff just, it just appears on my page. I don't know where it (<i>connection issues</i>) and presumably it's from things other people have shared. I don't know. I don't know how Facebook works like that
BS	Did you have a look into where it had come from and whose post it was
PC	No
BS	Okay. So in terms of the post how, how do you interpret that. When you saw it what, what did you think that that post meant or what were you thinking it was about or what were you thinking it was saying
PC	Well I just was, like most of the things I did it was, it was just to show what other people are saying. It was to show that other people are saying

	these things. I didn't like the post so there's a, there's a little button that you can click to say like and share and some stuff I liked, if it's about a bee and bees being some kind of endangered species then I like that post and share it but this I just shared it because of what, it's just one of the many things other people were saying
BS	So what did you think it was saying that post
PC	Well I wouldn't, I was more interested in what other people were thinking of it
BS	Okay
PC	I mean, I'm not sure I had an agenda at all with it. I just, I just, I will have been flicking through and just seen it and shared it to see what people thought of it. I don't know whether I thought that, that much about it at the time
BS	Okay but it wasn't so much
PC	And I don't, I don't think that sharing it is belittling any kind of racist minority or any issues faced by people in Darlington or anywhere
BS	Okay okay well that was the next thing that I wanted to speak to you about because when I spoke to the member of the public that had got in touch about the post she said that when she looked at the image that was shared she thought that that post and I appreciate you didn't create that image and nobody's suggesting that you had but she thinks that that image was designed to undermine or to try and deny the severity of the trans-Atlantic slave trade by comparing it to other instances of slavery. What do you make of that. Do you think that that post does undermine that
PC	Well that's her opinion. This was also shared in The Northern Echo and the comments behind The Northern Echo at the bottom of it absolutely agree with my right to share that. There's 75% of the comments that are there are agreeing with the post itself. My opinion of that post to me is irrelevant because I wasn't (<i>connection issues</i>) in what I thought of it. I was interested in what other people thought of it. It was a point of view and if she's, if she's saying that it's undermined it that's her opinion. There are numerous other opinions saying the exact opposite to her
BS	What's your opinion

PC	Is that relevant
BS	I believe so
PC	Because my, my opinion is my opinion and not, this will become a public opinion. If I now say to you it'll become a public opinion and that was not what I was trying to do
BS	Okay. I think the suggestion has been though that by sharing it on a public page it became a public opinion at the time
PC	But I didn't say whether I liked or disliked it. I didn't do either of those. To me the whole thing is, I don't see why they've made such a big issue of this, the opposition Councillors because I have never said what I thought about the post. The Echo asked me. Some radio programme asked me and I have never personally said what I think about that post so I don't see why the, well I know why they're gunning for me it's political isn't it why they've done all of this
BS	Okay. Well even if you're not happy to share what you think of that post are you able to say what you think that post itself is trying to say. Regardless of saying whether you agree or disagree with what that post is saying what do you think it is saying
PC	What the post is saying, well that's the same thing as telling you my, well I wasn't interested in what I, we're back to that. I wasn't interested in what I thought of it. I was more interested in what it represented cos I hate racism. Absolutely hate it. And it's very, it was just a post. It was, to me it was just a post
BS	Okay so I think the feeling is that there are some racist aspects to that post is that something that you agree with, do you believe that it is
PC	Again we're back to it's irrelevant what I think. Right so nobody from Mowden my Ward has complained about this post. The comments in The Northern Echo were 75% agreeing with what the post said. That says more to me than anything that I could ever say and all of this that they've done, all they've done by making a big deal of this has made sure that it's seen wider than it ever would have been
BS	Yeah
PC	Which again I'm not sure if that's a bad thing or a good thing

BS	Okay so can I just clarify for the purposes of the record is it that you don't have an opinion on the post or the interpretation of the post or is it that you don't wish to share it
PC	Do I have an opinion. I think, I think people should be allowed to have their own opinion on things and not shout down anybody who has the opposite opinion. I think it's, it's the, well like we've had in Council it's accepting other people's views on things and not just yelling back at them because you happen to have the opposite view and appreciating that everybody's views are different. Well not everybody's. Clearly I have a lot of Conservative colleagues whose views are the same as mine in many ways. I mean the whole group, the Conservative group when we met they all said there is no case to answer in this, in this whole is there a hearing is there not a hearing. They also thought there was no case. The fact that I've shared the post is not in dispute. I have shared the post. It's the interpretation of why I've shared the post that seems to be causing all the trouble
BS	Okay. So just to pick up on what you've said there about respecting other people's views and everybody being entitled to different views I've spoken to the other Councillors about that and said you know is everybody not entitled to have their own separate views and share those and their thoughts on that were yes everybody is entitled to an extent but if it, if it's to do with a view or an opinion that could be said to be perpetuating issues of discrimination that ethnic minorities face then there's a line there and that's something that shouldn't be shared. How do you feel about that
PC	Well again it says more about them than it does about me. So this, sorry can you repeat that what they've said. They've said, they said what
BS	So they've, they've suggested that yes to an extent people do have the rights to share their own views on things but if it's a view that contributes to discrimination in society continuing at that point there should be a line drawn and that perhaps shouldn't be shared
PC	But is that not in itself a racist view that people are going to be offended by it

BS	Well I think what they're saying is if somebody, anybody shares a post that might contribute to discrimination continuing
PC	And again that's their opinion that it contributes to it
BS	Well that's their opinion that it might or that it could
PC	Yeah
BS	So what's your opinion on that
PC	On whether it contributes to, well it did contribute I suppose inasmuch as the people that wrote in The Northern Echo agreed with the sentiments expressed in that, in the post
BS	Okay
PC	I, right, I have no interest in sharing anything that, right my, [REDACTED] [REDACTED] [REDACTED] [REDACTED]
BS	Okay but, [REDACTED] do you think there's an issue there with sharing things, sharing opinions even if they are your own opinion, opinions that might then contribute to issues of discrimination continuing, do you think there should be some limits on what people can share
PC	But then who decides what the limits are
BS	Yeah well that's another question
PC	There's your problem right there. I mean it's freedom of information. It's all of that stuff as well isn't it. That if you're going to stop people having an opinion about things, as I say I haven't shared my opinion on this post. Others have shared their opinion on it
BS	Okay
PC	And as I, I mean, yeah my thoughts on the whole thing is that it's politically motivated by, they've made such a fuss of this because of politics not because of what the post actually said
BS	Okay so do you think that there should be any limits on what people are able to post
PC	Anything that is clearly racist. If you were to say something clearly against any, any member of society then, but then we get that all the time.

	We get that in the Council chamber. We're always being, people having a go at us and I don't know, I don't know how you can draw the line. I don't know who gets to draw the line or how you can do it and people can be offended by all sorts of things can't they when you tell them the bees are dying off they can be offended by that
BS	Okay so you've mentioned a few times about the comments in The Northern Echo. They're not something that I've seen so are you able to tell me what the sentiments of those comments were
PC	Oh I sent them to Luke. Has he not given you them
BS	I haven't seen them
PC	Oh okay
BS	Could we speak about them
PC	I'll tell you. I have, I copied them at the time
BS	Okay
PC	And I did a precis for him. She's making a point that you personally had no control over what your ancestors did in the past. The truth matters. Thank you for standing up for it. Pauline Culley is right. Slavery existed whether white or black throughout the ages. She has nothing to answer for. The post was factually correct. The Barbary slave trade was a huge issue at the time. She's quite right. I'm grossly offended and can't believe the Councillor's being criticised for telling the truth. History needs teaching alright all of it not the bits BLM and loony left want. The truth hurts. Absolutely agree. All minority factions are only out for a fight using the race card to justify it. They are certainly something. Sorry I'll get my glasses. I mean that was kind of the gist and then of course some people went further into it about the British Empire being the first state to abolish slavery. Destroying the slave trade of Sultan of Zanzibar
BS	Okay so
PC	It states fear not Councillor Culley. As you can see the vast majority of comments we're right behind you. When it comes to commies the more they complain the better the job we're doing. I mean again I have no comment to make on what people commented on that post
BS	Okay
PC	That's just their opinion

BS	Okay so that's their opinion. So from some of those comments there a lot of people have said that you're right. I think the word right came up a few times
PC	It did
BS	Yeah
PC	It did come up yeah
BS	Yeah. So from what
PC	I don't know what they thought I'm right about
BS	Well that was my question because from what we've discussed you suggested that you shared it more as a conversation starter rather than this is my opinion but it reads from those comments if people are thinking that that's your opinion
PC	Well that's because of how the article was written
BS	Okay
PC	So these are the comments underneath the article that was in the, that was in the paper and the article itself well it says about my lack of understanding of suffering elsewhere, that I displayed insensitivity claiming the Ward resembled a third world country. Now you see that one. That was also reported by The Echo the third world country thing but what I actually said was one of my residents had complained about it looking like, a resident who came to my Ward Surgery and was complaining about the grass. That's what I said and it was reported as me saying it cos I did say it but it wasn't me who actually said it so again it's, and it's all appeared to undermine, appeared to do this, appeared to do that. It is what it is
BS	Yeah so do you think that people have got the wrong end of the stick then and thought that this was your opinion when actually it wasn't necessarily your opinion. It was just something that you wanted to create a discussion about
PC	Very possibly. Possibly. Because yes I suppose if they've seen me share it but I have never commented on it. I've just shared, I shared it. Whether it's, I mean, and it's, it's somebody's opinion whether it's racist or it's inciting hatred or all the rest of the things. I don't know. I don't know.

