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John Austin Associates

Slough Borough Council

Investigation Report

Complaint against Councillor Shaida Akbar

August 2018

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1. Introduction

- 1.1 I was commissioned by Sushil Thobani, Deputy Monitoring Officer at Slough Borough Council to investigate a complaint from Councillor Sandra Malik against Councillor Shaida Akbar, both councillors for the Wexham Court Parish Council.
- 1.2 The complaint relates to social media messages passed (it is alleged) between Councillor Akbar and Councillor Haqeeq Dar (who is a Member of Slough Borough Council and the Chief Whip for the ruling group). Councillor Malik says that the messages, which were passed to her by Councillor Dar, are racist and that one of them is also an unfounded personal attack upon her.

2. Summary of Findings

- 2.1 I am of the opinion that the content of the messages relating to the term 'Gori' and "we need get chair and vice to be Muslim this time" when taken together could be viewed as being racially divisive and a potential breach of the Parish Council's Code of Conduct (see below).
- 2.2 Without evidence to the contrary (but accepting it is technically possible) I feel it is stretching the bounds of probability to accept that Councillor Akbar's phone was cloned and that the messages were sent by somebody else. There are therefore, in my opinion, potential breaches of the Wexham Court Parish Council's Code of Conduct in relation to paragraph 2.1 (Members must treat others with respect), paragraph 2.3 (Members shall never undertake any action which would cause significant damage to the reputation and integrity of the Council as a whole, or of its Members generally) and Principle 7 relating to Leadership which states "Holders of public office should promote and support these principles by leadership and example."

3. Terms of Reference

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- 3.1 I was asked to conduct my investigation in accordance with the Code of Conduct and complaints procedure for the Parish Council. This involved interviewing both the complainant (Councillor Malik) and the subject member (Councillor Akbar). During her interview, Councillor Akbar was accompanied by Mr Sarfraz Khan. I had reason to speak to Mr Khan subsequently as a witness. I also had a telephone interview with Councillor Dar.
- 3.2 The complainant and the subject member were given the opportunity to comment on this draft report. Councillor Akbar replied and her comments are set out in paragraph 6.39. Councillor Malik did not respond.

4. Documents Reviewed

In the course of my investigation, I have reviewed the following:

- (a) The Parish Council's Code of Conduct for members
- (b) The Council's Complaints Procedure
- (c) The complaint form
- (d) The messages allegedly sent to Councillor Malik by Councillor Dar
- (e) Research relating to 'Whats App'
- (f) Other messages sent by Councillor Akbar

5. Evidence Gathering

5.1 As part of my evidence gathering, I interviewed the following:

- (a) Councillor Akbar (in person)
- (b) Councillor Malik (in person)
- (c) Councillor Dar (by telephone)
- (d) Sarfraz Khan (by telephone)

5.2 All those interviewed were given the opportunity to comment on the draft notes of the discussions. Any received have been taken into account when writing this report.

6. Evidence Gathered

6.1 The messages allegedly sent by 'What's App' were produced in evidence by Councillor Malik. The offending ones in Councillor Malik's view are:

- (a) "We need to get chair and vice to be Muslim next time"
- (b) "Sandy stand chair and she pump the other Gori to back her"

(c) "Look Sandy and him running the show"

- 6.2 The hard copy of the messages shows a date of Fri 22 April. This shows that the messages must have been sent in 2016 as the 22 April in 2017 and 2018 fell on a Saturday & Sunday. The start time for the messages I was given was 7.29am and they finished at 7.50am.

