

MEETING**COUNCIL****DATE AND TIME****TUESDAY 10TH SEPTEMBER, 2013****AT 7.00 PM****VENUE****HENDON TOWN HALL, THE BURROUGHS, NW4 4BG**

Dear Councillors,

Please find enclosed additional papers relating to the following items for the above mentioned meeting which were not available at the time of collation of the agenda.

Item No	Title of Report	Pages
4.7	Report of the Monitoring Officer	1 - 12

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REPORT OF THE MONITORING OFFICER

RESPONSE TO COUNCILLOR BRIAN COLEMAN'S APPEAL

1. At its meeting on 23 July 2013, the Group Leaders Panel considered 2 complaints against Councillor Coleman which resulted in the Panel making a recommendation to Council to censure Councillor Coleman for his failure to treat others with respect. Councillor Coleman has now appealed against this recommendation.

Factual background

(a) Complaint by Paul Merchant

2. The first complaint was made by Paul Merchant on 10 April 2012 (Case No 003/13 item 8 of the minutes of the Group Leaders Panel held on 23 July 2013). At the Cabinet meeting on 4 April 2012, Councillor Coleman was captured on film referring to Mr Merchant as a "tw*t."
3. On 8 May 2012, the Standards Sub Committee decided to refer the complaint to the Monitoring Officer Jeff Lustig for investigation. The investigation was delayed due to the criminal proceedings that Councillor Coleman was facing at the time. These concluded in May 2013. The matter was then investigated partially by Jeff Lustig who left the Council's employment at the end of May 2013 and a factual report was put before the Group Leaders Panel on 23 July.
4. The only comment on record from Councillor Coleman regarding this complaint was to the former Monitoring Officer Jeff Lustig in which he says apparently on the presumption that no further action would be taken:

"I am sure you have come to the correct conclusion. If I recall the individual was particularly rude and offensive to the Leader and Cabinet Members."

(b) Complaint by Dr Julia Hines

5. The second complaint was made by Dr Julia Hines on 13 September 2012 although she had raised a standards complaint first via the Greater London Authority on 10 May 2012 who informed her on 21 May that the London Borough of Barnet had agreed to deal with the matter. (Case No 004/13 item 9 of the minutes of the Group Leaders Panel held on 23 July 2013.)
6. The complaint was in two parts and the part which was upheld relates to the tone of the email correspondence between Councillor Coleman and Dr Hines in April 2012 relating to the Network Management Policy which was an item on the Cabinet agenda on 20 February 2012.

7. Councillor Coleman did not offer any specific written comments on this part of Dr Hines' complaint.

Appeal:

8. Councillor Coleman wrote to the Monitoring Officer on 29 July 2013 setting out his grounds of appeal. They are as follows:

"Please take this as Notice of Appeal on the grounds that cases cannot be considered on a code of conduct that has since been abolished. The complaint can only be considered against a code of conduct presently in force and adopted by the Council.

"The failure of the Council to consider these in a timely fashion cannot be mitigated by attempting to apply them to a code no longer valid. If the Council were to do that then the system of investigation and decision also in force at the time should be used. The previous Standards regime was available to deal with "run off cases" although the time period has now long expired."

Response from Councillor Thomas, Deputy Leader, Chairman of the Group Leaders Panel on the 23rd July 2013:

9. The grounds of the appeal are procedural.
10. There is no time limit for complaints to be submitted to the Group Leaders Panel and whilst it is unfortunate that these complaints have not been dealt with more speedily, there is nevertheless an obligation on the Panel to consider all complaints.
11. There have been 3 Codes of Conduct for Members between the period April 2012 and July 2013. They are as follows:
 - (a) Code of Conduct from November 2009 to July 2012;
 - (b) Code of Conduct from July 2012 to May 2013; and
 - (c) Current Code of Conduct from May 2013.
12. The fact that there has been a change in the Code of Conduct does not prohibit the Group Leaders Panel from considering legitimate complaints in this case from residents that Members may have breached the Code of Conduct in force at the time of the alleged misconduct.
13. In the case of both complaints the Localism Act 2011 (Commencement No 6 and Transitional Savings and Transitory Provisions) Order 2012 applies. This allows for complaints made before 1 July 2012 to be dealt with under the new standards arrangements required under the Localism Act 2011. The complaints are judged against the Code in force at the time of the alleged misconduct and any penalty can be made under the new arrangements.
14. There is no time limit for such cases. In practice, the delay did not affect the quality of the evidence. The events were captured either on film or in writing.