	I don't, I don't think it's racist. I don't think it's offensive. I don't think it incites hatred and I don't think it's inflammatory
BS	Okay
PC	And neither do the people who have commented. It's not. The post itself is not racist. That's why I don't understand why we've ended up here
BS	Do you want to expand on that or say anything more about that
PC	No
BS	Do you want to expand on why you don't think it's racist or inflammatory
PC	It's a, well it's a factual, it's just a fact. What's written on it is a fact and I don't think any of the things that I've, that they say it is but other people may think that. It was not my opinion. I have never said anything about that post
BS	Okay
PC	I specifically didn't speak to The Echo and I didn't speak to the radio
BS	So you've mentioned there that other people will have different opinions about it and some people might
PC	Yeah
BS	Interpret it in a different way to how you have. Do you think that there's any risk that somebody from an ethnic minority living in Darlington might interpret that in a different way to how you have
PC	Well somebody who isn't from an ethnic minority may interpret differently to what I have. The ethnic minority part of it well it's, that, it's, people can be offended by just about anything that any politician says these days. People get offended by all sorts of things whether they're ethnic minorities or Liberal Democrats
BS	So if somebody did interpret it differently to how you have and was offended by it is there any possibility that that might prevent somebody from accessing Council services
PC	Why
BS	Well that's something that's been mentioned when I've discussed this with the other Councillors is that perhaps if you were from an ethnic minority and you were offended by that and did interpret it to be racist you might not feel as comfortable contacting the Council about something as you normally would if you hadn't seen that. Is that a possibility do you think

PC	Why, no. Why would that, why would that stop anybody who needed help from contacting the Council. You're back to then saying that it's racist. You're back to that. That's their view. It's not my view that it's racist
BS	Okay I appreciate that. I'm just trying to get your views on it
PC	Yeah yeah yeah. I know. I know sorry
BS	It's okay
PC	Just
BS	I know. I know it's difficult and I know I'm firing an awful lot of questions at you
PC	Yeah
BS	But I'm just trying to explore your thoughts on it as much as possible so that we can get as much down, as much information as we possibly can
PC	Yeah
BS	So leading on from the question, the last question I've asked, do you think that things that you post, not necessarily this but anything that you post on Facebook do you think that reflects back upon the Council as a whole or upon the other politicians in the Council
PC	That anything that I post reflects back. Not necessarily cos as I say the majority of things that I ever post are about bees and the library
BS	Okay
PC	And I have very few people who actually live in Mowden from however many friends on that site that I've got there's not that many of them in Mowden and it's people in Mowden who vote for me. Not some random person who lives in Kent or Middlesbrough
BS	Okay. So the (<i>connection issues</i>) views on this post if in some hypothetical circumstance in the future you or any other Councillor was to post something on Facebook that everybody agreed was offensive, that was very clearly outright offensive, would that reflect back on the Council as a whole do you think
PC	No. It would reflect back on the person who shared it
BS	Okay
PC	And their political party to some extent
BS	So do you think then that people in society understand about how it works with the Council having politicians from a wide range of different parties

	and that they all will have different views and that they're not necessarily reflective of what the Council as an organisation thinks. Do you think that people have a good understanding of that then
PC	I'm not sure that most people have any interest at all in politics or how the Council works or anything else. I'm not sure that they, that many people, I mean obviously there are some who do understand it and do follow it but the vast majority of people including members of my own family haven't got a clue
BS	Okay
PC	About how things work with the Council until they need something doing about the bins or something like that and then they become very interested. And as a Councillor I don't discriminate between people who didn't vote for me and people who did. You just try and help them all
BS	When you saw this post on Facebook did you kind of have much of a think about it before you reposted it or was it something that you did just instantly. I know you've said that you shared a lot of things on there. Did you just kind of think oh that's interesting I'll share it or did it kind of
PC	I can't remember
BS	Cross your mind whether there might be any controversy about it
PC	I can't remember. It was months ago
BS	So can you remember if you kind of gave any thought as to whether it might be more appropriate on your personal page rather than a public one
PC	I can't remember
BS	Okay. I'm coming to the end of my questions but the last thing that I had noted down that I wanted to ask you, am I right in thinking that the post itself has been deleted now
PC	I, yes I, so I shared this I don't know what day it was but the following day John Clare who is a Labour Councillor in Durham said, said something back to me that made me look and I thought oh I'll have a look see what it was he's talking about and I looked on his page and then I realised when I looked on his page that I was in for some abuse just from the messages that were on there so they were on about scoring points by publicising what I'd, this post that I'd done and I mean some of the stuff that the Labour Party do on there, they're just trolls. They are awful, awful

	<p>comments that they put on us being Tory scum being probably one of the mildest things that they do and I realised then that they were out to get, well to try and cause as much political trouble as possible by the, just by the posts that were on there. Now my children were also on, because I always spent more time on this site than on my personal site both my children were on there and I could, I've seen how they operate in the past and I thought I'm not having my children seeing me being vilified by them on this, on this post so I closed it down so that's, so that, well so that my kids didn't have to see that. I've seen what they do. They're awful yeah and then when I, when I then looked back later and I saw that they were just trying to, apparently they can get points for causing trouble for, well they've scored points in the past according to Helen Goodman who used to be the MP there. She got somebody fired and she was telling him to make sure that I got fired for this post and you just think no they're just gunning for me. I'll take it down which is what I did and then, then when I got the complaint I thought well I best leave it down until the investigation's over and then I'll start it up again at some point</p>
BS	Okay so is it the post that's come down or is it the whole page
PC	Page. I took the page down
BS	<p>Okay so finally I just wanted to come back to this point that the main concern that has been raised by a member of the public and the other politicians is that the post and the sharing of the post effectively shares an opinion which they feel could contribute to prejudice in society continuing. I know you've said that you don't necessarily want to give an opinion on that but that basically is the crux of the complaint so I wanted to give you a final opportunity on whether or not you wanted to say anything about that</p>
PC	So the post what say again please
BS	The post could contribute to any prejudice in society continuing. That the main views are that the post undermines the difficulties that black and ethnic minority people face as a legacy of the trans-Atlantic slave trade
PC	Does it
BS	Well that's what I'm asking. What's, that's what they've raised. What's your views on it if you wish to give me one

PC	You're back to that's their opinion and
BS	Yeah
PC	And from, just we're back to the comments in The Echo. They all had a different opinion to the one that the opposition Members and this member of the public have had. They are all a completely different view of that post so do you go with the majority or the minority of views on that particular post. I don't know. I suppose that's what you have to work out whether you're going to go with the majority or a minority
BS	Yeah but I just
PC	And whilst a minority needs a voice, minorities always need a voice you know yes you're back to it being their opinion of that post
BS	Yeah so I'm just, the purpose of that is I'm asking you, I'm putting to you their opinion and asking for yours on it. I'm not saying whether I agree with anybody's opinion. I'm just asking for your views on it. That's all
PC	Yeah yeah I get that. I get that. I don't think that post is racist or inciting hatred. The post itself
BS	Okay. Alright. Thank you
PC	And, but they are entitled to their view on it
BS	Okay. Thank you. I think that's everything that I wanted to ask unless there's anything else that you want to say or have on the record about any of this
PC	Yes I don't think I've got, I mean there's, I suppose it depends if it's actually going to go to a hearing cos then there will be other questions but I'm sure you'll be letting me know
BS	Okay
PC	When this is all typed up
BS	Okay so
PC	You see it's just a, it's a shame that it's come to this for something, you'll end up with nobody sharing any kind of, anything and I'm not sure that that's a good thing either if people aren't allowed an opinion on things
BS	Okay okay. Thank you very much. That was everything from me so thank you for your time today. I really do appreciate it and I'm sorry about how many questions I fired at you but I just really wanted to get a good sense of your views on this

