

DECISION NOTICE: REFER FOR INVESTIGATION

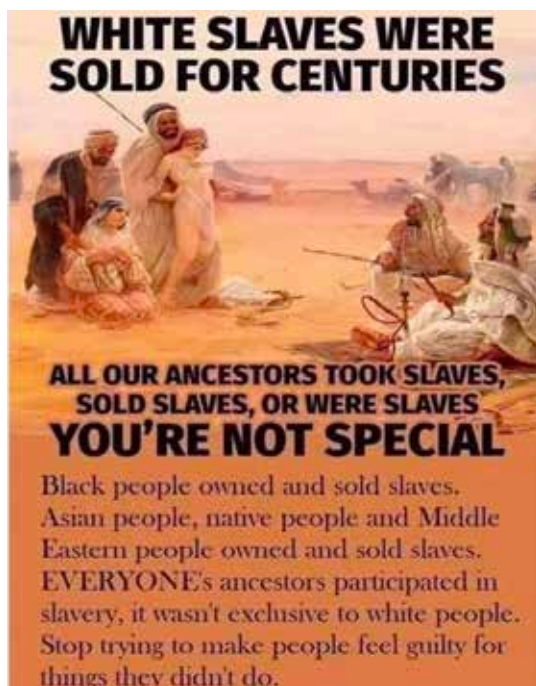
Reference 94/2020

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**

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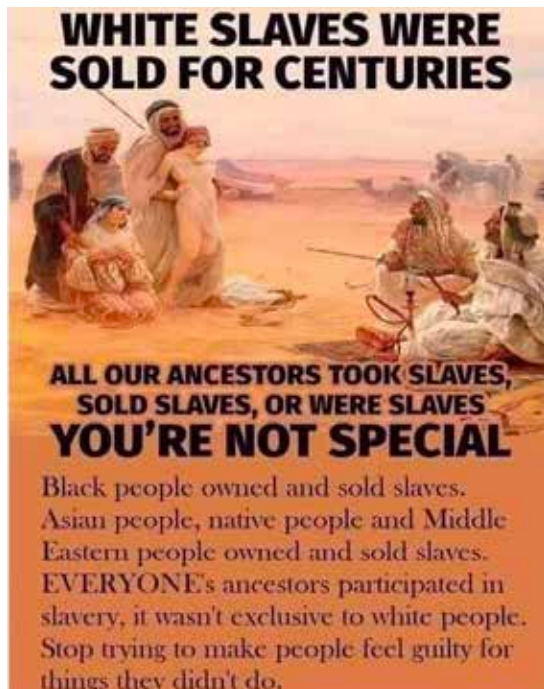
Reference 95/2020

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.

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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.

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- 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

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Analysis

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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

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**Luke Swinhoe,
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