

IN THE COLCHESTER BOROUGH COUNCIL
GOVERNANCE COMMITTEE

Regarding the complaint of:

Councillor Dominic Graham

Against

Councillor Ben Locker

RESPONSE TO COMPLAINT

Undisputed facts

1. On 12 September 2015, Cllr Ben Locker (Cons, Mile End), from his personal Twitter account, tweeted a photograph of an envelope placed on top of his car's dashboard which read, "*Flat battery, will move this afternoon*" and signed, "*Ben Locker*". The photograph also depicted a penalty charge notice attached to his windscreen, under his windscreen wiper. As a caption to this photograph, Cllr Locker tweeted the words, "*Thank you North East Parking Partnership. You heartless, target driven bastards. #Colchester*".
2. Later that evening, Cllr Dominic Graham (Lib Dem, Mile End) sent an email headed, "*Complaint*" to the Monitoring Officer, Andrew Weavers which was cc'd to Paul Smith (Lib Dem, St John's) and Matthew Young (Head of Operational Services). This complaint read as follows:

"Hi Andrew,

I'd like to make a formal complaint about Cllr Locker.

He posted the attached tweet this morning.

I'm especially unhappy that he is setting the example that publicly abusing council staff is ok.

He is effectively encouraging residents to abuse the Civil Enforcement Officers. To my mind, this sort of behaviour is totally inappropriate for a councillor.

Our staff receive enough abuse whilst carrying out their jobs. This will do nothing but worsen their experience.

Perhaps you could arrange for Cllr Locker to be reminded of his responsibilities?

Many thanks,

Cllr Dominic Graham

Colchester Borough Council

Cabinet Member for Street & Waste Services"

Legal Framework

3. Shortly after its formation, the Coalition Government made an announcement to abolish the centrally prescribed model code of conduct contained in the Local Government Act 2000 together with the Standards Board. The reasoning behind the Coalition's decision was that it considered local authority member regulation by a central quango inconsistent with the principles of localism. The announcement went on to say that,

"In addition, there is a concern that the regime is a vehicle for vexatious or politically motivated complaints".

4. As a result of the Localism Act 2011, local authorities are required to formulate their own Code of Conduct (s27) and that said code should, when viewed as a whole, be consistent with the seven principles of public life (s28).

Colchester Code of Conduct for Councillors

5. Colchester Borough Council adopted a Code of Conduct for Councillors in June 2012. The council subsequently set out its, "Arrangements for dealing with complaints" on 1 July 2012 in accordance with the requirement to do so under the Localism Act 2011, s28.

What does the Code apply to?

6. Para 2 of the Code states:

*(1) You must comply with this Code whenever you -
(a) conduct the business of the Authority, or
(b) you are acting as a representative of the Authority.
(2) This Code has effect in relation to your conduct in your official capacity. ...*

"Official capacity" v "Private life" distinction

7. The [Ken Livingstone case](#) considered the tension between the old LGA 2000, "Model Code" and the European Convention on Human Rights (which is brought into UK law by way of the Human Rights Act 1998). Article 10 of the ECHR provides the right to Freedom of Expression - and *Livingstone* stands as authority for the proposition that a Code of [Member] conduct covers only conduct where a Member is acting in his official capacity.

In *Livingstone*, the High Court [2006] EWHC 2533 (Admin) held at para 39:

"The burden is on the defendant to justify the interference with freedom of speech. However offensive and undeserving of protection the appellant's outburst may have appeared to some, it is important that any individual knows that he can say what he likes, provided it is not unlawful, unless there are clear and satisfactory reasons within the terms of Article 10(2) to render him liable to sanctions. In my view, the Tribunal misdirected itself in deciding that it was proportionate for the Code to extend as far as it did on the Tribunal's construction. The restraint was not in my judgment shown to be necessary in a democratic society even though the higher level of protection appropriate for the expression of political opinion was not engaged".

And at para 41:

“I think the Tribunal applied a test which failed to recognise the real distinction between the man and the office ...”

8. In *Cllr David Allen v Surrey Heath Borough Council Standards Committee* [LGS/2012/0587], Cllr Allen posted a blog which made reference to another Member of the Council. That member made a complaint.

Although Cllr Allen made reference to his status as a councillor on the blog, it was only part of his wider profile and not an indication that he was acting in his official capacity in publishing his blog post.

The First Tier Tribunal concluded that Cllr Allen had not been acting in his official capacity when he posted the blog.

As a result of its finding, the First Tier Tribunal set aside Surrey Heath’s Standards Committee’s decision to censure and require Cllr Allen to apologise.