PC	Okay. Well I hope you have. Let's hope
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INTEGRITY IN PUBLIC LIFE

ADVICE NOTE ON THE APPLICATION OF ARTICLE 10 OF THE ECHR

1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission for Scotland (Standards Commission), aims to outline the approach its Hearing Panels will take when issues that concern the application of Article 10 of the European Convention on Human Rights (ECHR) arise.
- 1.2 The Advice Note also suggests issues councillors and members of devolved public bodies should consider in order for them to ensure compliance with the provisions concerning courtesy and respect in their respective Codes of Conduct.
- 1.3 Councillors and members of devolved public bodies have a personal responsibility to observe the rules in the Councillors' Code of Conduct and the Devolved Public Bodies' Codes respectively. This advice is intended to assist them in interpreting the provisions in the Codes of Conduct in order to do so. This Advice Note should, therefore, be read in conjunction with the Codes of Conduct.

2. Background

- 2.1 The Standards Commission's functions are provided for by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) as amended by the Scottish Parliamentary Commissions and Commissioners etc. Act 2010. The 2000 Act created an ethical standards framework whereby councillors and members of devolved public bodies are required to comply with Codes of Conduct, approved by Scottish Ministers, together with Guidance issued by the Standards Commission.
- 2.2 The role of the Standards Commission is to:
- Encourage high ethical standards in public life; including the promotion and enforcement of the Codes of Conduct and to issue guidance to councils and devolved public bodies.
 - Adjudicate on alleged breaches of the Codes of Conduct, and where a breach is found, to apply a sanction.
- 2.3 Article 10 of the ECHR (as incorporated in the Human Rights Act 1998) concerns freedom of expression. It states:
1. 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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

2.4 Therefore, Article 10 is a qualified right and as such the right to freedom of expression may be limited by imposition of sanctions in respect of provisions prescribed by law, such as ones contained in the Codes of Conduct, provided the restrictions are necessary and proportionate and are in pursuance of a legitimate aim. The approach the Standards Commission will take in conducting such an analysis is outlined under Section 5 below.

3. **Relevant Provisions in the Councillors' Code of Conduct and Model Code of Conduct for Members of Devolved Public Bodies**

3.1 The Councillors' Code of Conduct contains provisions relating to respect that impact on a councillors' right to freedom of expression. Specific applicable paragraphs in the Councillors' Code of Conduct include:

Conduct at Meetings

3.2 You must respect the chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its Committees or Sub-Committees or of any Public Bodies where you have been appointed by, and represent the Council. You must comply with rulings from the chair in the conduct of the business of these meetings.

Relationship with Council Employees (including those employed by contractors providing services to the Council)

3.3 You must respect all Council employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.

3.5 You must follow the Protocol for Relations between Councillors and Employees attached at Annex C. A breach of the Protocol will be considered as a breach of this Code.

Annex C: Protocol for Relations between Councillors and Employees in Scottish Councils Public comment

20. Councillors should not raise matters relating to the conduct or capability of employees in public. Employees must accord to councillors the respect and courtesy due to them in their various roles. There are provisions in the Code of Conduct for Employees about speaking in public and employees should observe them.

3.2 Codes of Conduct for Members of Devolved Public Bodies are based on the Model Code of Conduct. Specific applicable paragraphs in the Model Code of Conduct include:

Conduct at Meetings

3.2 You must respect the chair, your colleagues and employees of the public body in meetings. You must comply with rulings from the chair in the conduct of the business in these meetings.

Relationship with Board Members and Employees of the Public Body (including those employed by contractors providing services.

3.3 You must treat you fellow board members and any staff employed by the body with courtesy and respect. It is expected that fellow board members and employees will show you the same consideration in return. It is good practice for employers to provided examples of what is unacceptable behaviour in their organisation. Public bodies should promote a safe healthy and fair working environment for all. As a board member you should be familiar with the policies of the public body in relation to bullying and harassment in the workplace and also lead by exemplar behaviour.

4. How Article 10 has been interpreted by the Courts

4.1 There have been a number of cases on the application of restrictions under Article 10(2) on freedom of expression. Summaries of some relevant cases are outlined below:

4.2 *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin): The High Court recognised that politicians have an enhanced protection in respect of political expression, which applies to all levels of politics, including local, and that political expression in itself is a broad concept. The Court further held that public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits were not as wide as they were for elected politicians. The need to protect officers when imposing a restriction, in terms of Article 10(2), on freedom of expression must be weighed up against a politician's right to enhanced protection. The Court noted that the right to freedom of expression was not absolute but that any restriction was required to respond to a 'pressing social need', to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued. However, that margin must be construed narrowly in this context as there was little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest. The Court had further recognised that it was in the public interest that officers were not subjected to unwarranted comments that prevented them from performing their duties in conditions free from perturbation¹ as this could undermine public confidence in the administration. The Court recognised that local government could not 'sensibly function' without such a mutual bond of trust and confidence.

4.3 *R (Calver) v Adjudication Panel for Wales* (2012) EWHC 1172: This case outlined the order a Tribunal would require to adopt when considering Article 10, which was firstly whether there had been a breach of the Code; secondly, if so, whether the finding of a breach and the imposition of a sanction was a limitation of the right to freedom of expression afforded by Article 10; and thirdly, if so, whether the restriction involved was one that was justified by Article 10(2). The High Court noted that if the conduct in question is less egregious², it is more difficult to justify any restriction. The Court further noted that 'political expression' had to be interpreted widely and it included open discussion on political issues including public administration and public concern, including

¹ Disturbance or upset caused by some event.

² Extremely bad in a way that it noticeable or shocking.

comments about the adequacy or inadequacy of the performance of public duties by others. It had been held that there was no distinction between political discussion and discussion of matters of public concern.

- 4.4 *Guja v Moldova* (2011) 53 EHRR 16: The European Court of Human Rights (EHRR) found that the signalling or disclosure of wrongdoing by an officer should be made in the first place to the individual's superior or other competent authority or body and that the question of whether there was any other effective means of remedying the wrongdoing should be considered before information was disclosed in public. The EHRR further found that the public interest in particular information could sometimes be as strong as to override even a legally imposed duty of confidence.
- 4.5 *Lombardo v Malta* (2009) 48 EHRR 23: The EHRR stated that a very narrow margin of appreciation must be afforded to competent national authorities to restrict discussions on matters of public interest. Comments in the political context, which amount to value judgements, are tolerated even if untrue, as long as they have some or any factual basis. Even a statement of fact will be tolerated if what was expressed was said in good faith and there is some reasonable (even if incorrect) factual basis for saying it. The Court noted it did not matter whether the restriction was imposed by civil or criminal proceedings when determining whether interference with the freedom of expression was proportionate to the aim pursued and was necessary in a democratic society.
- 4.6 *Mamere v France* (2009) 49 EHRR 39: The EHRR noted that individuals taking part in public debates on matters of general concern must not overstep certain limits, particularly with regard to respect of the reputation and rights of others, a degree of exaggeration or even provocation is permitted. The requirement to protect civil servants had to be weighed against the interests of freedom of the press or of open discussion on matters of public concern. In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical³, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated. The Court noted that Article 10 protects all modes of expression but that the means of disseminating information can be of significance in determining whether measures taken by a competent authority to restrict freedom of expression were proportionate to the legitimate aim being pursued.
- 4.7 *Busuioc v Moldova* (2006) 42 EHRR 14: Even if comments are made as part of a debate on an issue of public interest, there are limits to the right to freedom of expression where an individual's reputation is at stake.
- 4.8 *Livingstone v Adjudication Panel for England* (2006) EWHC 2533: The High Court notes that restraints imposed by a code of conduct designed to uphold proper standards in public life are in principle likely to fall within Article 10(2) ECHR but such restraints should not extend beyond what is necessary to maintain those standards. The Court noted that interference with the right of free speech which impedes political debate must be subjected to particularly close scrutiny but that simply indulging in offensive behaviour was not to be regarded as expressing a political opinion, which attracts the enhanced level of protection.
- 4.9 *Pederson v Denmark* (2004) 42 EHRR 24: The EHRR recognised that there can be a conflict between the right to impart information and the protection of the rights and reputation of others. In determining whether a restriction on freedom of expression was legitimate, consideration should be given to whether or not there were sufficient other opportunities for person imparting the information to achieve his or her objective.

