

COMPLAINT DECISION NOTICE



**COMPLAINT REFERENCE:
COUNCILLOR GARY BYRNE
DECISION: BREACH OF THE CODE OF CONDUCT**

Power to determine the Complaint

This Code of Conduct complaint against Cllr Byrne has been determined under the Members' Code of Conduct (The Code) complaints process in Chapter 7 of the Thurrock Council Constitution. The decision was made by a Members Advisory Panel held on 23rd January 2024 in accordance with the procedure at Chapter 7, Part 1, paragraph 2.7 Members Advisory Panel.

The Complaints

Two complaints were made against Cllr Byrne regarding Cllr Byrne's Facebook post on the Stanford le Hope group on 25th April 2023. The complaints are set out in full below:

Complainant A alleged a breach of the Code based on the following:

- The post amounted to racism, and it is unacceptable on any level to suggest a candidate in an election had used Photoshop to change their race to gain votes.
- Complainant A first saw the post on Facebook or Twitter, and it struck him as wrong and racist. The post was disrespectful to the candidate/ to anyone of colour and the Party and was morally wrong. Complainant A himself found the post to be offensive.
- Complainant A said it is a private Facebook page, but the Subject Member has been a Councillor for at least 2 terms (Complainant A estimated about 6 years based on 2 elections) so people would know he is Councillor so that posting something of this ilk also brings the position of Councillor into disrepute. Complainant A made the point that the Subject Member is supposed to be representing everyone in ward, and this post was disgusting. Complainant A views the post as someone being blatantly racist, not about it making political points.

Complainant B saw the post by the Subject Member at about 6pm on Tuesday 25th April, and by that time, as the screen shot shows, the Subject Member had posted the comment some 8 hours earlier and it was left for the general public to see. It was placed on the public Stanford-le-Hope Facebook group, which has over 38,000 members.

Complainant B considers that the Subject Member's post is appalling, is racist, derogatory and defamatory. She considers it abhorrent to think a member would consider this to be acceptable or moral, under any kind of conduct code.

Complainant B states that using Facebook as Gary Byrne rather than as Cllr Gary Byrne, does not, in this instance diminish the atrocity committed on social media, or make any difference to how he should conduct himself. Councillor Byrne is a well known personality in this area of Thurrock and often uses the same Facebook identity to share and do council work in his capacity as a councillor. Therefore, he is equally recognisable to the public under the name Gary Byrne as he is as under Cllr Byrne. Several screenshots of the his post on social media have been submitted by Complainant B. Cllr Byrne's profile picture on these posts is of him in the Council Chamber. Some of the posts discuss Council business and there are posts directly from members of the public to Cllr Byrne as Councillor.

Complainant B spoke to the candidate whose photo was the subject of the post. The candidate was very upset by the post but did not want to take the matter forward themselves but wanted Cabinet members to take the matter forward for them.

Complainant B pointed out that the 38,000 (now 41,000) residents on the Facebook page are all different races. Stanford-Le-Hope covers the SS17 post code which is just not one ward but several wards.

Relevant Parts of the Code

The behaviour complained of, is relevant to the following parts of the Code.

- not to bring a Councillor's role, or the Council into disrepute (paragraph 7.5)
- to treat others with respect (paragraph 7.1)
- to promote equalities and not to discriminate unlawfully against a person (paragraph 7.2,3)
- General Principles under Part 4 of the Code and the Nolan Principles (4.1 and Appendix A of the Code).

The Deputy Monitoring Officer made an initial assessment of the complaint under Chapter 7, part 2, paragraph 3.1 and after consulting one of the Council's Independent Persons, made a recommendation to take the complaint forward which the Monitoring Officer agreed and appointed Jayne Middleton-Albooye, Interim Head of Legal Services to conduct an investigation.

Following the investigation, the Investigating Officer, firstly considered whether the Code of Conduct applied to the actions complained of. The Investigating Officer concluded that the jurisdictional tests had been made. The Investigating Officer then concluded, in respect of the specific alleged breaches of the Code, the following:

Disrepute

It was considered whether Cllr Byrne's actions had brought the office of Councillor into disrepute. A Councillor is held to a higher standard of behaviour. The Investigating Officer concluded that "the post by Councillor Byrne falls into the category of abusive behaviour and could be reasonably regarded as adversely affecting the public's confidence in them being able to fulfil their role, as the post was, even by Councillor Byrne's own admission, poorly judged, and posted without thought to any offence it might cause to anyone including members of the public."