15. In addition, we have legal advice that local authority has the common law right to take action in order to regulate itself and enable it to carry out its functions. This was confirmed by the Court of Appeal in R v Broadland District Council ex p. Lashley [2001].
16. The power of self-regulation is not a power to punish a Councillor or co-opted member for misconduct, but rather a power to take such administrative action as may be required to protect the interests of the authority and of the people it serves. This includes either on their own or in conjunction with a formal standards procedure to censure a Councillor or co-opted member who has behaved in a way so that it is necessary for the authority to make a public statement of disapproval of the Councillor's action, dissociating the authority from the action.
17. This kind of measure does not, in any way, interfere with the Member's duties or the will of the electorate; nor does it engage Article 6 of the European Convention on Human Rights as it does not interfere with civil rights.
18. I would therefore ask Council to reject the appeal and censure Councillor Coleman for his actions in relation to the two complaints.

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Decisions of the Group Leaders Panel

23 July 2013

Members:

Councillor Richard Cornelius (Chairman)

*Councillor Jack Cohen
*Councillor Alison Moore
*Councillor Anthony Finn

*Councillor John Marshall
*Councillor Daniel Thomas (In place of
Richard Cornelius)
*Councillor Barry Rawlings (In place of
Alison Moore for Case 001/13)

Independent Person:

*Stephen Ross

*denotes Member present

1. APPOINTMENT OF CHAIRMAN

That Councillor Daniel Thomas be appointed Chairman.

2. ABSENCE OF MEMBERS (IF ANY)

Apologies for absence were received from Councillor Richard Cornelius (Councillor Daniel Thomas substituting).

3. DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND NON PECUNIARY INTERESTS (IF ANY)

Members declared the following interests:

Councillor:	Agenda Item(s):	Interest :
Alison Moore	5 – Case no. 001/13	Non pecuniary interest as Councillor Moore was the complainant in this case. Councillor Moore left the room during the determination of this item. Councillor Barry Rawlings substituted for Councillor Moore for this item.

4. MOTION TO EXCLUDE THE PRESS AND PUBLIC

Papers for this meeting had not been made available in accordance with Section 100B (1) and (2) of the Local Government Act 1972 as the matters yet to be discussed involved the likely disclosure of exempt information. It was for the Panel to decide whether the public and press should be excluded for consideration of the item.

The Panel considered reports on behalf of the Monitoring Officer which set out details of four complaints that Members had failed or may have failed to comply with the Authority's Code of Conduct.

RESOLVED that

Case No 001/13 the matter in relation to one of the remarks made by Councillor Coleman go to formal consideration by the Panel and that no further information was required.

Case No 002/13 the complaint against Councillor Coleman in part go to formal consideration by the Panel and that no further information was required. The complaint against Councillor Richard Cornelius and Councillor Brian Schama (the Mayor) should not go to formal consideration by the Panel.

Case No 003/13 the complaint against Councillor Coleman go to formal consideration by the Panel and that no further information was required.

Case No 004/13 the complaint against Councillor Coleman go to formal consideration by the Panel and that no further information was required.

The Panel then went into public session and heard the complaints.

5. RE-ADMISSION OF THE PRESS AND PUBLIC

Case No 001/13 made by Councillor Alison Moore, 002/13 made by Ms Helen Davies and 004/13 (in part) made by Dr Julia Hines all related to alleged breaches of the Code of Conduct for Councillors made by Councillor Brian Coleman at the Council meeting held on 11 September 2012 at which he was heard to address a remark to the public gallery referring to unnamed individuals as "sad, mad and a couple of hags."

Evidence

The Monitoring Officer introduced her factual report. The video of the Council meeting on 11 September 2012 was played showing Councillor Coleman making the statement whilst facing the public gallery and gesturing with his hand towards them. It was unclear whether Councillor said sad or bad.

The Panel was informed that the public gallery contained 40 seats and was approximately two thirds full.

Both Councillor Moore and Dr Hines made statements confirming that the remarks were addressed to the public gallery and that in Dr Hines' case that these were directed at named individuals including herself.