³ A piece of writing or a speech in which a person strongly attacks or defends a particular opinion, person, idea, or set of beliefs.

- 4.10 *Janowski v Poland* (1999) 29 EHRR 705: The EHRR considered rights of public servants and their entitlement to protection but noted they are subject to the wider limits of acceptable criticism, meaning such criticism could be harsh or expressed in strong form. Public servants can expect criticism at higher level than the public but not quite the same level as politicians. They did not knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should not, therefore, be treated on an equal footing with the latter when it comes to criticism of their actions. The Court noted that civil servants can expect protection if there is a pressing social need. Any such protection must also be proportionate to the legitimate aim being pursued and be relevant and sufficient. Civil Servants must enjoy public confidence in conditions free from undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty.
- 4.11 *Thorgeirson v Iceland* (1992) 14 EHRR 843: The EHRR noted that freedom of expression was not just applicable to information and ideas that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those which shock, offend or disturb. The Court observed that there was no distinction between political discussion and discussion on matters of public concern.
- 4.12 The points below summarise some of the principles established by the Courts, in the case described above, in respect of the application of Article 10.

Enhanced protection of freedom of expression applies to all levels of politics including local.

There is little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest.

There is no distinction between political discussion and discussion of matters of public concern

In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.

The right to freedom of expression is not, however, absolute.

It may be necessary, for example, to protect officers from offensive and abusive verbal attacks when on duty. It is in the public interest that officers are not subjected to unwarranted comments that prevented them from performing their duties in conditions free from perturbation.

Public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits were not as wide as they were for elected politicians.

Any restriction on freedom of expression needs, however, to respond to a pressing social need, to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being

pursued (i.e. is there any other way of achieving the restriction's objective).

The less egregious the conduct, the more difficult it is to justify any restriction on freedom of expression.

Communications protected by Article 10 are not limited to speech. They include communications of any kind such as spoken or written words (including social media); pictures, dress, graffiti, acts of protest, even wearing a beard. They include opinion or speculation even if not objectively true. They must, however, be made in a public way.

Hate speech is not protected.

5. The Standards Commission's Approach

- 5.1 The Standards Commission recognises that a finding of a contravention of one or more of the provisions in the Codes of Conduct, and the subsequent application of a sanction at one of its Hearings, may impact on the Respondent's right to freedom of expression.
- 5.2 In determining at Hearings whether there has been a contravention of a Code of Conduct, the Standards Commission, through its Hearing Panel, will take the following approach. Firstly, it will consider whether the facts found lead it to conclude, on the balance of probabilities, that the Respondent has failed to comply with the applicable Code of Conduct.
- 5.3 Secondly, if so, the Standards Commission will then consider whether such a finding in itself was *prima facie* a breach of the right to freedom of expression under Article 10.
- 5.4 Thirdly, if so, the Standards Commission will proceed to consider whether the restriction involved by the finding was justified by Article 10(2), which allows restrictions that are necessary in a democratic society.
- 5.5 **Stage 1:** The Hearing Panel will determine whether the facts as established and / or as admitted lead it to conclude, on the balance of probabilities, that there has on the face of it been contravention of any of the respect provisions in the Codes of Conduct, as alleged. If not, the Hearing Panel will announce its decision and the reasons behind the finding and will proceed to conclude the Hearing on that basis.

If the Hearing Panel concludes, on the balance of probabilities, that there has on the face of it been contravention of any of the respect provisions in the Codes of Conduct, it will, consider the provisions of Article 10, as set out in Stage 2 and 3 below, before coming to a finding on the matter.

- 5.6 **Stage 2:** If the Hearing Panel has concluded that there has, on the face of it, been contravention of the Codes of Conduct, it will proceed to determine whether such a finding would interfere with the Respondent's right to freedom of expression under Article 10. In doing so, the Hearing Panel consider whether the comments were made and/ or the behaviour took place in a political context or in respect of a debate on questions of public interest, in order to determine whether the enhanced protection applies.

The Standards Commission notes that enhanced protection of freedom of expression applies to all levels of politics including local. Therefore, if the conduct being considered concerns comments and / or behaviour by a councillor in a political forum or context or in respect of matters of public concern, it is likely that the Hearing Panel will conclude that the enhanced protection applies. The

Standards Commission notes, however, that the situation may be different for members of devolved public bodies as they are less likely to be behaving or commenting in a political context or in a public forum. However, a Hearing Panel will consider the context on a case by case basis, depending on the specific facts and circumstances of each matter.

5.7 Stage 3: The Hearing Panel will then consider whether any interference to freedom of expression it is considering making, in determining a breach of a Code of Conduct has occurred and in applying a sanction, is justified with reference to Article 10(2). The Hearing Panel in making such an evaluative judgement, must consider:

a) Is the restriction prescribed by law? The answer to this will be yes as the Codes of Conduct and the Standards Commission's remit to adjudicate on alleged contraventions of them are prescribed by the Ethical Standards in Public Life etc. (Scotland) Act 2000 and the Scottish Parliamentary Commissions and Commissioners etc. Act 2010.

b) Is the restriction necessary in a democratic society? The Standards Commission considers that the intention of the Codes themselves and the provisions within them as outlined under Section 3 above, and the imposition of any sanction if a breach is found, is to protect the reputation and rights of others; for example, from offensive, abusive and defamatory remarks. The Standards Commission considers that the intention is also to ensure that officers of Councils and devolved public bodies are free from undue perturbation so they could perform their duties, with the aim of protecting the mutual bond of trust and confidence between councillors or members of devolved public bodies and officers, to enable local government and devolved public bodies to function effectively. It may also be necessary to prevent the disclosure of information received in confidence.

It may be, therefore, that the answer to this question of whether the intended restriction is in pursuance of a legitimate aim will be yes. However, the Standards Commission recognises that Hearing Panels, in determining whether such a restriction is necessary must also consider whether there are there relevant and sufficient reasons to justify the interference to the Respondent's right to freedom of expression and whether the restriction is proportionate.

In considering proportionality, the Hearing Panel will reflect on whether the objective of the finding of a breach and the imposition of a sanction can be achieved by means which are less interfering of the Respondent's rights. The Hearing Panel will also take into account the question of whether any restriction would have a disproportionate effect; for example on a councillor or member's ability to make a political point or to undertake their scrutiny role in an open and transparent manner.

c) How egregious is the conduct in question? The Standards Commission notes if that if the conduct in question is less egregious, it is more difficult to justify any restriction, particularly if the Respondent enjoys enhanced protection.

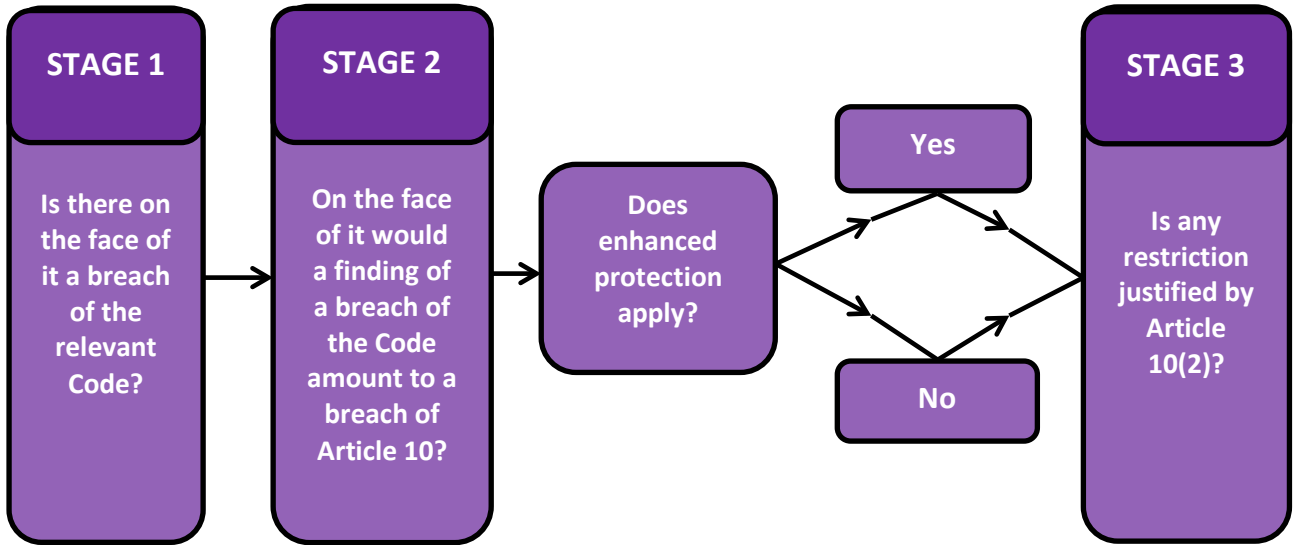
5.8 The Standards Commission recognises that Hearing Panels will be required to make evaluative judgements and will, therefore, need to weigh all factors outlined above together. In doing so, Hearing Panels will be undertaking a balancing exercise and their decisions at each stage will depend on the facts and circumstances of the particular case under consideration.

