

FINAL REPORT

**PRIVATE AND CONFIDENTIAL**



Case reference: SC2020/01

Report of an investigation under Section 28(6) of the Localism Act 2010 by Graham White, Solicitor, appointed by the Monitoring Officer for Shropshire Council, into allegations concerning Councillor Andy Boddington of Shropshire Council.

**March 2020**

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### 1. Executive Summary

- 1.1 Councillor Andy Boddington is a member of Shropshire Council for its "Ludlow North" division having been last elected at the ordinary elections which were held on the 4<sup>th</sup> of May 2017. He is a member of the Liberal Democrat Group and has been a member of Shropshire Council since 13<sup>th</sup> of March 2013.
- 1.2 A complaint was received by Shropshire Council on the 6<sup>th</sup> of January 2020 from Councillors Charmley, Nutting and Picton in which it was alleged that, on his blog [www.andybodders.co.uk](http://www.andybodders.co.uk), Councillor Andy Boddington had published information which was exempt from publication and had been included in a report considered by the Council.
- 1.3 My finding is that Councillor Andy Boddington failed to comply with the Code of Conduct of Shropshire Council by inappropriately releasing information which was exempt from publication. It is my view that this action amounted to a failure to comply with the following paragraphs of the code of conduct adopted by Shropshire Council:
  - "You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate
  - You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office."
  - "You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions "
  - "You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example."
- 1.4 Councillor Boddington's actions risk prejudicing the position of Shropshire Council during sensitive negotiations. In addition, members of the public using the Ludlow Assembly Rooms, which were the subject of the report, are likely to worry unnecessarily about its future, contributing to a lack of trust in Shropshire Council.

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### **2. My appointment**

- 2.1 In accordance with the arrangements of Shropshire Council for dealing with allegations of a member's failure to comply with the Council's code of conduct, the Monitoring Officer referred a complaint from Councillors Charmley, Nutting and Picton for investigation.
- 2.2 In accordance with those arrangements, the Monitoring Officer nominated me to carry out the investigation in respect of the allegations made about the conduct of Councillor Andy Boddington.
- 2.3 I am employed by Shropshire Council as a Solicitor with responsibility for Standards and Ethics.

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### 3. The Code of Conduct and Access to Information Procedure Rules

3.1 Shropshire Council adopted its current Code of Conduct on the 8<sup>th</sup> of May 2014. Councillor Boddington was a member of Shropshire Council at that time. The following is an extract from the Code of Conduct:

“You are a member or co-opted member of the Shropshire Council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member –

- “You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
- You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
- You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
- You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

3.2 The Access to Information procedure rules adopted by Shropshire Council include the following provisions:

#### 10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

The public may only be excluded under 10.1 and 10.2 for the part of parts of the meeting during which it is likely that confidential or exempt information would be divulged.

#### 10.2 Exempt information – discretion to exclude public

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed. Such a decision to exclude the public is to be made by resolution of the relevant decision making body. Where the meeting will determine any person’s civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public

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unless a private hearing is necessary for one of the reasons specified in Article 6.

10.4 Meaning of exempt information Exempt information means information falling within the following seven categories, subject to the conditions in paragraph 10.5, and information is exempt if and so long, as in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes –
  - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) to make an order of direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

10.5 Category Condition

Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under,

The Companies Acts (as defined in section 2 of the Companies Act 2006);  
The Friendly Societies Act 1974; The Friendly Societies Act 1992;  
The Co-operative and Community Benefit Societies Act 2014;  
The Building Societies Act 1986; or  
The Charities Act 2011.

Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and County Planning General Regulations 1992.

10.6 Where a resolution is passed excluding the public from a meeting,

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that exclusion shall not be deemed to apply to any Member of the Council but all Members will be expected to observe the confidentiality conventions.