Dr Hines was in attendance as she had asked to attend. Ms Davies was not present.

In addition to her written complaint, Dr Hines told the Panel that she had informed Councillor Coleman's election agent sometime prior to the meeting that she intended to make a complaint about him under the Standards regime.

Councillor Coleman was not present at the meeting but had responded as follows to all three complaints:

“These complaints are frivolous, party political in nature and anyway as part of a speech in the Council Chamber just the sort of complaint the Localism Act was supposed to prevent.

As the supposed comments are general and refer to nobody in particular I cannot see how any individual could take offence.”

Relevant Sections of the Code

The relevant Members Code of Conduct in force at the time of the meeting was the July 2012 Code.

The complainants cited breaches of Section 3 General Obligations citing 3(2), 3(3) and 3(4) although the Panel was not bound to consider these sections alone.

Section 3 of the Members Code of Conduct as at September 2012

General obligations

3. (1) As a member or co-opted member of London Borough of Barnet you have a responsibility to represent the community and work constructively with the Council's staff and partner organisations to secure better social, economic and environmental outcomes for all.

(2) In accordance with the provisions of the Localism Act 2011, when acting in this capacity you must be committed to behaving in a manner that is consistent with the following principles to achieve best value for the borough's residents and maintain public confidence in this authority:-

SELFLESSNESS: Holders of public office should act 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 seek to 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.

(3) You must treat others in a manner which is consistent with the obligations set out in paragraphs 3 (1) and 3 (2) above.

(4) 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, which has now been superseded by the Equality Act 2010);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be:-

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

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

Having heard the submissions, the Panel adjourned the meeting to conduct its deliberations.

Findings of fact

It is not entirely clear from the footage referred to whether Councillor Coleman used the word 'mad' or 'bad', although the word 'sad' and the phrase 'a couple of old hags' are distinct.

The remarks were addressed to the public gallery but given the lack of video evidence and the paucity of information as to who was in the public gallery and where they were all seated, the Panel could not conclude on the balance of probabilities that the remarks were addressed to specific individuals.

Dr Hines' statement about the election agent was new evidence that had not been put to Councillor Coleman and as such was not considered by the Panel.

The Panel made the following findings:

1. Although discourteous, the remarks did not breach sections 3(1)-3(3) of the Code.
2. Councillor Coleman was not acting as the Authority when he made the remarks and there was nothing to indicate that his actions would cause the Authority to breach the Equality Act 2010.
3. In respect of Dr Hines' complaint, as the Panel had concluded that it was not possible on the balance of probabilities to identify to whom the remark was addressed, 3(4) (b) and (c) were not breached.

The Press and Public were re-admitted for the announcement of the Panel's decisions.

6. CASE NO. 001/13

RESOLVED

1. Although discourteous, the remarks did not breach sections 3(1)-3(3) or any part of the Code.
2. Councillor Coleman was not acting as the Authority when he made the remarks and there was nothing to indicate that his actions would cause the Authority to breach the Equality Act 2010
3. As the Panel had concluded that it was not possible on the balance of probabilities to identify to whom the remark was addressed, 3(4) (b) and (c) were not breached.
4. That a recommendation be made to the Constitution, Ethics and Probity Committee to review the Members Code of Conduct with a view to including an obligation on Members to treat others with respect.

7. CASE NO. 002/13

RESOLVED

1. Although discourteous, the remarks did not breach sections 3(1)-3(3) or any part of the Code.
2. Councillor Coleman was not acting as the Authority when he made the remarks and there was nothing to indicate that his actions would cause the Authority to breach the Equality Act 2010.
3. As the Panel had concluded that it was not possible on the balance of probabilities to identify to whom the remark was addressed, 3(4) (b) and (c) were not breached.
4. That a recommendation be made to the Constitution, Ethics and Probity Committee to review the Members Code of Conduct with a view to including an obligation on Members to treat others with respect.

8. CASE NO. 003/13

The Monitoring Officer presented her factual report. The complaint was made by Mr Paul Merchant and concerned a Cabinet meeting held on 4 April 2012. Mr Merchant alleged that at the meeting he had exercised his right to put a supplementary question to

Cabinet; that on bringing his question to a close, Councillor Brian Coleman had called him a “tw*t”.