Interview with Councillor Malik

- 6.3 I interviewed Councillor Malik on 9 May 2018. She said she submitted the complaint because Slough has a very mixed ethnic population. It doesn't need to have one group being racist against another group. She doesn't like it. She added that she had been married to a Pakistani Muslim and had herself converted to Islam. There is no need in her view to use racist language. There are other words we can use. She referred to the messages which she says were between Councillors Akbar and Dar. Councillor Dar took screenshots and sent them to her.
- 6.4 Councillor Malik showed me an e mail dated 6 May to Christine Hulme – Slough Labour Party – in which she complained about the messages. She was told the Party would look into the matter but she hadn't heard anything further. Councillor Malik said subsequently that the Labour Party was apparently awaiting the outcome of my investigation before beginning theirs.
- 6.5 She said that Sarfraz Khan had threatened her over the phone. He said he would "take her to the cleaners". He accused her of writing the messages. I asked who instigated the call. She recalled calling him for something else and he began shouting at her.
- 6.6 Councillor Malik said that the story about the messages had been in the local newspapers for 4 weeks. Councillor Akbar denied the allegations 4 times. Councillor Malik lived in a complex of 39 flats for over 55s. When the issue broke in the press, a neighbour cut the articles out and put them through other neighbour's doors to cause trouble for her.
- 6.7 I showed Councillor Malik the messages I had received from the Monitoring Officer and she confirmed they were the same ones she had complained about (see paragraph 6.2 above). To her knowledge, there were no more.
- 6.8 I asked her to explain the content of the messages. She replied that the word Gori' means 'white woman'. She found being referred to in these terms offensive. On a scale of 1 – 10 (with 10 being very offended) I asked her how offended she felt. She

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replied about 5. (This was subsequently amended by Councillor Malik to 10 during consultation on the notes of our interview). She also took exception to the message saying that the chair and vice-chair of the Parish Council should be Muslim. She confirmed that “Surinder” mentioned in the messages was the Parish Clerk. She had very little to do with him. She felt however that he had a close working relationship with Councillor Akbar.

- 6.9 Councillor Malik did not know why she was singled in the messages. She said she hadn’t had arguments with any of the individuals concerned. She added that she would rather walk away from an argument. She had put herself forward as chair of the Parish but wasn’t supported.
- 6.10 Councillor Malik said she found the messages offensive. She didn’t like being accused of something she hadn’t done – for example “pumped the other Gori to back her”.
- 6.11 She said that Councillor Dar gave no explanation for forwarding the messages on. They were fellow ward councillors for a while and got on well. Perhaps that was the reason?
- 6.12 Since the complaint, they have had no contact.

Interview with Councillor Akbar

- 6.13 I interviewed Councillor Akbar on 9 May 2018. She was accompanied by Sarfraz Khan.
- 6.14 I began the interview by asking her if she sent the messages. She asked which year we were talking about. We clarified that they must have been sent in 2016 (see paragraph 6.2 above). Councillor Akbar said she had no recollection of sending them. The first time she heard of them was when she read about it in the local papers. She was devastated when she saw them in the newspaper report. 2016 was, she thought, the time of Councillor Malik’s election to the parish council. Her only contact with Councillor Malik was during 2015/16.
- 6.15 Councillor Akbar referred to the message about wanting a Muslim chair and vice-chair and commented that the parish council had a Muslim chair in 2016 (Mr Khan). It also had a Muslim vice-chair. The relationship with white councillors was very good.
- 6.16 Councillor Akbar showed me a folder during the interview which set out her wide ranging community involvement going back many years, including in the areas of diversity, countering extremism and equality. She had also been actively involved in the Prevent agenda. She highlighted the national and local

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awards she had received for her work, including the Mayor's award just 2 weeks earlier for contributions to community work. She added that she always promoted unity and peace. She had worked for 17 years in the NHS, was an active volunteer and school governor. She became a parish councillor in 2015.