5.9 The Standards Commission further recognises that undertaking such a balancing exercise will be particularly challenging in marginal cases. It notes, therefore, that previous Hearing decisions may be useful in terms of outlining the Hearing Panel's approach but should not be relied on as precedent cases in respect of findings of fact.

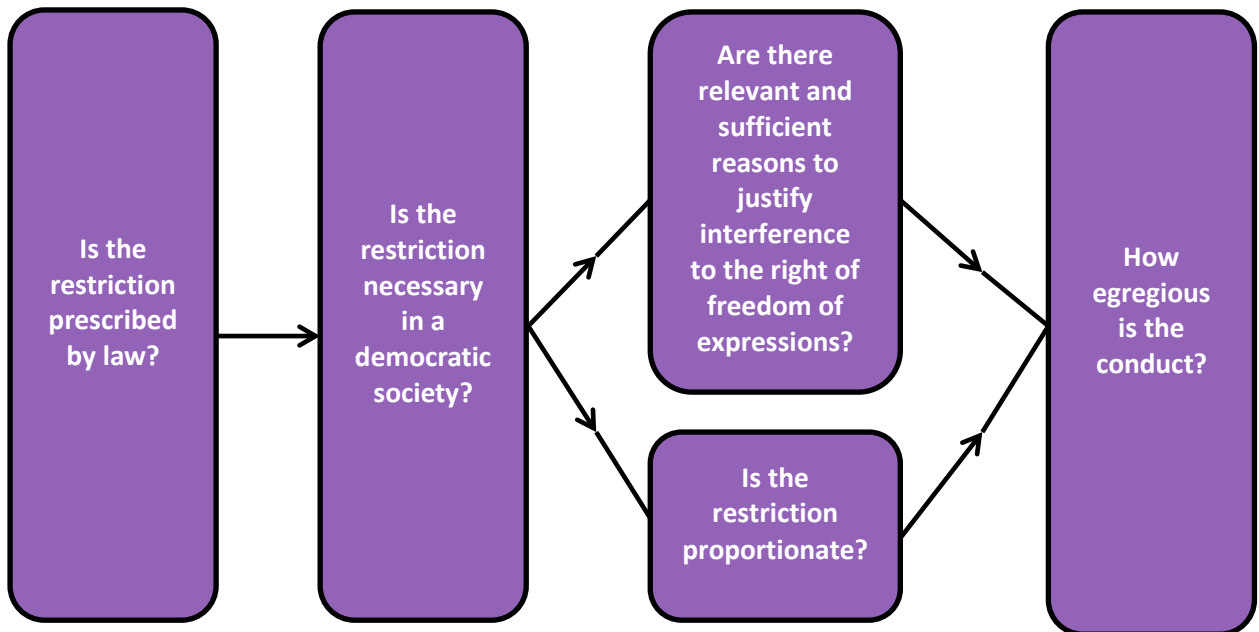
5.10 The Standards Commission will follow the process outlined above in any cases whether it appears to the Hearing Panel that Article 10 consideration may apply, regardless of whether the parties to the case make any submissions, refer to case law or lead evidence to that effect.

5.11 In its written decisions of Hearings, the Standards Commission will announce the Hearing Panel's findings on each distinct stage.

Standards Commission's Approach



Standards Commission's Approach at Stage 3



6. Councillors and Members of Devolved Public Bodies

- 6.1 The approach outlined above concerns how the Standards Commission will apply Article 10 considerations when adjudicating on complaints referred to it. The Scottish public is entitled to have a high expectation of those in public life and, therefore, councillors and members of devolved public bodies should ensure their conduct is beyond reproach so that complaints do not arise and / or are without basis or merit.
- 6.2 Councillors and members of devolved public bodies must act in the public interest and have a duty to undertake a scrutiny role to ensure their Council or devolved public body uses its resources properly and in accordance with law. Councillors, in particular, operate in a political environment and must be free to make political points and discuss matters of public concern without undue interference. However, as outlined under Section 4 above, the right to freedom of expression is not absolute. It is important that Councillors and members of devolved public bodies understand that restrictions can be imposed to protect the rights and reputations of others, to ensure officers can undertake their tasks without undue perturbation and to ensure public confidence in the Council or devolved public body is not undermined.
- 6.3 Councillors and members of devolved public bodies should consider, therefore, both what they are expressing and the way they are expressing it. They should be able to undertake a scrutiny role, represent the public and any constituents, or make a political point in a respectful, courteous and appropriate manner without resorting to personal attacks, being offensive, abusive and / or unduly disruptive.
- 6.4 Councillors and members of devolved public bodies may wish to consider:
- Whether they are making a gratuitous⁴ personal comment and / or simply indulging in offensive abuse? If so, it is unlikely they will attract the enhanced protection of freedom of expression afforded under Article 10.
 - Are they being deliberately dishonest or engaging in misleading conduct towards officers, other councillors / members or members of the public?
 - Is their communication factual, made in good faith and does it have a reasonable basis?
 - Could their behaviour bring the council or devolved public body or office of a councillor / member into disrepute?
 - Could their conduct undermine good administration?
 - Have they been warned about similar conduct or behaviour in the past? Should they be heeding such advice and warnings?
 - Could their conduct be perceived as raising negative issues about performance, conduct or capability of specific and identifiable officers in public? Have they considered what the appropriate channels for raising such concerns are?
 - Could a recipient or the public's perception of the tone / nature of a communication be different to that which is intended?
 - Could there be an impact on the mutual bond of trust between councillor / members and officers?

⁴ Done without good reason, unjustified.

- 6.5 Councillors and members of devolved public bodies may also wish to consider that demonstrating insight and remorse by issuing a genuine and sincere apology if they realise they have behaved in an offensive way in the heat of a moment. Doing so may well put an end to the matter.
- 6.6 The Court in *Heesom v Public Services Ombudsman for Wales* noted that if a councillor is guilty of a breach of the Code of Conduct, his or her re-election does not and cannot act as an absolution for his misconduct as popularism⁵ is not determinative. In any event, the fact that a councillor is re-elected by his own ward, does not mean that democracy has not been adversely affected by his conduct. For example, his or her misconduct may have comprised of improperly favouring his or her own constituents or it may have had a negative impact on the rights and interests of other individuals or the public interest in terms of good administration.

7. Further Sources of Information

- 7.1 The Standards Commission has published guidance on how to interpret, and act in accordance with, the provisions in the Councillors' Code of Conduct and Model Code of Conduct, including those relating to courtesy and respect. This guidance can be found on the Standards Commission's website at www.standardscommissionscotland.org.uk/guidance/guidance-notes.
- 7.2 The Standards Commission also publishes written decisions of Hearings held on its website, which can be found at www.standardscommissionscotland.org.uk/cases/case-list.
- 7.3 If councillors and members of devolved public bodies have any queries or concerns about how to interpret or act in accordance with the provisions in the Councillors' Code of Conduct or Model Code of Conduct, they should seek assistance from their respective Monitoring Officer or Standards Officer. Further information can also be obtained from the Standards Commission using the contact details outlined below.

Standards Commission for Scotland
Room T2.21, Scottish Parliament
Edinburgh, EH99 1SP
Tel: 0131 348 6666
Email: enquiries@standardscommission.org.uk.

⁵ Any political doctrine chosen to appeal to a majority of the electorate.