Mr Merchant also alleged that when Councillor Richard Cornelius confirmed to him (Mr Merchant) that the answer to his (Mr Merchant) question was “no”, Councillor Coleman interjected and said “you’ve had your answer, now get out”. Mr Merchant also alleges that Councillor Coleman used offensive language towards him and that his manner was brusque. Mr Merchant refers to a “video footage on a blog on the internet” to support his allegation and states that Councillor Coleman’s alleged remarks breached the following parts of the Members’ Code of Conduct (applicable as at April 2012):

Paragraph 3(1) - You must treat others with respect;

Paragraph 3(2) (b) - You must not bully any person;

Paragraph 5 - You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

Findings of fact

Video footage does show Councillor Coleman mouthing what appeared to be tw*t, after Mr Merchant had addressed a remark to Councillor Robert Rams and that the second alleged comment was made.

RESOLVED

1. That Councillor Coleman breached paragraph 3 (1) of the Members Code of Conduct – You must treat others with respect (the Code applicable as at April 2012 when the breach occurred).
2. That in view of (1) above, the Panel recommends censure of Councillor Coleman for his failure to treat others with respect, a breach of the Members Code of Conduct applicable at the time of the breach.
3. That Councillor Coleman is notified of his right of appeal to Council and that any such request for an appeal is submitted to the Monitoring Officer by 30 August 2013.

9. CASE NO. 004/13

The complaint was made by Dr Julia Hines and was in two parts:

Part 1 of complaint

This was dealt with together with Case No 001/13 made by Councillor A Moore and 002/13 made by Ms Helen Davies (see above).

Part 2 of complaint

The main issues stemmed from a meeting of Cabinet on 20 February 2012 and an Agenda item on Network Management Policy. Dr Hines was concerned about a proposed review of traffic light controlled crossings in the context of the potential effect on older people. Dr Hines entered into correspondence with Councillor Coleman and the complaint appears to encompass the tone and nature of this correspondence as well as Councillor Coleman claiming that Dr Hines had misrepresented the policy.

Dr Hines alleged that 3 General Obligations citing 3(2), 3(3) and 3(4) of the Members Code of Conduct had been breached.

Findings of fact (In respect of the complaint about the email correspondence):

The proposal was 'that a systematic review of traffic signal controlled junctions and pedestrian crossings be undertaken with a view to removal or replacement with an alternative method of control where these are no longer needed.'

Councillor Coleman's view expressed in the correspondence is that Dr Hines had misrepresented this policy and seemed to be spreading misleading information.

The correspondence was set out in full in the appendices to Dr Hines' complaint so there was no dispute about what was said in the written correspondence.

RESOLVED

Part 1 of complaint

1. Although discourteous, the remarks did not breach sections 3(1)-3(3) or any part of the Code.
2. Councillor Coleman was not acting as the Authority when he made the remarks and there was nothing to indicate that his actions would cause the Authority to breach the Equality Act 2010.
3. As the Panel had concluded that it was not possible on the balance of probabilities to identify to whom the remark was addressed, 3(4) (b) and (c) were not breached.
4. That a recommendation be made to the Constitution, Ethics and Probity Committee to review the Members Code of Conduct with a view to including an obligation on Members to treat others with respect.

Part 2 of complaint

1. That in respect of the complaint about email correspondence, Councillor Coleman breached paragraph 3 (1) of the Members Code of Conduct – You must treat others with respect (the Code applicable as at April 2012 when the email correspondence occurred), when he sent the two emails of 10 April 2012 (sent at 3.46pm and 4.07pm) to Dr Hines. The third email of 10 April 2012 (sent at 4.51pm) was not viewed by the Panel as an attempt to defame Dr Hines and that this was tempered by the word "seems".
2. That in view of (1) above, the Panel recommends censure of Councillor Coleman for his failure to treat others with respect, a breach of the Members Code of Conduct applicable at the time of the breach.
3. That Councillor Coleman is notified of his right of appeal to Council and that any such request for an appeal is submitted to the Monitoring Officer by 30 August 2013.

10. ANY OTHER ITEM(S) THAT THE CHAIRMAN DECIDES ARE URGENT

There were none.

The meeting started at 5.00pm and finished at 7.15 pm