Respect

The Investigating Officer considered where behaviour may amount to disrespectful behaviour in the Local Government context and where it may amount to a breach of the Code. She concluded that the post on Facebook amounted to demeaning the prospective candidate, a member of the public, and was generally disrespectful. The large membership of the Facebook page was taken into consideration, and the fact that such a post would be disrespectful to, amongst others, those who share the prospective candidate's ethnicity.

Also considered was the high level of protection given to Councillors by Article 10 of the European Convention on Human Rights to comments that are genuinely made during political debate and in communication. Protection under Article 10 extends to the expression of views that may shock, disturb, or offend the deeply held beliefs of others. However, Article 10 is not an absolute but a qualified right which means that the rights of the individual must be balanced against the interests of society. In this case it was not considered that the Councillor's rights to freedom of expression outweighed the need to protect others from such comments.

Equalities and Discrimination

The Equality Act 2010 imposes positive duties on the Council to promote equality and to

eliminate unlawful discrimination and harassment. A Councillor must be careful not to do anything which hinders the Council's fulfilment of its positive duties under the Act. A Councillor must also promote equalities and not discriminate unlawfully against any person.

The Investigating Officer found that regardless of whether it was Cllr Byrne's intention or not, the inference that a person would have to lighten their skin to get votes, is offensive to an individual's characteristics, promotes negative stereotypes and amounts to behaviour that is racially discriminatory. The comment creates a stereotypical narrative that people of lighter skin will get more support.

Following the Investigating Officer's report, where there is evidence that the Subject Member has failed to comply with the Code of Conduct, then the matter is referred to a Hearing Advisory Panel.

Hearing Advisory Panel

The Panel held on 23rd January 2024 comprised Cllr Kairen Raper (Chairperson), Cllr Fraser Massey (Vice Chair), and Charles Clarke and Jasdip Singh Co-opted members. The Panel was supported by the Monitoring Officer. The Investigating Officer attended to present her report. Cheryl Campbell attended as the Independent Person who had been consulted at the assessment stage, and at the investigation stage, and who made a statement explaining why she had agreed with the outcome of the report.

Cllr Byrne attended with Cllr Speight as his representations.

Complainants A & B attended to give their statements.

In accordance with the procedure for the hearing, attendees asked questions of those who had made representations.

Considerations and Conclusions

The Panel carefully considered the evidence before it, and, in particular, noted that:

Cllr Byrne used a private Facebook page where he is widely known as a local Councillor and posted to 38,000 followers of that page.

The inference that candidates with lighter skin meant there was a greater chance of them gaining votes, was a racist comment that wasn't deleted immediately when an objection was raised.

There was acknowledgement that the post could be considered racist and that it was ill judged and ill advised.

No apology has been given, and no remorse has been shown thus far.

The Panel noted that breaches of behaviour not only impacted on the council members, officers and community but set a tone of culture and behaviour that is not acceptable in Thurrock Council.

In considering the sanctions to impose, the members took into account the seriousness of the breaches in terms of disrepute, respect and equalities and felt that it fell below the standards required of expected members at Thurrock Council. They were also mindful of the effect that the standards of behaviour of Members had on the reputation of the whole Council in the minds of the communities that it serves.

Members Advisory Panel Decision was:

- i) Cllr. Byrne is in breach of paragraph 4, 7.1, 7.2.3, and 7.5 of the Council's Member's Code of Conduct (4 breaches) as identified in the Investigating Officers Report.**
- ii) The Panel asks for a private apology, in writing to both Complainant A & B with a copy to the Monitoring Officer.
- iii) Cllr. Byrne attends training on Equalities and Diversity, and Social Media.
- iv) This decision be forwarded to the Standards and Audit Committee.

Notification of Decision

This decision notice has been sent to Cllr. Byrne, the Complainants, and the Independent Person.

Under Chapter 7, Part 2, paragraph 7 of the complaints procedure there is no further right of appeal. Anyone dissatisfied with this decision may however write to the Local Government Ombudsman. Further details are on the Local Government Ombudsman's website. It should be noted that there is no right of appeal for a Member except for a complaint that due process was not followed.

*Asmat Hussain
Monitoring Officer
26th January 2024*