

<p style="text-align: center;"><b>Council Meeting</b> <b>10 September 2013</b></p>
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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 23<sup>rd</sup> 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.