- 6.17 She felt that problems arose with Councillor Malik when she (Councillor Akbar) became parish council chair. Councillor Malik was not happy with her chairmanship. Councillor Malik had also stood for the same position. She added that Councillor Malik had lodged a list of complaints with the then Council's Monitoring Officer (MO) in 2017 in relation to the workings of the parish council. These were investigated and involved interviews with all parish councillors. The MO found no evidence to support the complaints. Councillor Akbar gave me copies of relevant correspondence between the MO and Councillor Malik and said that Councillor Malik basically told the MO she was lying (e mail dated 20 October 2017 - 4.17pm).
- 6.18 Councillor Akbar said that she only saw the allegations relating to the messages in March of this year. She gave me copies of text messages (headed Tue 16, Thu 18, Sun 21 and Mon 22 Jan) between her and Councillor Malik which she said showed a supportive relationship. Councillor Akbar therefore couldn't understand the complaint from Councillor Malik. She had supported Councillor Malik during a selection process for the Borough Council. She was only one of two people to do so. She added that she felt Councillor Dar viewed her as a threat.
- 6.19 She felt that a number of councillors didn't like her being so active and in the public eye. This included Councillor Malik. She added that Councillor Malik had said at a Labour event that she (Councillor Akbar) was getting her picture everywhere. She made negative comments in relation to Councillor Akbar. Similar comments were made by other councillors.
- 6.20 Councillor Akbar advised that the night before our interview, she had been elected vice-chair of the Parish Council. She stated that Councillor Malik had wanted the position but didn't get the support. She walked out of the meeting.
- 6.21 I asked further about the messages and where they might have come from if she didn't send them. Councillor Akbar felt that her phone had been cloned. Since the allegations, she had researched this and, in her view, it can be done quite easily through an app called 'What Scan'. She demonstrated to me how she said it could be done during our interview. I asked whether it could be detected but she wasn't sure.

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- 6.22 Councillor Akbar felt that the allegations were timed to coincide with Parish elections. She referred to the long time lapse since the messages were allegedly sent and asked why wait this long before lodging a complaint?
- 6.23 She also felt that Councillor Malik was being used by somebody (perhaps Councillor Dar) but she couldn't elaborate or prove this.
- 6.24 I asked Councillor Akbar about the term 'Gori' and what it meant to her. She did not see it as an offensive term. She was supported in this view by Mr Khan. Both said that it is a term to describe a white person. Neither knew of anybody who was offended by it.
- 6.25 Subsequent to the above interview, I asked Councillor Akbar supplementary questions relating to her assertion that her Whats App account had been hacked/cloned.
- 6.26 In response to a question, Councillor Akbar said that she does leave her phone unattended at times. The phone never used to be password protected but since the allegations she now has a password.
- 6.27 I asked her again if she had any evidence as to who might have cloned/hacked into her account. She replied that she had no direct evidence. She only became aware that this might have happened as a result of the allegations and trying to resolve how the Whats App text messages could appear to have come from her phone.
- 6.28 I then asked if she had any thoughts as to who might have been responsible. She said she could only come to the conclusion that "it was either Councillors Dar or Malik seeing that Councillor Dar states he received them. Maybe these two conspired? It's the only plausible explanation I can think of considering how long Councillor Dar said he had the messages and how long he took to produce them. Very strange."
- 6.29 I also asked if she was aware of any other messages being cloned from her account. She replied that she wasn't aware of any other occasions. She emphasised that she didn't send the messages in question or composed them.
- 6.30 I asked her if she had realised at the time that her account had been cloned. She said she had no idea. She didn't know it could be cloned until she researched the internet when trying to find out how fake messages could appear to come from a phone when they hadn't.

Interview with Mr Sarfraz Khan

- 6.31 In paragraph 6.5 above, Councillor Malik said that Sarfraz Khan had threatened her over the phone. He said he would “take her to the cleaners”. He accused her of writing the messages.
- 6.32 I spoke to Mr Khan separately by telephone on 11 May 2018. I asked if he recalled a telephone conversation with Councillor Malik when he is alleged to have shouted at her and threatened her with the phrase ‘he was going to take her to the cleaners’. He recalled the telephone call but denied talking about the messages and threatening her at all.

Interview with Councillor Dar

- 6.33 I interviewed Councillor Dar on 16 May 2018. I asked if he sent the messages to Councillor Malik. He replied possibly. If Councillor Malik had asked for them then he would have sent them. He believed she might have asked for them. He said he received them from Councillor Akbar in 2016. When asked how he knew they were from Councillor Akbar he replied that they came from her phone as ‘What’s App’ messages.
- 6.34 I asked when he sent them on. He thought it was 2017 but he wasn’t sure of the month. He said they were originally reported to the Labour Party in May/June 2016. He was concerned about them as a Muslim Councillor. In his view, they do not represent the views of the majority of the community. They are pure racist in his view.
- 6.35 When asked why he sent them to Councillor Malik he replied that he thought she might have asked for them. They were in the public domain as they were discussed at a Labour Party Executive Committee of which Councillor Malik was a member.
- 6.36 He said he found the messages to be very racist and offensive. They were trying to divide the diverse community in Slough. The messages in his view were not representative of his views or those of colleagues and the wider community.
- 6.37 He felt that the word “Gori’ was offensive. In his view, it was on the same level as the ‘n’ word for the black community. The messages were in his view trying to incite colour hatred. Councillor Akbar he said wants Muslim control.

