

AUDIT & STANDARDS COMMITTEE

Brighton & Hove City Council

Subject: Member Complaints Update
Date of Meeting: 18 November 2014
Report of: Monitoring Officer
Contact Officer: Name: **Brian Foley** Tel: **293109**
E-mail: brian.foley@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This paper updates the Audit and Standards Committee on complaints received about Member conduct following the last report to Audit and Standards Committee on 23 September 2014.

2. RECOMMENDATION:

- 2.1 That the Committee note the report.

3. RELEVANT BACKGROUND INFORMATION

- 3.1 The current status of complaints about Member conduct is:

3.1.1 Active complaints

- a. A member of the public complained that in making an objection to a Planning Application, a Parish Councillor knowingly gave false information to a planning officer and failed to declare a personal relationship. This complaint is the subject of an investigation report that will be considered by a Hearing Panel of the Standards Committee.
- b. Some young people complained that they observed an elected member acting in an inappropriate way whilst carrying out preparatory work for a conference they were assisting with. This matter is nearing informal resolution.
- c. A member of the public complained via the Community Safety Team about the conduct of an elected Member towards her and members of her family and friends. A decision has yet to be reached on how this matter should be progressed.

3.1.2 Closed complaints:

- a. A member of the public complained that they had been publicly bullied in a sexist and smearing manner by an elected Member on Facebook. The Independent Person and Monitoring Officer considered the material as set out in the complaint and whether this had the potential to be interpreted as a breach of the Code of Conduct. It was acknowledged that the correspondence did contain some robust exchanges, but it was not considered to reach the level where a potential breach had occurred. No further action was taken on this case.
- b. Members of the Local Muslim Community complained about a tweet written by Councillor Ben Duncan. They described the tweet as deeply distasteful, hurtful and unbecoming of a Brighton & Hove City Councillor. The complainants said the tweet did more to divide communities than bring people together. The complaint was the subject of an investigation report considered by a Hearing Panel of the Standards Committee.

On 06 October 2014 the Standards Committee reached a decision that there had been a breach of the Code of Conduct. A copy of the decision is included in the appendix.

In summary, the Panel determined that Councillor Duncan be subject to formal censure for failing to treat others with respect and bringing the council into disrepute. Secondly, that, in light of this censure and the Panel's determination that a recommendation is to be made to the meeting of full Council on 23 October 2014 that he be removed for the remainder of this municipal year from the role of Deputy Chair of both the Licensing Committee (Licensing Act 2003 Functions) and the Licensing Committee (Non Licensing Act 2003 Functions).

The full decision set out in the appendix.

The recommendation of the Standards Panel were approved by full Council at its last meeting and came into effect immediately.

- c. Many members of the public complained about a tweet relating to Armed Forces Day written by Councillor Duncan. They described the tweet as being offensive and showing a lack of judgment and understanding. The complaint was the subject of an investigation report considered by a Hearing Panel of the Standards Committee.

On 06 October 2014 the Standards Committee reached a decision that there had been a breach of the Code of Conduct. A copy of the decision is included in the appendix.

In summary, the Panel determined that Councillor Duncan be subject to formal censure for failing to treat others with respect and bringing the council into disrepute. Secondly, that, in light of this censure and the Panel's determination that a recommendation is to be made to the meeting of full Council on 23 October 2014 that he be removed for the remainder of this municipal year from the role of Deputy Chair of both

the Licensing Committee (Licensing Act 2003 Functions) and the Licensing Committee (Non Licensing Act 2003 Functions).

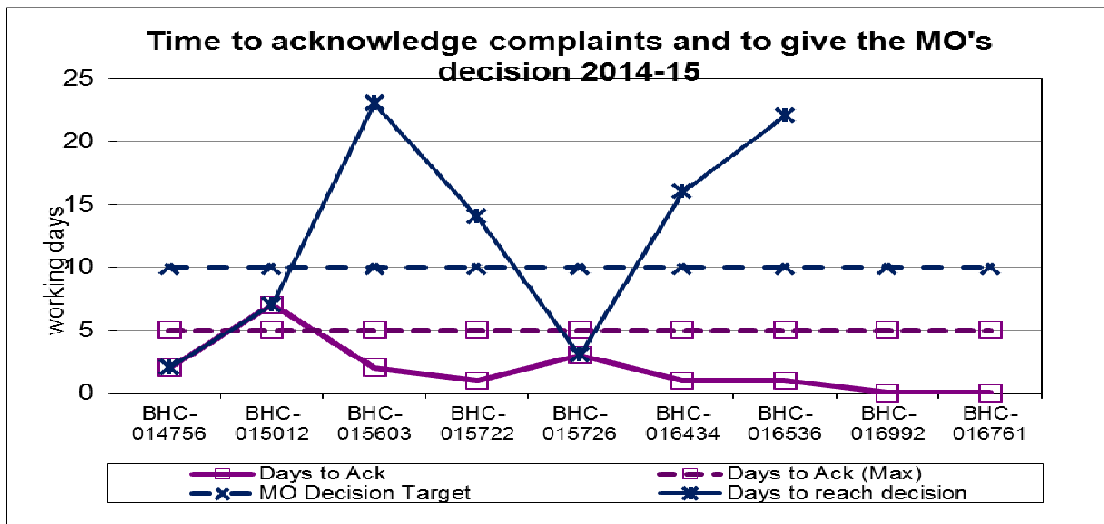
The full decision set out in the appendix.

