

London Borough of Barnet

Report of Monitoring Officer - Complaint by Councillor Coleman against Councillor Cohen

Introduction

1. This report is written in accordance with the council's process for complaints about the conduct of a Councillor or co-opted member.
2. According to the procedure the Monitoring Officer, after consulting with the Independent Person, will decide whether any complaint should go to a formal process. After that consultation process the Monitoring officer has determined that this complaint falls under the Code of Conduct.
3. If the Monitoring Officer decides that a complaint should go to a formal process, the Monitoring Officer will provide a written report to the Group Leaders Panel within three months of receiving the complaint. The report would comprise purely factual findings without any conclusion drawn as to whether or not a breach of the code is believed to have taken place.

The complaint

4. The complaint is made by Councillor Coleman. The complaint was originally made by email on 22nd January 2014 (see Appendix 1). On 27th January 2014, the Monitoring Officer, after consultation with the Independent Person (Stephen Ross), decided that the complaint should go to a formal process.

Complaint:

5. The complaint is as follows: *"This is a complaint under the Members Code of Conduct specifically paragraph 1 about openness and honesty. In Answer to Question 36 tabled by Cllr Alison Moore for answer at last night's Council meeting, Cllr Dean Cohen declined to answer how he had voted on the issue of the future of the procurement project citing part 2 commercial confidentiality reasons of the nature of the report.*
6. *Cllr Cohen retained that position when Cllr Moore asked a supplementary*
7. *Despite attempts to discuss the matter of how a Council appointee to an Outside Body had voted on a major issue of public policy Cllr Cohen still declined the opportunity to tell us when replying to the debate on the motion in my name on NLWA matters*
8. *I now understand from reading the NLWA public papers on their website covering the Sept 26th 2013 meeting of the Authority that in fact Cllr Cohen was absent entirely from the meeting . Indeed there is a report to members requesting that the 6 month rule be waved in the case of Cllr Cohen till 14th February 2014. It is noted in the report that Cllr Cohen had failed to attend any meetings of NLWA in the municipal year 2013/14*
9. *I believe that Councillor Cohen misled the full Council by failing to answer Cllr Moore's question honestly with a simple "I did not vote , I was not present",*

despite having 3 opportunities to do so , the question, the supplementary and the motion on NLWA in breach of the Code of Conduct and Nolan principles of openness and Honesty

10. *Cllr Cohen deliberately maintained a falsehood that the matter of how he voted at the meeting was part 2 in an attempt to hide from the Council that he had not attended this vital meeting (or indeed the previous one) knowing the future of the 3 billion pound procurement contract was to be discussed”.*

Members’ Code of Conduct

11. The complaint refers to the following section of the Code of Conduct being breached, however the Group Leaders Panel do not have to limit their review to these sections of the Code:

1(6) 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.

Questions to the Complainant

12. No questions were put to the complainant however the complainant further commented that he felt that the issue was of significance to the Council and therefore was important to Barnet’s public profile.

Cllr Cohen's response

13. Cllr Cohen responded on the complaint made to the Monitoring officer on the 18th February 2014 and stated the following:
14. *"The question that was asked by Cllr Moore was the following;*
15. *Would the relevant Cabinet Member advise how London Borough of Barnet's representative on North London Waste Authority voted on the issue of whether to cease their waste treatment procurement exercise and keep waste treatment at the Edmonton Plant?*
16. *The briefing received from officers for this question was the answer that was given, 'This vote was taken in a private session of the North London Waste Authority'.*
17. *Both the first question and the second question which was just put in a different way was purely in connection with the private meeting of which all aspects are private including who was present.*
18. *Full council has not been misled in anyway as another Barnet representative was at the meeting*
19. *If I had been asked directly how did I vote I would of course informed Council I was not present due to the Jewish festival which I have a duty to observe. I was not asked that I was asked 'How did the Barnet representative vote'.(singular)*
20. *I find it hard to believe that Cllr Moore had not looked at the minutes of this meeting prior to tabling such a question and would have therefore seen that I was not at the meeting. This appears to be the case as Cllr Moore refers to representative in the singular form in her question."*
21. I followed up with Councillor Cohen the following questions "What did you rely upon when making your decision around disclosing the way in which a council representative voted? Is there clear guidance provided by the NLWA in what information you can discuss once a decision has been made?"
22. Councillor Cohen verbally replied to the question posed and indicated that the officer briefing was relied upon and discussions took place with the Managing Director of the NLWA who made it clear that the contents and decisions of the meeting are considered private. Councillor Cohen also suggested that if he did attend the meeting the way he voted would remain private.