6.38 I asked about his relationship with Councillor Akbar. He said he originally supported her as women (and particularly Pakistani women) were under-represented in politics. But she is not now representing the local community. He had not spoken to her since 2016.

Response from Councillor Akbar to the draft report

6.39 I sent the draft report to Councillor Akbar and her comments are below:

- “(a) I deny that I was responsible for either sending or receiving any of the WhatsApp messages which form the basis of the complaint against me.
- (b) This complaint was made by Cllr Malik on the 8th of December 2017 some 20 months after the messages were allegedly sent or received and approximately the same period after they were in Cllr Dar/Malik’s possession. This followed an unsuccessful complaint made by her to the region Labour Party who, as far as I am aware carried out their own enquiry (in which I was not involved) and did not find the complaint substantiated. Cllr Mailk not member of Labour Executive Committee as far I am aware this is potential leak from Group.
- (c) I have not been made aware of the detail of the Labour Party enquiry and I am not aware of whether you have taken any step to identify the evidence obtained by the same. Such may or may not have assisted your own enquiry. (See mail Two)
- (d) The only evidence you have gathered regarding the existence of the messages is a screenshot purporting to be an accurate copy of the original and authentic messages. I am told that this was supplied by Councillor Dar to Cllr Malik some time shortly after April 2016.
- (e) No attempt appears to have been made by you or others to prove that the messages shown in the screenshot were actually sent or received or that they represent a truthful representation of authentic messages.
- (f) Whilst my enquiries are ongoing it is likely that due to the passage of time, between being in receipt of the screenshot and making the complaint, I will be unable to recover the original message history of my WhatsApp account from WhatsApp themselves. I imagine the same will be the case for Councillor Dar.

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- (g) As far as I am aware you have made no request for such history to be produced neither have you made any enquiry of WhatsApp yourself to establish the availability of this primary evidence.
- (h) I consider that by reason of this delay in making the complaint I have been denied the opportunity of being able to show that the allegations were false because the messages were not present in my account. As a consequence I believe that I have been denied the possibility of producing evidence crucial to my defence. I do not believe therefore that any investigation can be conducted fairly because of this delay which denies my rights under Article 6 of the Human Rights Act 1998.
- (i) Over and above my observations above regarding the consequences of delay I also consider that you have failed to properly investigate my assertions that these messages were falsely created in order to cause me reputational damage.
- (j) You have exclusively relied upon an assumption that a screenshot of messages allegedly sent by and to me was an authentic document without having taken any or any proper step to establish the authenticity of the same.
- (k) You have failed to investigate my suggestions to you that various methods exist by which such evidence could have easily been artificially created. I have sought advice from my solicitor Stephen Bennett of Gardner Leader LLP Maidenhead. He in turn has consulted a digital forensic expert Cyfor and the email exchange between them dated the 3rd of August is attached. This amply demonstrates the fact that websites such as www.fakewhats.com can be used to create a false screenshot of items purporting to be authentic WhatsApp messages. See Email Three
- (l) I consider that such enquiry should have been part of a full and fair enquiry by you in this case rather than making the simple acceptance that the screenshot you had been given was a copy of authentic and genuine messages. Regrettably I have been unable to fund the obtaining of a full forensic report as it is beyond my limited means but I consider that it would have been well within your powers to have done so and I invite you to take this action to support my the fact that my contentions are correct.
- (m) Instead you have chosen to accept without any challenge the uncorroborated evidence of Councillor Dar and Mrs

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Malik and in doing this you have failed to take account of the motives I have suggested may have explained why either or both of them may have behaved in this way. Attached message previous MO say "Cllr Mailk is being encouraged by others who have their own agenda and it important to know what is going on "" evidence point 6:35 (See email Four)

- (n) The only time stood against Cllr Mailk was in 2017 Parish selection chair. Please note the Chair and Vice Chair Muslim already.
- (o) May I suggest therefore that proper consideration is given by you to the obtaining of an expert forensic report of the kind set out above before reaching any conclusion as to this matter. You will appreciate that I have explained to you the enormous damage to my reputation that will be caused by any adverse finding against me. Problems have already arisen by reason of the leaking of information to the local press. I am clearly anxious to protect my reputation and to be able to continue with the work I do in local politics and in the voluntary sector."