The recommendation of the Standards Panel were approved by full Council at its last meeting and came into effect immediately.

3.2 The Council’s performance in dealing with individual complaints during 2014-15 is shown in the chart below.

3.2.1 Complaints about Member conduct should be acknowledged as soon as possible and within a maximum of 5 working days. This has been achieved in five out of six instances.

3.2.2 Complainants will where possible be informed within 10 working days how the matter will be dealt with. There is sometimes a delay whilst additional background information is sought.



4. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 4.1 The costs of complaints in terms of administration and compensation awards (where appropriate) are met within the allocated budget.

Finance Officer Consulted: James Hengeveld Date: 20/10/14

Legal Implications:

- 4.2 The Council's arrangements under which complaints about Member conduct are investigated and decided comply with the relevant provisions of the Localism Act 2011.

Lawyer Consulted: Oliver Dixon Date: 20/10/14

Equalities Implications:

- 4.3 There are no Equalities implications

Sustainability Implications:

- 4.4 There are no Sustainability implications

Crime & Disorder Implications:

- 4.5 There are no Crime and Disorder implications

Risk and Opportunity Management Implications:

- 4.6 There are no Risk and Opportunity Management implications

Corporate / Citywide Implications:

- 4.7 There are no Corporate or Citywide implications

SUPPORTING DOCUMENTATION

Appendices:

1. Decision lists from Standards Panel 06 October 2014.

Documents in Members' Rooms

1. None

Background Documents

1. None

APPENDIX

BRIGHTON & HOVE CITY COUNCIL STANDARDS PANEL

10.00am 6 OCTOBER 2014

COUNCIL CHAMBER, HOVE TOWN HALL

DECISION LIST

Part One

2 HEARING OF AN ALLEGATION THAT A COUNCILLOR HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT FOR MEMBERS - CASE BHC-015722

Contact Officer: *Brian Foley*
Ward Affected: *All Wards*

Tel: 291229

2.1 RESOLVED – That Councillor Duncan:

1. failed to comply with paragraph 3(1) of the council's Code of Conduct for Members ('You must treat others with respect'); and
2. failed to comply with paragraph 5 of the council's Code of Conduct for Members ('You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute').

- 2.2 The Panel considered the allegation that Cllr Duncan failed to comply with the council's Code of Conduct for Members, specifically paragraphs 3.1 'you must treat others with respect' and paragraph 5 'you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

The Panel noted that the facts of case were not in question, and that both the tweet and the identity of the tweeter were in the public domain. The Panel was satisfied that it was reasonable for members of the public to assume that by issuing his tweet, Councillor Duncan was not acting solely as a member of the public but as a councillor, and therefore that the Code applied.

The Panel noted the level of complaint, especially among the Islamic community, which the tweet of 16 June 2014 had generated.

The Panel noted Councillor Duncan's comments that in his tweet he was not referring to the Qur'an. The Panel felt, notwithstanding Councillor Duncan's assertion that he was not referring to the Qur'an but a book on Islamic art and architecture, that any reasonable person would assume the tweet was in fact referring to the Qur'an.

The Panel recognised that had the tweet been made at any time, it would have been capable of being disrespectful and of bringing the council into disrepute. However, the timing of the tweet was an additional factor as it happened at a time when members of the BME and Muslim communities, senior council officers, the Police, and Home Office were discussing ways of reducing the likelihood of young Muslim men from the community going to Syria to fight.

The Panel carefully considered Councillor Duncan's statement made during his submissions, in particular his contention that his right under Article 10 of the Human Rights Act took precedence over the council's Code of Conduct; and that for the Panel to find a breach of the Code would breach his right to freedom of expression. The Panel noted that Councillor Duncan's written response to the complaint, as conveyed during his submissions at the Hearing itself, did not in any way refer to his right to freedom of expression. This argument was only raised following publication of the papers for the hearing.

The Panel had access to legal advice during its deliberations. The council's lawyer, on behalf of the Monitoring Officer, advised that whilst under the Human Rights Act it is unlawful for a public authority to act in a way which is incompatible with a Convention right, Article 10 – the right to freedom of expression – is a 'qualified right'; further, the council's Code of Conduct is framed within the ambit of Article 10(2) which in certain circumstances makes it lawful to interfere with a person's Article 10(1) rights.