Data control and version information				
Date	Action by	Version Updated	Current version	Brief Description
XX/08/17	LJ	N/A	V1	Implementation of Policy



Code of Conduct for Members and Co-opted Members

Introduction

1. This Code has been adopted by Darlington Borough Council in compliance with the requirements set out in Chapter 7 of the Localism Act 2011. This Code defines the standards of conduct which will be required of all Members and co-opted Members of the Council.
2. Every Councillor and co-opted Member of the Authority must sign an Undertaking to observe this Code.
3. In addition to the Code of Conduct, the Council has adopted the seven Principles of Public Life (the Nolan Principles). Members will be expected to act in a manner that is consistent with the principles and the principles will be used to help in interpreting the Code. It is however only the Code of Conduct that is enforceable, rather than the Principles of Conduct. The Principles are set out in an **Appendix** to this Code of Conduct.
4. Any person may make a written complaint to the Monitoring Officer that a Member or Co-opted Member has broken the Code. Details about how to complain and the way that complaints are dealt can be found on the Council's website
www.darlington.gov.uk/Democracy/Democracy/democraticinvolvement/standards/Complaints+Against+Members.htm
5. It is the personal responsibility of each Member and Co-opted Member to make sure that she/he complies with the requirements of this Code. Advice on the requirements may be sought from the Authority's Monitoring Officer, or a personal legal adviser, however, ultimately it is a decision for the Member or Co-opted Member.
6. In this Code, words denoting any gender shall include all genders.
7. This Code shall be subject to any subsequent changes of law after adoption

Part 1 - General Provisions

Introduction and Interpretation

1. (1) This Code applies to **you** as a Member of the Council.
- (2) You should read this Code together with the seven Principles of Public Life.
- (3) It is your responsibility to comply with the provisions of this Code.

Interpretation

(4) In this Code :-

'meeting' means any meeting of :-

- (a) the Council;
- (b) the executive of the authority; and
- (c) any of the Council's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees.

'Member' includes a co-opted member and an appointed Member.

'Executive' means Cabinet

'Co-opted member' means a person who is a member of a committee or sub-committee of the Council, who is not an elected member.

Scope

2. (1) Subject to sub paragraph (2) below, 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 you are acting as a representative of the Council,

and references to your official capacity are construed accordingly.

- (2) This Code does not have effect in relation to your conduct other than where it is in your official capacity.

General Obligations

3.(1) You must treat others with respect.

(2) You must not :-

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in Section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be involved in any complaint about an alleged breach of this Code, or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of the Council.

4. You must not :-

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, unless :-

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is reasonable, in the public interest, made in good faith and in compliance with the reasonable requirements of the Council; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office as a member or the Council into disrepute.

6. You :-

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of the Council :-

(i) act in accordance with the Council's reasonable requirements; and

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by :-

(a) the Council's Chief Finance Officer; or

(b) the Council's Monitoring Officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2 – Interests

Non Pecuniary Interests

8.(1) You have a non-pecuniary interest in any business of the Council where either :-

(a) it relates to or is likely to affect :-

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council;

(ii) any body :-

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a Member or in a position of general control or management;

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or the well-being of a relevant person to a greater extent than the majority of persons of the area affected by the decision

(2) In paragraph 8(1) (b) above, a relevant person is :-

(a) your spouse or civil partner or

(b) a person you live with as husband wife, or

(c) a person you live with as if you were civil partners

(d) a member of your family

(e) any person with whom you have a close association

(f) any body of a type described in paragraph 8(1)(a) above.

Gifts and Hospitality

(3) You must within 28 days of receipt, notify the Monitoring Officer of any gift or hospitality that you have accepted with an estimated value of £25 or more, which is attributable to your position as a member of the Council.

Pecuniary Interests

9. (1) You have a pecuniary interest in any business of the Council where either :-

(a) it relates to or is likely to affect :-

(i) your employment, office, trade, profession or vocation - any employment, office, trade, profession or vocation carried on for profit or gain;

(ii) sponsorship - any payment or provision of any other financial benefit (other than from the Council) made or provided within 12 months ending on the day you notify the monitoring officer of any disclosable pecuniary interest in respect of expenses incurred by you in carrying out your duties as a member or towards your election expenses. This includes any payment or financial benefit from a trade union;

(iii) contracts - any contract which is made between you or a relevant person (see paragraph 9 (2) below, or a body in which you or the relevant person has a beneficial interest (see paragraph 9 (3) below and the Council

(aa) under which goods or services are to be provided or works are to be executed; and

(bb) which has not been fully discharged

(iv) land - any beneficial interest in land within the area of the Council;

(v) licences - any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer;

(vi) corporate tenancies – any tenancy where (to your knowledge)

(aa) the landlord is the Council; and

(bb) the tenant is a body in which you or the relevant person has a beneficial interest (see paragraphs 9(2) and 9(3) below)

(vii) securities - any beneficial interest in securities (see paragraph 9(4)) of a body where :-

(aa) that body (to your knowledge) has a place of business or land in the area of the Council; and

(bb) either :-

(i) the total nominal value of securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

(b) a decision in relation to that business might reasonably be regarded as affecting your financial position or the financial position of a relevant person to a greater extent than the majority of persons of the area affected by the decision.

(2) In Paragraph 9(1)(a) and (b) above, 'a relevant person' is :-

(a) your spouse or civil partner, or

(b) a person you live with as husband wife, or

(c) a person you live with as if you were civil partners, or

(d) a member of your family, or

(e) Any person with whom you have a close association

- (f) any body of a type described in Paragraph 8(1)(a) above.
- (3) 'a body in which you or the relevant person has a beneficial interest' means a firm in which you or the relevant person is a partner or a body corporate in which you or the relevant person is a director, or has securities of which the relevant person has a beneficial interest.
- (4) Securities means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Disclosure of Interests

- 10.** (1) Where you have an interest in any business of the Council and you attend a meeting of the Council at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Paragraph 10(1) above only applies where you are aware or ought reasonably to be aware of the existence of the interest.
- (3) Where you have an interest but, by virtue of Paragraph 13 sensitive information relating to it is not registered in the Council's register of members' interests, you must indicate to the meeting that you have an interest, but need not disclose the sensitive information to the meeting.
- (4) Subject to Paragraph 11(2)(b) below, where you have an interest in any business of the Council and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (5) In this paragraph, 'executive decision' is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Effect of Interests on Participation

11. (1) If you have a non pecuniary interest you can remain at the meeting, take part in any discussion about the matter and participate in any vote
- (2) Subject to Paragraph 11(3) below, if you have a pecuniary interest:-
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held
 - (i) in a case where Paragraph 11(3) below, applies, immediately after making representations, answering questions or giving evidence; or
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting,
unless you have obtained a dispensation from the Monitoring Officer;
 - (b) you must not exercise executive functions in relation to that business; and
 - (c) you must not seek improperly to influence a decision about that business.
- (3) Where you have a pecuniary interest in any business of the Council you may attend the meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.
- (4) Subject to Paragraph 11(2)(b) above, where you have a non-pecuniary interest in any business of the Council and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (5) In this paragraph, 'executive decision' is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Interests that do not Prevent Participation

- (6) You can participate in a decision that relates to the functions of the Council in respect of :-
- (a) housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;
 - (b) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (d) an allowance, payment or indemnity given to members;
 - (e) any ceremonial honour given to members; and
 - (f) setting council tax or a precept under the Local Government Finance Act 1992.

Part 3 - Registration of Members' Interests

12. (1) Subject to Paragraph 13 below, you must, within 28 days of:-

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in the Council's register of members' interests details of your pecuniary and non-pecuniary interests where they fall within a category mentioned in Paragraph 8(1)(a) above and Paragraph 9(1)(a) above, by providing written notification to the Council's Monitoring Officer.

(2) Subject to Paragraph 13 below, you must, within 28 days of becoming aware of any new interest or change to any interest registered under Paragraph 12(1) above, register details of that new interest or change by providing written notification to the Monitoring

Officer.

Sensitive Information

- 13.(1)** Where you consider that the information relating to any of your interests is sensitive information, and the Monitoring Officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under Paragraph 12 above
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under Paragraph 13(1) above, is no longer sensitive information, notify the Monitoring Officer asking that the information be included in the Council's register of Members' Interests.
- (3) In this Code, 'sensitive information' means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Note

The Council has also issued guidance to Members which does not form part of this Code, but Members are required by the Council to comply with this guidance, namely:-

Protocol of Member/Officer Relations; and
Protocol for Councillors and Officers dealing with Planning matters
Protocol for Councillors and Officers dealing with Licensing matters

(Section 106 of the Local Government Finance Act 1992 provides for Members in arrears of Council Tax to lose voting rights on Council Tax matters).

