

7 March 2017

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Member / Officer Protocol – Councillor Lissimore		
Wards affected	Not applicable		

This report requests the Committee review the comments made by Councillor Lissimore at a council meeting and whether they breached the Member /Officer Protocol

1. Decision(s) Required

- 1.1 To determine whether the comments made by Councillor Lissimore at the Full Council meeting on 8 December 2016 in relation to a Council employee breached the Member / Officer Protocol and if so what action, if any, it considers appropriate in the circumstances.

2. Background

- 2.1 The Council as part of its Constitution has agreed a Member / Officer Protocol. The purpose of this protocol is to provide a guide to good working relationships between Councillors and Officers, to define the respective roles of Councillors and Officers and provide some principles governing conduct.
- 2.2 Paragraph 10 of the Protocol deals with constructive criticism / complaints and this is set out at Appendix 1 to this report.
- 2.3 The Full Council has agreed that part of the terms of reference of this Committee is responsibility for promoting and maintaining high standards of conduct by Members and Co-opted Members of the Council and monitoring the Member / Officer Protocol.
- 2.4 Any breach of the Member / Officer Protocol is dealt with separately to the Member's Code of Conduct Localism Act Arrangements and it is for this Committee to determine what action, if any, it considers appropriate in the circumstances.

3. The comments made by Councillor Lissimore

- 3.1 At the Full Council meeting on 8 December 2016 during the agenda item on Questions to the Leader, Cabinet Members and Chairmen of Panels and Committees, Councillor Lissimore asked the following question of the Leader of the Council, Councillor Smith:

"What action will he take over a situation in St Mary's car park today at 11am when a Colchester Council employee was witnessed kicking a homeless man who was on the floor of the stairwell?"

Councillor Smith replied that he would look it into it if Councillor Lissimore provided the details.

Councillor Lissimore responded *"a video was taken after the incident that will identify the perpetrators....."*

- 3.2 The Committee needs to consider whether Councillor Lissimore's comments amounted to a breach of Paragraph 10 (3) of the Member / Officer Protocol, which states

"Members should not raise matters relating to the conduct or capability of an individual Council Officer or Officers collectively at meetings held in public."

- 3.3 This matter has been referred to the Committee at the request of the Leader of the Council, the Liberal Democrat Group Leader, Councillor Higgins, the Labour Group Leader, Councillor T. Young and the Highwoods Independent Group Leader, Councillor B. Oxford.
- 3.4 Councillor Lissimore's question followed the posting on social media earlier that day of comments and a video which alleged that a person had witnessed a Council employee kicking a homeless person. The question to the Leader of the Council was the first time that either the Leader of the Council or the Chief Executive were made aware of the alleged incident.
- 3.5 Councillor Lissimore by referring to the allegation in a public meeting, criticised the conduct of a council employee. Furthermore by referring to the employee as "the perpetrator" implied that they were guilty of the action mentioned. Councillor Lissimore asked the Leader of the Council to investigate the incident.
- 3.6 The Leader of the Council and the Monitoring Officer have both separately emailed Councillor Lissimore and requested that she consider apologising for making the comments. Councillor Lissimore has commented *"As I still to this date do not know who the alleged perpetrator was, and from the video footage, it is impossible to identify them unless one knew who they were looking for, then I do not feel I have a case to apologise for."*

As the leader of the council was not aware of the incident even though it had been widely distributed by the general public on social media, I felt it was my duty as a Councillor when CBC is brought in to disrepute that the leader should be aware. I still believe that to be true."

- 3.7 The incident at St. Mary's car park has been the subject of an internal council investigation where the Council employee and the homeless person concerned were interviewed. The person who posted the allegation on social media has been separately interviewed and has made a statement. The Police have also undertaken their own enquires at the request of the Council. However, all of this is background information but is not pertinent to why this matter has been referred to this Committee which needs to solely deal with the question posed at paragraph 3.2 above.

4. Options for the Committee

- 4.1 The Committee has the ability to use the Council's powers of self-regulation and the following options (or combination) are available to enable it to deal with this matter:

- (a) No further action;
- (b) Report its findings to Full Council for information;
- (c) Recommend to Full Council that the councillor be issued with a formal censure or be reprimanded
- (d) Recommend to the councillor's Group Leader that the councillor be removed from any or all Committees or Panels of the Council;
- (e) Instruct the Monitoring Officer to arrange training for the councillor;
- (f) Recommend to Full Council to remove from all outside appointments to which he/she has been appointed or nominated by the Council;

- (g) Recommend to Full Council to withdraw facilities provided to the councillor by the Council, such as a computer, website and/or email and internet access; or
- (h) Recommend to Full Council to exclude the councillor from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Panel meetings.

4.2 Any option(s) applied need to be reasonable and proportionate.

5. Strategic Plan References

5.1 The manner in which the Council governs its business is an underpinning mechanism in the Council's Strategic Plan aims to set out the direction and future potential for our Borough.

6. Financial, Equality, Diversity and Human Rights, Consultation, Community Safety, Health, Publicity and Safety and Risk Management Implications

6.1 None identified.

Extract from the Member / Officer Protocol

10 Constructive Criticism/Complaints

- (1) It is important that there should be mutual courtesy between Members and Officers. It is important that there are reasonable standards of courtesy and no Member or Officer should seek to take unfair advantage of their position.
- (2) Members and Officers should not criticise or undermine respect for the other at Council Meetings or at any other meeting they attend in their capacity as a Councillor or Council employee.
- (3) Members should not raise matters relating to the conduct or capability of an individual Council Officer or Officers collectively at meetings held in public.
- (4) Members when acting in their official capacity must comply with the Council's Social Media Policy and should not use social media to criticise or undermine respect for officers. Officers should not use social media to criticise or undermine respect for Members and must comply with the Council's Social Media Policy at all times.
- (5) If a Member believes that he/she has not been treated with proper courtesy or has a concern about the conduct or capability of an Officer, he/she should raise the matter with the respective Head of Service. If he/she is not satisfied with the action that has been taken in response to this, he/she may raise the matter with the Chief Executive who will look into the matter afresh. If the Chief Executive believes that there is a case to answer he/she may determine the action to be taken which might include the Council's formal disciplinary procedures. If the Officer concerned is the Chief Executive then the Member should raise the matter with their Group Leader, who should initially discuss the issue with the Chief Executive.
- (6) If an Officer feels that he/she has not been treated with respect or is concerned about any action or statement relating to him/herself or a colleague by a Member, or conduct of a Member, the Officer should raise the matter with his/her Head of Service. If the Officer is not satisfied with any action that has been taken as a result, the Officer should raise the matter with his/her Executive Director. If there is a serious case to answer the Executive Director, with the agreement of the Chief Executive, may request that the matter be investigated through the Council's Governance Committee's procedures.
- (7) Where an Officer or Member is concerned about potential unlawful conduct of an Officer or Member, the Council's Whistleblowing Policy may also be relevant. Nevertheless, the procedure outlined in this protocol should be first reference where possible.