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### 4. Evidence and Facts

- 4.1 An exempt report relating to the Ludlow Assembly Rooms was considered by the Councils Cabinet on the 16<sup>th</sup> of December 2019. Members resolved that the report should remain exempt from publication on the grounds that it contained information relating to the financial or business affairs of any particular person (including the authority holding that information). There was no challenge to the appropriateness to the resolution being made.
- 4.2 A further exempt report relating to the Ludlow Assembly Rooms was considered by the Council on the 19<sup>th</sup> of December 2019. Members resolved that the report should remain exempt from publication on the grounds that it contained information relating to the financial or business affairs of any particular person (including the authority holding that information). There was no challenge to the appropriateness to the resolution being made. Councillor Boddington attended this meeting and did not suggest that he disagreed that the report contained exempt information.
- 4.3 Also on the 19<sup>th</sup> of December 2019, Shropshire Council issued [a press release](#) to confirm that it would provide an additional £1.3m in funding to enable the project to be delivered in accordance with any of the proposed options.
- 4.4 On 1<sup>st</sup> January 2020, Councillor Boddington published, on his blog, [an article](#) that contained information which had been included in the exempt report and had not been released. This related to a proposal to enter negotiations for the repayment of the funds and for the term of the lease being reduced from 125 to 3 years.
- 4.5 The exempt information was broadcast on Radio Shropshire during the breakfast show, on the 3<sup>rd</sup> of January 2020 during which Councillor Boddington was interviewed and confirmed the intention of Shropshire Council to negotiate a return of the funding and reduction in the term of the lease. The Shropshire Star, on the same date, also [published a story](#) relating to the reduction of the term of the lease and the proposal seek to recover the funds provided.
- 4.6 In accordance with the arrangements of Shropshire Council for dealing with allegations of a failure to comply with the code of conduct, upon receipt of the allegation, I asked Councillor Boddington, by e-mail, on the 7<sup>th</sup> of January 2022, for his comments prior to the Monitoring Officer considering what, if any further action was appropriate. Councillor Boddington was also advised not to contact anyone else due to the risk that this could compromise him or the fairness of the process
- 4.7 A further [article was published](#) by Councillor Boddington on his blog

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on the 7<sup>th</sup> of January 2020 indicating that it had been alleged that he had failed to comply with the code of conduct by releasing confidential information. The article reproduced my e-mail in full.

- 4.8 Councillor Boddington responded, also on the 7<sup>th</sup> January 2020 indicating that there was insufficient information for him to comment. He added that the financial information was already in the public domain and that he considered it to have been in the public interest to release the information relating to the repayment of the funds and the reduced term of the lease.
- 4.9 The Shropshire Star published, on the [8<sup>th</sup> of January 2020, an article](#) in which Councillor Boddington was quoted and contained details of the allegations of a failure to comply with the code of conduct.
- 4.10 As a consequence of the release of exempt information, individuals involved in the Ludlow Assembly Rooms have contacted Shropshire Council expressing concerns in relation to the uncertainty caused due to rumours being circulated around Ludlow with regard to the future of the project.
- 4.11 The Monitoring Officer decided, on the 13<sup>th</sup> of January 2020, to refer the matter for an investigation and to appoint me as the investigating officer. Councillor Boddington was notified and asked to provide further comments regarding his indication that he had felt that the public interest in the release of the information outweighed the public interest in maintaining the exemption. Councillor Boddington was asked not to contact anyone or publish further details until the conclusion of the process, subject to any request for independent advice in relation to the allegation.
- 4.12 In his response, received on the 15<sup>th</sup> January 2020, Councillor Boddington indicated that he did not wish to comment further until such time as he had taken further advice, which may include legal advice. Councillor Boddington has not provided any information relating to his assertion that it was in the public interest to release the information.

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### 5. Reasoning

- 5.1 There can be no doubt that Councillor Boddington was acting in an official capacity. The exempt information which he disclosed had been obtained by him in his role as a member of Shropshire Council. It was not yet available to the general public in any form. Councillor Boddington was interviewed by the press as a consequence of him being a member of the Council and was described in the articles and on his blog as the Shropshire Councillor for Ludlow North.
- 5.2 Officers had recommended, and members agreed, that the report was exempt from publication because it contained information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 5.3 Councillor Boddington has indicated that he considered it to be in the public interest to release the information. He did not take advice from the Monitoring Officer or any other officer prior to reaching his view. He provided no explanation for making that decision. The training which is provided for members on the code of conduct deals with the release of exempt information. The code of conduct requires that members are as open as possible but are advised that this does not extend to the release of exempt information.
- 5.4 The Councils Access to Information procedure rules confirm that information should remain exempt from publication where the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members had already determined that the public interest in maintaining the exemption outweighed the public interest in releasing the information.
- 5.5 Additional funding was required for the completion of the works to Ludlow Assembly Rooms. Shropshire Council agreed to provide the funding required and to negotiate further terms, including the potential for the recovery of such funding, that would apply.
- 5.6 The release of the information prior to the completion of any discussions risks seriously prejudicing the negotiating position of Shropshire Council.
- 5.7 It cannot reasonably be considered to be in the public interest to release the information where that could prejudice the ability of Shropshire Council to negotiate an outcome which is considered to be in the best interests of the people of Shropshire as a whole. The information should not have been disclosed at least until such time as negotiations had concluded.
- 5.8 The code of conduct states as follows:

“You must act solely in the public interest and should never

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improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate”

5.9 The consequence of the improper release of exempt information in this matter is to the advantage of the Ludlow Assembly Rooms during negotiations with regard to revised terms.

5.10 The code of conduct states as follows:

“You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.”

5.11 Councillor Boddington has acted in a manner which shows disregard for the code of conduct and Shropshire Council by immediately publishing details of the complaint despite having been requested not to do so.