6.40 Upon receiving my draft report, Councillor Akbar asked for an expert forensic report to be commissioned. This option was discussed with the Council's Monitoring Officer at the beginning of my investigation and was ruled out on the grounds of cost and proportionality. Given Councillor Akbar's request above, I revisited this issue again with the Monitoring Officer. The Council's response was as follows:

- "(a) a forensic report in this case is unnecessary and not justified in the public interest.
- (b) It appears to be common ground that it may technically be possible for the social media messages concerned to be "hacked", albeit that you (the investigator) consider that to have been unlikely to have happened in this case.
- (c) We do not feel, therefore, that a forensic report confirming that hacking may be possible would add anything. It would, if anything, only lead to unjustifiable expense and delay."

7. Evaluation of Evidence and Findings

7.1 The Code of Conduct for Wexham Parish Council states (Section 1):

"As a Member of the Council:

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- 7.1.1 It is your responsibility to comply with the provisions of Wexham Court Parish Council's Code of Conduct.
- 7.1.2 You must comply with this Code whenever you:
- (a) conduct the business of the Council; or
 - (b) you are acting as a representative of the Council."
- 7.2 Paragraph 1.4 of the Code requires members (when acting in that role) to ensure that they conduct themselves in such a manner that complies with the Seven Principles of Public Life (referred to in the Code as the '7 Principles'). Principle 7 relates to Leadership and states "Holders of public office should promote and support these principles by leadership and example."
- 7.3 Paragraph 2.1 of the Code requires members to treat each other with respect, whilst paragraph 2.3 states "Members shall never undertake any action which would cause significant damage to the reputation and integrity of the Council as a whole, or of its Members generally."
- 7.4 My evaluation of the evidence before me and the facts of this case have been based against the above paragraphs of the Code of Conduct.
- 7.5 There is no doubt that the messages were sent from Councillor Akbar's Whats App account. The questions to be answered are firstly whether they are offensive and racist in content and secondly whether they were sent by Councillor Akbar or somebody else as she is claiming.
- 7.6 Councillor Malik in paragraph 6.1 said that she found the following offensive:
- (a) "We need to get chair and vice to be Muslim next time"
 - (b) "Sandy stand chair and she pump the other Gori to back her"
 - (c) "Look Sandy and him running the show".
- 7.7 I do not consider the comment in (c) above to be offensive or racist. It is expressing an opinion so I have not included that in my considerations.
- 7.8 With regard to 7.6 (a) above, Councillor Akbar said in paragraph 6.15 above that the parish council had a Muslim chair in 2016

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(Mr Khan). It also had a Muslim vice-chair. The relationship with white councillors was very good.