Questions to council Officers

23. I contacted the Council officer who attended the meeting on the council's behalf. I was informed by the officer that the meeting Councillor Moore refers to within her question to Full Council is the meeting held on the 26th

September, it appears on the agenda of items discussed in the private session of the meeting.

24. I inquired as to the briefing provided from officers in the Street Scene Delivery Unit to Councillor Dean Cohen, they confirmed that the briefing provided was exactly as written within the Full Council questions and answers. They elaborated and added "We do always discuss and agree any of these answers, briefings and comms with our contacts at NLWA." The reasons for confidentiality were noted on the front page of the confidential minutes as provided by the officer (Appendix 2).

Questions to Councillor Moore

25. Councillor Moore asked a supplementary question to Councillor Cohen, the transcript of which was as follows:

The answer to this puzzles me; you refuse to answer the question. The only rational explanation for this is that you and Councillor Thomas, the other Council representative voted for the process to go ahead and for Pinkham way to continue to be a site for a huge waste plant. Why you are not prepared to stand by his actions or do you agree with him?

Response - Councillor Dean Cohen

As I have said in my answer, the meeting was in private session and the information in that meeting is private.

Councillor Moore clarified when sent the transcript what she had meant by the last sentence "Why you are not prepared to stand by his actions or do you agree with him?" she confirmed that she had meant "why are you not prepared to stand by Councillor Thomas's actions - do you agree with him?".

Findings of fact

26. Council Questions from the January 2014 Council meeting, the relevant question is actually question 35, the extract is as follows:

Question 35 Councillor Alison Moore

Would the relevant Cabinet Member advise how London Borough of Barnet's representative on North London Waste Authority voted on the issue of whether to cease their waste treatment procurement exercise and keep waste treatment at the Edmonton Plant?

Answer by Councillor Dean Cohen

This vote was taken in a private session of the North London Waste Authority.

27. It was not put to the Cabinet Member how he personally voted at the meeting.
28. Papers from the NLWA are in the public domain for the 26th September meeting, the private meeting is not. It was confirmed with a council officer who attended the entire meeting that the decision referred to by Councillor Moore took place in private session on the 26th September.

29. There are two representatives appointed to NLWA from the Council - Councillor Cohen (who is Vice Chair of NLWA) and Councillor Thomas.
30. Appendix 3 notes the minutes from the public meeting whereby it is noted that Cllr Cohen was not present but Cllr Thomas was in attendance throughout the public and private meeting.
31. Appendix 4 notes a paper was prepared and approved for the dispensation for the attendance of Cllr Cohen for the September meeting as it fell on a Jewish Holiday. This was available on the public website.
32. The meeting held in December 2013 for the NLWA was attended by Councillor Dean Cohen according to the minutes of that meeting (Appendix 5).
33. An officer had provided the response as part of their briefing on questions to Full Council as it appeared in the published answers: "This vote was taken in a private session of the North London Waste Authority."
34. On the NLWA website the standing orders for the NLWA state under A18.1 that decisions are taken by simple majority who are present and under 18.3 by show of hands, the vote is only recorded (18.4) whereby 4 Members request it <http://www.nlwa.gov.uk/governance-and-accountability/standing-orders>
35. In relation to the supplementary question posed by Councillor Moore to Councillor Cohen on the evening of Full Council the following was available in the transcript:

The answer to this puzzles me; you refuse to answer the question. The only rational explanation for this is that you and Councillor Thomas, the other Council representative voted for the process to go ahead and for Pinkham way to continue to be a site for a huge waste plant. Why you are not prepared to stand by his actions or do you agree with him?

Response - Councillor Dean Cohen

As I have said in my answer, the meeting was in private session and the information in that meeting is private.

36. Councillor Moore confirmed that she had meant by the last sentence to her supplementary question "why are you not prepared to stand by Councillor Thomas's actions - do you agree with him?"

Action

37. The Panel is asked to consider whether any of the findings of fact amount to a breach of the Code of Conduct.

38. If a breach of the Code of Conduct has been found the Panel are asked to consider what the appropriate sanction would be.

Maryellen Salter
March 2014

Appendices

Appendix 1 – The complaint

Appendix 2 – Confidentiality extract from NLWA

Appendix 3 – Minutes from public meeting of NLWA September 2013

Appendix 4 – Dispensation of Councillor Cohen's attendance

Appendix 5 – NLWA minutes from December 2013 meeting