5.12 The code of conduct states as follows:

“You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions “

5.13 Being as open as possible does not extend to the improper release of exempt information. The Council had agreed that the report contained exempt information which should not, at that time, be released. By publishing the information, Councillor Boddington has demonstrated a lack of regard for the Council and prejudiced its position in future sensitive negotiations.

5.14 The code of conduct states as follows:

“You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.”

5.15 By acting in a manner which has prejudiced the position of Shropshire Council in sensitive negotiations, Councillor Boddington has failed to demonstrate the appropriate leadership that should be expected by Shropshire residents of their Councillors.

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### 6 Response of Councillor Boddington to Draft Report

- 6.1 A copy of the draft report was shared with Councillor Boddington who has provided the following comments:

#### **“Response to Code of Conduct Complaint**

The strength of democracy lies in honest debate and critical challenge. It also lies in open and honest publication and discussion of the issues of the day.

On 19 December 2019, Shropshire Council issued a press release which said that an extra £1.3m would put into the Ludlow Assembly Rooms refurbishment. It said: “Following the completion of the work Shropshire Council has agreed to transfer the building as a Community Asset Transfer (CAT) to the Ludlow Assembly Rooms.”

Steve Charmley, the deputy of the council, made no mention of the intention to reduce the CAT to three years. Or the intention to negotiate full or part repayment of the £1.3m. The press release was a lie by omission of vital facts.

I have made a commitment to be an open and communicative councillor. I tell it as it is from my perspective. I saw my role as publishing information on LAR as a part of my duties as a councillor. The public were not being told the entire truth. They weren't being made aware of the sting in the tail of £1.3m funding or reducing the CAT from 125 years to just three.

I did not publish the confidential paper but I accept that I published the essence of the recommendations that are most damaging to Ludlow. It is my job, along with my fellow councillors, to defend Ludlow to the hilt.

I was fully aware that a code of conduct complaint could be submitted by the dominant political powers in Shirehall. That to my mind was a risk worth taking.

I acted in the public interest. Both Shropshire Council's code of conduct and legislation allow a public interest defence on release of information marked confidential. The financial data I released was already in the public domain.

I was given the option of proceeding with this complaint or withdrawing my blog post. This is 2020. Withdrawing a blog post does not delete it from the public record. My blog is threaded into social media and mainstream media networks. It has had 25k views so far this year. The county's media pick up anything I publish within minutes. Sometimes they use the material but whether they do or not is their business not mine.

I would not withdraw the blog post on principle. What is said is said. We are not a totalitarian state. We have a right to speak out. Freedom of speech is central to our democracy.

I don't mind in the least if people challenge me. Nutting, Charmley and

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Picton could have challenged by commenting on my blog post. They could have written an article and I would have published that. They could have used the conventional media. Peter Nutting did say I was talking “tosh” to BBC Radio Shropshire but that was the limit of the response. The political leaders prefer to exercise their power behind the scenes.

I accept I will get disciplined by the council on this. It is worth that to promote the cause of democracy and the openness that must underpin our democratic future. I will accept any punishment dealt out. And I will go back to the electorate to ask whether they support Shropshire Council taking on procedures that China and Russia would be proud of.

I have a right to speak in the best interests of my ward constituents and for Ludlow as a whole. I have exercised that right. I am proud to have done so.

This response will be published on my blog as soon as I send it you. Openness. Transparency. Nothing hidden on confidential papers. We spend public money. We should be 100% publicly accountable. I will defend that until the electorate of Ludlow North no longer wish me to defend them and our town.”

- 6.2 Councillor Boddington accepts that a sanction will be imposed as a consequence of his actions.
- 6.3 As indicated by Councillor Boddington, a copy of his response was, on the 1<sup>st</sup> of March 2020 also [posted on his blog](#).

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### 7. Conclusion

- 7.1 I have concluded that Councillor Andy Boddington has failed to comply with the code of conduct of Shropshire Council by releasing exempt information relating to the provision of additional funding to enable the completion of the Ludlow Assembly Rooms project.
- 7.2 In accordance with the arrangements in place at Shropshire Council I am forwarding a copy of this report to Councillor Boddington and referring it to the Monitoring Officer of Shropshire Council.
- 7.3 Following consultation with the Independent Person, the Monitoring Officer will forward the report to the Standards Sub Committee with a recommendation for an appropriate sanction to be applied.

G White  
Investigating Officer

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### 8. Schedule of Evidence

1. Shropshire Council [press release](#) - 19<sup>th</sup> December 2019
2. Councillor Boddington [article - 1<sup>st</sup> January 2020](#)
3. [Shropshire Star, article](#) – 3<sup>rd</sup> January 2020
4. Councillor Boddington [article – 7<sup>th</sup> January 2020](#)
5. [Shropshire Star, article](#) – 8<sup>th</sup> January 2020

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