This Code takes account of The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 no.1464

The Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Appendix 7: Update as of 7th June 2021

This appendix is dated 7th June 2021 and is to be read alongside the report substantive report.

The purpose of this Appendix is to give a timeline of events since my draft report was circulated on 17th February 2021, and to outline issues raised by Councillor Culley which will need to be discussed at the hearing.

Timeline of events

17th February 2021 – Draft report circulated to the complainants and to Councillor Culley and all were invited to comment on the report before it was issued as a final report. All were asked to respond with any comments no later than 28th February 2021.

27th February 2021 - Councillor Culley emailed me to say that she had noted inaccuracies in the report but that she had not had time to examine it in detail and therefore requested an extension of time. Councillor Culley was therefore offered a further 7 days and asked to return her comments to me by 7th March 2021.

6th March 2021 - Councillor Culley emailed me to say that she still hadn't been able to review the report but that there were a number of factual inaccuracies. Councillor Culley provided some detail about one of those purported inaccuracies which was a point about how the report says that she saved and uploaded the meme to Facebook. Councillor Culley says this is incorrect, and that she had actually shared the post of another Facebook user called Angela Walker but that the screen grab has been edited/cropped so that it looked as though she had uploaded and posted the meme herself. In doing so, any caption to the original post had been cropped off. Councillor Culley's email was clear that aside from this issue there were also other inaccuracies that she wanted to address and that she needed additional time to do so.

10th March 2021 - Luke Swinhoe emailed Councillor Culley regarding her request for additional time, and explained that the final report would be issued on 15th March 2021 as by then there will have been sufficient time for any comments on the draft report to have been forwarded.

11th March 2021 - Councillor Culley sent a further email to Luke Swinhoe repeating her concerns about the caption to the post not being included in the screen grab, and that her actions had been misrepresented given that she actually 'shared' the post as opposed to posting it herself.

19th March 2021 – having not received Councillor Culley's other comments on the report I emailed her to ask if I could phone her on Monday 22nd March. My intention was to ask her verbally what the factual inaccuracies were (aside from the issue of the cropping/editing of the screen grab) so that I could remedy these and issue the final report.

21st March 2021 - Councillor Culley replied with a lengthy email regarding the issue of the caption to the post not being included within the screen grab. In her email she says she has

been trying to find a copy of the original post which shows the caption, as this will indicate the context of the post which she shared.

22nd March 2021 - I emailed Councillor Culley to ask her to confirm whether, aside from the issue about the caption not being included within the screen grab, were there any *other* factual inaccuracies within the report that she wanted to raise. Councillor Culley replied on the same day to say that there were. I asked Councillor Culley the following day to tell me what the other inaccuracies are, and I also asked Councillor Culley to give consideration to temporarily reactivating her Facebook page in order to view the post and take a screen grab which includes the caption.

26th March 2021 - Councillor Culley emailed me to ask if I could send her a copy of my report in Word format so that she could highlight the inaccuracies. I sent this on 29th March 2021 and asked Councillor Culley again if her Facebook page could be reactivated in order to take a screen grab of the full post including any caption.

3rd April 2021 - Councillor Culley replied to express her views that it should be the Labour party who source and provide a copy of the full post including the caption, and suggesting that either she or I should write to them. Failing this, Councillor Culley will agree to attempt to log back into her Facebook account to retrieve the original post but would like me to attend her home to be present while she does so along with another of her colleagues who is experienced with Facebook. Councillor Culley says she will provide details of other inaccuracies in the report within 7 days of the issue regarding the context/caption being resolved.

10th April 2021 – Councillor Culley advised me that the original source of the screen grab is John Clare, a Labour Councillor for Durham County Council.

13th April 2021 – I emailed John Clare to asked him if he recalled a) whether the meme was posted on its own or if there was any caption either to Councillor Culley’s post or to the original post and b) if he commented on the post and the nature of his comments and c) if he had a screen grab of the post which shows any caption or comments. John Clare replied to tell me that he did not comment on the post. He also provided his screen grab which was the same as the screen grab provided earlier in this report and did not show anything additional. Finally, John Clare confirmed that he did not have any record of the comments made alongside the post.

13th April 2021 – Luke Swinhoe emailed Councillor Culley about the screen grab/caption issue and indicated that allowing for further time to explore the issue, he would ask the Investigating Officer to finalise her report by 29 April with a view to the final report being issued by 30 April.

14th April 2021 – I informed Councillor Culley of John Clare’s response and asked her to consider reactivating her Facebook page to retrieve the original post. Councillor Culley asked for assistance with this and I arranged for her to meet with Jonathan Robson from Xentrall on 23rd April 2021.

23rd April 2021 – Jonathan Robson (Xentrall) emailed me to advise that he had assisted Councillor Culley in trying to retrieve the post from her Facebook account but that this was not possible because the account had been deleted due to Facebook’s rules about dormant accounts.

25th April 2021 – Councillor Culley emailed me to say that following her meeting with Jonathan Robson she had been able to retrieve her deactivated Facebook account, and that she had “found evidence” that the original post was shared from “the Facebook account of Angela Walker, the vice-presidential nominee of the Green Party in the US at the 2020 election”. Councillor Culley then requested another meeting with Jonathan Robson to “try and find a way to recover the deleted post and, failing that, to share the evidence we found about the source of the post”. This meeting went ahead on Friday 30th April 2021.

4th May 2021 – Jonathan Robson (Xentrall) emailed me following his meeting with Councillor Culley on the previous Friday to tell me that there was no evidence that the original post came from Angela Walker of the US Green Party (whose name on Facebook appears as ‘Angela N Walker’) and that in his opinion the original screen grab shared by John Clare, the Labour party and the Northern Echo are in fact “undoctored and the full post”.

17th May 2021 – Councillor Culley responded to my request, originally made on 17th February 2021, to confirm whether there were any factual inaccuracies within the draft report. Councillor Culley has made significant amendments to my original report and these are not limited to simply pointing out any factual inaccuracies (such as if any dates or names were incorrect) as I had invited. I have not made the changes that Councillor Culley requests as they are mostly to do with her perspective on matters and the reasons why she disputes that there has been any breach of the code of conduct. Those issues are more appropriate for Councillor Culley to make at the hearing rather than for me to present them as facts in my report which should be focussed on the facts that I have been able to establish throughout my investigation and my analysis of those. (For example, Councillor Culley’s amendments include repeated reference to the screen grab having been edited to exclude the context and mislead the public as to the nature of the post. However I have not found any evidence of this and I cannot comment on whether that is true or not. Is it for Councillor Culley to raise this issue at the hearing rather than for me to present it as a fact in my report).

Summary and analysis of outstanding issues to be dealt with at hearing

It would be helpful to understand why the issue of appropriate context was not raised throughout the course of the substantive investigation, or mentioned in interview, and

instead why it was only raised after circulation of the draft report. It is clear that Councillor Culley considers this to be a fundamental issue and I cannot understand why it was not raised sooner and in particular why it was not raised during the interview. I expect that this can be discussed at the hearing.

From the screen grab, it does appear that the meme was uploaded by Councillor Culley herself. However I note that following circulation of my draft report stating this, Councillor Culley has said numerous times that this is not correct and that she used Facebook's 'share' function to share this post from another user's profile and that she did not upload it herself. I cannot say for certain whether the post was shared or uploaded.

If the post was a shared post, I agree with Councillor Culley in that it would be useful to know whether the meme had been captioned in the original post. My understanding of Facebook is that if the original post had a caption, and Councillor Culley shared the post, then the original poster's caption would have been shared too. This may provide relevant context.

However I do not attach the same importance to this issue as Councillor Culley does because any caption / comment will only really be helpful to Councillor Culley's position if it discredits the meme or criticises the messaging of the meme. If the caption says something which is of the same sentiment as the meme then the concerns of the complainants will be the same and this will not alter the issues which need to be determined by the panel. However this can be further discussed and debated at the hearing where all sides will have the chance to offer their own views on the importance of this point.

I have made enquiries with Councillors Curry, Harker and Snedker to ask if either of them has a copy of the screen grab which shows any caption or if they can recall what any caption may have said. I have asked John Clare, Councillor for Durham County Council, the same question. All confirmed that they did not have screen grab showing any captions / comments and had no recollection of this.