The Panel was advised that the extent of any such interference must be proportionate and engage one or more of the justifications set out in Article 10(2). The Panel was further advised that under case law, political expression or the expression of a political view attract a higher degree of protection under Article 10, whereas expression in personal or abusive terms does not attract the same higher level of protection. The limits of what is acceptable is wider where the subjects of the expression are politicians acting in their public capacity, since politicians lay themselves open to close scrutiny of their words and deeds and are expected to possess a thicker skin and greater tolerance than ordinary members of the public. In the view of the Panel, Councillor Duncan's tweet was directed to a section of the community and not at a fellow politician.

Furthermore, one of the permitted justifications for restriction of Article 10 rights is the protection of the reputation or rights of others. The Panel felt that the reputation of both the local Muslim community and the council had been impugned by the tweet. In light of this, the Panel considered

that Councillor Duncan's tweet did not enjoy the unqualified protection of Article 10(1).

2.3 Sanctions to be applied

Having heard Councillor Duncan's representation as to sanctions he considered appropriate in light of the Panel's findings, the Panel considered the range of sanctions available to it and determined the following in respect of both breaches of the Code of Conduct.

Firstly, that Councillor Duncan be subject to formal censure by this Standards Panel for failing to meet the standards of behaviour required of all councillors under the Code of Conduct for Members, specifically for failing to treat others with respect and bringing the council into disrepute; and that this censure be made publicly available and reported to the meeting of full Council on 23 October 2014.

Secondly, that, in light of this censure and the Panel's determination that it is inappropriate for someone who has repeatedly brought the council into disrepute to represent the council in the role of Chair or Deputy Chair of any committee, a recommendation be made to the meeting of full Council on 23 October 2014 that he be removed for the remainder of this municipal year from the role of Deputy Chair of both the Licensing Committee (Licensing Act 2003 Functions) and the Licensing Committee (Non Licensing Act 2003 Functions).

2.4 Right of Appeal

There is a right of appeal for the subject Member and any of the complainants against the decision of the Standards Panel.

If any of these persons wishes to exercise this right, they should write to the council's Monitoring Officer*, stating they wish to appeal the Standards Panel decision, with reasons for doing so. The appeal request will only be granted if one or more of the following criteria are met:

- (1) the hearing was procedurally flawed; a relevant consideration was not taken into account; or an irrelevant consideration was taken into account;
- (2) new evidence or material has arisen with a direct and significant bearing on either of the allegations;
- (3) the Panel's decision was irrational, meaning it was so unreasonable that no sensible Standards Panel, having applied its mind to the complaints, could have arrived at that decision.

A request for an appeal must be received within 10 working days of 6 October 2014.

3 HEARING OF AN ALLEGATION THAT A COUNCILLOR HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT FOR MEMBERS - CASE BHC-015726

Contact Officer: *Brian Foley*

Tel: 291229

Ward Affected: *All Wards*

3.1 RESOLVED – That Councillor Duncan:

3. failed to comply with paragraph 3(1) of the council's Code of Conduct for Members ('You must treat others with respect'); and
4. failed to comply with paragraph 5 of the council's Code of Conduct for Members ('You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute').

- 3.2 The Panel considered the allegation that Councillor Duncan failed to comply with the Code of Conduct for Members, specifically paragraphs 3.1 'you must treat others with respect' and paragraph 5 'you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

The Panel noted the facts of the allegation were not in question, and that both the tweet and the identity of the tweeter were in the public domain. The Panel was satisfied that it was reasonable for members of the public to assume that by issuing his tweet, Councillor Duncan was not acting solely as a member of the public but as a councillor, and therefore that the Code applied.

The Panel noted the unprecedented level of complaint the tweet of 28 June 2014 had generated, with widespread significant offence and indignation, and it appeared to be this that caused Councillor Duncan to switch off his twitter account.

Councillor Duncan offered no further submissions except to reiterate his contention that his right to freedom of expression was protected by Article 10. In relation to this point, the legal advice offered to the Panel was substantially the same as that given for item BHC-015722 in that Councillor Duncan's tweet was both abusive and directed not specifically at politicians or public figures but to ordinary members of the community, namely the armed forces; and that for this reason, Councillor Duncan was unable to rely on his Article 10(1) rights to justify or excuse his tweet.

Although the Panel noted Councillor Duncan's apology on 30 June 2014 for the offence caused, he restated his conviction to the Panel that 'hired killers' was an accurate description of the armed forces.

3.3 Sanctions to be applied

Having heard Councillor Duncan's representation as to sanctions he considered appropriate in light of the Panel's findings, the Panel considered the range of sanctions available to it and determined the following in respect of both breaches of the Code of Conduct.

Firstly, that Councillor Duncan be subject to formal censure by this Standards Panel for failing to meet the standards of behaviour required of all councillors under the Code of Conduct for Members, specifically for failing to treat others with respect and bringing the council into disrepute; and that this censure be made publicly available and reported to the meeting of full Council on 23 October 2014.

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- (6) the Panel's decision was irrational, meaning it was so unreasonable that no sensible Standards Panel, having applied its mind to the complaints, could have arrived at that decision.

A request for an appeal must be received within 10 working days of 6 October 2014.

* Address: Brighton & Hove City Council, King's House, Grand Avenue, Hove, BN3 2LS