- 7.9 Councillor Malik felt it was a racist comment and Councillor Dar claims that it is racially divisive in what is a diverse community.
- 7.10 Whether intended or not, the expressly stated wish to have certain positions of power filled by people from a particular ethnic group can in my view have racist implications. Racism is as much about impact as it is about intention. Comments such as in 7.6 (a) above can undermine ethnic and social cohesion.
- 7.11 In relation to 7.6 (b) and the use of the term 'Gori', I have sourced two definitions. The Oxford English Dictionary defines the word as "a White or fair-skinned female". The Urban Dictionary describes it as a "Term used by [Indians](#) to refer to white people. Literally means "white". "[Gori](#)" is used to refer to a [white woman](#). Not derogatory."
- 7.12 Councillor Akbar did not see it as an offensive term. She was supported in this view by Mr Khan. Both said that it is a term to describe a white person. Neither knew of anybody who was offended by it.
- 7.13 Councillor Malik said she found it offensive. Councillor Dar felt it was on the same level as the 'n' word for the black community. The messages were in his view trying to incite colour hatred.
- 7.14 An alternative view is that it is a pejorative term having an unpleasant or disparaging connotation.
- 7.15 I have asked myself whether comments expressing a wish for a white chair and vice-chair, with a pejorative term used towards ethnic minorities, would have caused offence to the non-white community. I think the likelihood is that they would have caused offence. Therefore standards applying to one section of the community should apply to all.
- 7.16 Taken in isolation, it could be argued that the term 'Gori' was pejorative rather than racist. It would still however be capable of causing offence – see paragraph 7.10 above. I have considered its use in the context that it accompanied a message that expressed a wish for the chair and vice-chair to be muslim. I find that read together, the comments could be viewed as being racially divisive and a potential breach of the Parish Council's Code of Conduct - paragraph 2.1 in relation to treating others with respect), paragraph 2.3 (Members shall never undertake any action which would cause significant damage to the reputation and integrity of the Council as a whole, or of its Members generally) and Principle 7 relating to Leadership which

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

- 7.17 I now turn to who sent the messages. There is no dispute that they came from Councillor Akbar’s ‘Whats App’ account. Councillor Akbar claims however that she did not send them. She maintains that somebody must have accessed her account and sent them. She said at interview that this is possible and showed me how she felt it could be done using ‘Whatscan’. I have looked into whether it is possible. My understanding is that ‘Whats App’ accounts can be cloned so that it can be used on two devices at the same time. The person doing the cloning would need to be in possession of the device being accessed for at least a short time. They would also need to know any password or access code for the device unless it was left unlocked.
- 7.18 Councillor Akbar has said that she does leave her phone unattended at times. She never previously had password protection but this was installed after the allegations.
- 7.19 The messages in the conversation in question were sent within 21 minutes of each other. The first on Friday 22 April at 07.29 and the last at 07.50. Two of the messages set out in paragraph 6.1 (a) and (b) were sent at 07.33, with one at 07.34. It is possible (but some would say unlikely) that somebody could have had direct access to Councillor Akbar’s phone to send the messages at such an early time in the morning. They could instead have cloned the Whats App account beforehand. The question then remains why they would engage in the wider conversation relating to decision making, the Parish Clerk and the working relationship between the Clerk and Councillor Malik which lasted for over 20 minutes?
- 7.20 The reason for Councillor Dar sending the messages when he did is not clear (see paragraphs 6.11 and 6.35).
- 7.21 Councillor Akbar said that she did not have password protection prior to the allegations. It is possible therefore that somebody could have accessed her phone and cloned her Whats App account to discredit her. This cannot be proven either way without a detailed (and probably costly) technical investigation and even this may not give the answers we are looking for. See paragraph 6.40 for the views of Slough Council).
- 7.22 I have therefore looked at the balance of probability and the likelihood of Councillor Akbar’s phone being cloned, and the messages in question being sent by somebody else, particularly without her being aware of it.

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- 7.23 To my knowledge, such cloning is very rare. I have certainly never come across it before. That's not to say it doesn't happen but the chances are slim. As stated above, somebody would had to have accessed Councillor Akbar's phone without her knowledge, with the technical 'know how' to execute the cloning. Whenever I use Whats App, my phone flags up when a message is received and it shows all messages sent and received. So I would know fairly quickly if a message was sent by somebody else purporting to be me. Councillor Akbar says she didn't notice the cloned messages, although she is presumably a regular user of her phone given the fact that she is a councillor and involved in so many other projects.
- 7.24 My view is therefore that (without evidence to the contrary) it is stretching the bounds of probability to accept that Councillor Akbar's phone was cloned and that the messages were sent by somebody else. It's not impossible but I think it's highly unlikely. If this is accepted, there is a potential breach of the Parish Council's Code of Conduct in relation to paragraph 2.1 (treating others with respect), paragraph 2.3 (Members shall never undertake any action which would cause significant damage to the reputation and integrity of the Council as a whole, or of its Members generally) and Principle 7 relating to Leadership which states "Holders of public office should promote and support these principles by leadership and example."
-