I have not asked RT the same question as she made clear to me in her interview that she cannot remember where / how she became aware of the post. She was unclear whether she had seen the post on Councillor Culley's page, if she had seen the post shared or if she had only seen it in the Northern Echo article.

It is also noted that Councillor Culley herself appears not to be able to recollect the caption of the post or the sentiment of it. If I am wrong in that, and if Councillor Culley can recall this, then it would be helpful if she could share her recollection.

Councillor Culley has assumed that the uncertainty over the caption requires her to be reinterviewed. I do not agree that this is necessary because unless Councillor Culley can recall the caption, or at least the sentiment of the caption, then I have no further questions to ask her and I do not expect that there will be anything else significant to say outside of what Councillor Culley has already said to me in her emails.

It is also worth noting that if nobody can recall a caption, it may be possible that there was no caption at all and that the post consisted of the meme on its own. In that case, I cannot see that there is any real relevance in whether Councillor Culley uploaded it herself or shared it from another page.

Without any clarification of:

- a) whether the post was shared or uploaded; and
- b) if the post was shared whether there was a caption; and
- c) what that caption said

I cannot offer any further analysis to assist the panel at the hearing.

Without any further information the issues to be determined by the panel have not changed since my initial report of 17th February 2021.

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STANDARDS HEARING RE CLLR CULLEY

Independent Person's Submissions

- a. I propose to set out a series of questions in the hope that they assist all parties in focusing on the relevant issues in this enquiry.
- b. I have considered the final report provided by Bethany Symonds and agree with her analysis of the relevant law to be applied in this case.

Did Cllr Culley post the meme?

- c. There is no dispute that Cllr Culley accepts posting the meme on her Pauline "Mowden" Culley Facebook page and that she removed the post following negative and abusive responses to its contents within days of its posting.

Was she acting in her capacity as a councillor

- d. Cllr Culley accepts that she would post content on that particular profile which included issues and information relating to council and political matters.
- e. I agree with Ms Symonds analysis at paragraph 7.1 of her report that it is likely that Cllr Culley was acting in her capacity as a councillor when she posted that particular meme on that particular Facebook profile account.
- f. Cllr Culley has not submitted that she was acting in a private capacity when she posted the meme.

The Meme

How should the meme and the message which it is trying to convey be interpreted?

- g. The interpretation of the meme must be placed in the context of the particular contemporaneous political debate.
- h. The Black Lives Matter Movement was actively and vigorously seeking to highlight significant institutional racism which impacted on the lives of BAME people and the corresponding and disproportionate risk to those who may receive violent, unlawful and life-threatening treatment at the hands of the police following the murder of George Floyd.

- i. The BLM Movement argues that the sheer magnitude of the industrialised transatlantic slave trade created a legacy of discrimination, direct racism and inequality, which continues to blight the lives of BAME people.
- j. The layout, font size and highlighting of specific parts of the meme should be considered in order to understand what it aimed to convey to the reader.
- k. In the centre of the meme in the boldest type and the largest font is the phrase;

YOU'RE NOT SPECIAL

- l. It follows that the author of the meme placed significant emphasis on this particular comment.
- m. It assists the reader to understand who the message is specifically and particularly aimed at and is clearly a response to the BLM Movement and arguably is a direct challenge to the view that BAME people face discrimination and racism.
- n. It is specifically directed at BAME people. This is the only possible interpretation on the face of the document.
- o. The corollary of this is that the author of the document is saying that the transatlantic slave trade is comparable to other historic instances of slavery and denies that the transatlantic slave trade has created a legacy of racism, discrimination or inequality which continues to impact on the real life experiences of BAME people.
- p. The image should be considered in the context of argument contained in the post. It depicts men of middle eastern origin, armed and restraining 2 barely dressed white women at gun point, with expressions of enjoyment on their face. There is a clear atmosphere of sexual violence. The panel may want to consider the following questions in determining whether the image assists in determining what interpretation should be given to the whole document;
 - Why is that particular image used?
 - Is it particularly crass and founded on negative stereotypes of a particular race of people?
 - Is it used to create a particularly inflammatory response in the reader?
- q. The complainants argue that the meme taken as a whole is grossly offensive because it denies the magnitude of the transatlantic slave trade and denies the link between that particular slave trade and a legacy of discrimination.

- r. Cllr Culley accepts that some people may be offended by the post but that it is not grossly offensive.
- s. She relies on her right of freedom of expression under Art 10. It is unclear whether Cllr Culley is asserting that she published the meme within a political context and is therefore entitled to enhanced protection under Article 10. She has repeatedly said that the post does not express her opinion but that she thought it was interesting, she comments she did not “like” the post but simply posted it without any comments from her as to her view or opinion.
- t. The post itself was not directed towards her political colleagues but made generally available to the public at large.
- u. Whether she posted the meme within the political sphere or not, the right of freedom of expression, even enhanced freedom of expression does not provide a defence to a breach of the code if the meme is found to be grossly offensive.
- v. If the panel find the meme grossly offensive, then the decision by Cllr Culley to post it on her public Facebook profile page is capable of breaching provisions 3(1) and 5 of the Code.

Joanne Kidd

Independent Person

18th June 2021

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Decision Notice

Case Reference 94/2020, 95/2020, Councillor Mrs Pauline Culley

FINDING OF NO BREACH OF THE CODE OF CONDUCT

Hearing of the Member Standards Hearing Committee of 29th June 2021.

Members:

Councillor Kevin Nicholson (Chair)
Councillor Paul Crudass
Councillor Andy Scott

Monitoring Officer: Luke Swinhoe, Assistant Director, Law and Governance
Investigating Officer: Beth Symonds, Lawyer (Litigation)

Summary

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.

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.

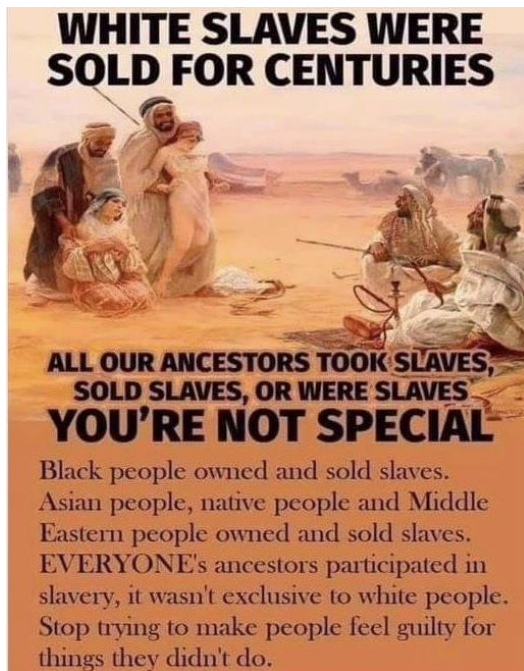
Cllr Mrs Culley is and was at the material time a member of Darlington Borough Council.

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.

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.

The Complaint

This is about the post that was shared by Cllr Mrs Culley (reproduced below)



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
- c) The post by Councillor Culley reflects poorly on Darlington Borough Council as an organisation that is ignorant to the issues affecting black people

Relevant Sections of the Code of Conduct

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"

Paragraph 3 (1) - "you must treat others with respect"

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”

Factual matters

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.
2. Cllr Mrs Culley reposted the meme on her ‘public’ Pauline Mowden Culley Facebook profile – around 6 September 2020
3. Cllr Culley did not ‘like’ the post or add any comment when reposting the meme.
4. The post was removed after a day of being displayed and the Facebook account taken down.

Consideration of the Code of Conduct

Official Capacity

The first question for us is whether the Code of Conduct applied. Not everything a member does is subject to the Code of Conduct.

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.

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.

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.

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.

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.

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.

Interpretation of the meme

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.

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.

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.

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.

In a democratic society Freedom of expression is an important right. It is also the case that enhanced protection is afforded to political expression.

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.

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.

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.

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.

It is relevant that the meme is not specifically directed towards any particular person or group. Neither does it mention the transatlantic slave trade.

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.

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

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.

Decision

We do not find that Cllr Mrs Pauline Culley broke the Members Code of Conduct.

Supplementary Matters

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.

Dated 1st July 2021

Councillor Kevin Nicholson
Councillor Paul Crudass
Councillor Andy Scott.

Member Standards Hearing Committee

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