Colchester’s Arrangements for dealing with complaints

9. The Arrangements set out a mandatory and structured approach to how complaints about Members are to be handled. The, “Complaints Procedure Flowchart” can be found at Appendix 1.
10. Appendix 3 contains the, “Standards Complaints Assessment Criteria (Complaints which would not normally be referred for investigation).
11. Appendix 1 refers to “Preliminary tests” and these tests tally with the contents of Appendix 3.
12. The flowchart in Appendix 1 makes clear that the Preliminary tests should be considered prior to determining whether a complaint should be rejected, informally resolved or referred to the Governance Committee for consideration.

Application of the legal framework to the facts of Cllr Locker’s case

13. It is Cllr Locker’s respectful submission that Cllr Graham’s complaint should be rejected prior to referral to the Governance Committee as it does not pass the **Preliminary tests** for the following reasons:

Was Cllr Locker acting in his official capacity when he tweeted?

14. Cllr Locker’s Twitter bio reads:

“Copywriter, @procopywriters co-founder, Triumph enthusiast, modern Tory, from Stamford, Loves Colchester, borough councillor. All tweets in personal capacity”.

15. Further, the envelope in the photograph is signed, "*Ben Locker*" and not "*Cllr Ben Locker*".
16. An examination of @benlocker's tweets will show a Twitter account devoted to personal communication only. While @benlocker's bio does indicate he is a, "*borough councillor*", like Cllr David Allen's case above, Cllr Locker's indication that he is a, "*borough councillor*" is only part of a wider profile.
17. It therefore cannot be construed that Cllr Locker was acting in his official capacity in broadcasting the tweet.
18. Accordingly, it is respectfully submitted that there is no case for Cllr Locker to answer. The complaint should be rejected in its entirety as it falls outside the scope of the Code – and the council has no power in law to deal with it.
19. Further and alternatively:

Does the complaint appear to be politically motivated?

20. The complaint does not emanate from a member of the public, a Civil Enforcement Officer or indeed any council officer. It emanates from Cllr Graham – Cllr Locker's political rival in the Mile End Ward.
21. Further, Cllr Locker immediately deleted the tweet and issued an apology on the Monitoring Officer's request. While Cllr Mitchell (Chairman of the NEPP) accepted the apology, Cllr Graham did not.
22. It therefore appears that the complaint is politically motivated. As the complaint therefore fails to meet this Preliminary test, in accordance with the Assessment Criteria delineated in Appendix 3, it should not be referred for investigation.

Does the complaint appear to be simply motivated by malice or is 'tit for tat'?

23. As noted above, Cllr Graham cc'd his complaint to Cllr Paul Smith and to Matthew Young, the Head of the Council's Operational Services. In the absence of any reasonable explanation, it is submitted that an objective observer is likely to conclude that Cllr Graham's cc to Mr Young was sent to ensure Mr Young read Cllr Locker's tweet – and designed to communicate to Mr Young that he is a Cabinet Member ally – and to perhaps sour Cllr Locker's and Mr Young's working relationship.
24. As such, this complaint does not meet the Assessment Criteria test in Appendix 3 and it should not be referred for investigation.

Complaints which may be referred to the Governance Committee

25. Even if, contrary to the submissions above, it was determined that Cllr Graham's complaint passes the Preliminary tests – a complaint *may* be referred to the Governance Committee in certain specific situations delineated in Appendix 3.
26. By his email correspondence with Cllr Locker in respect of this matter, copies attached, the council's Monitoring Officer has indicated that he is minded to refer this matter to the Governance Committee for the following reasons:
- i) *Unacceptable language "clearly" directed at council officers;*
 - ii) *"If you feel that the ticket was not justified then you need to appeal using the normal channels;*
 - iii) *"[Y]our tweet does give the impression that you were directing your comments to the CEO concerned who was carrying out his or her duties;*
 - iv) *"The issue for us is that CEOs experience a lot of verbal abuse in the course of their job and we as employer need to ensure we do everything to protect them".*
 - v) *"It could be seen that your original tweet was encouraging this".*
27. It is respectfully submitted that these reasons fall short of the criteria delineated in the Appendix 3 Assessment Criteria.
28. It is further submitted that parking enforcement is a political issue in the Borough and a matter of public interest.
29. As Phillip Colvin QC's, *Cornerstone on Councillor's Conduct* notes at para 3.53:
- "In the political context, a degree of immoderate, provocative, emotive and non-rational speech is to be tolerated. Even aggressive, offensive and shocking speech may have its place as part of the cut and thrust of political life. However, purely personal abuse or deliberately false statements do not benefit from the enhanced protection given to political expression in Article 10".*
30. There are no personally abusive comments in Cllr Locker's tweet. Nor are there any deliberately false statements. Had Cllr Locker used the phrase, *"You heartless, target-driven bastard"* that may be another issue. However, it is clear in this case that *"target-driven bastards"* is a general reference to the organisation and is not pointed at an individual for personal abuse.
31. While the sentence, *"Thank you North East Essex Parking Partnership. You heartless, target-driven bastards"* may indeed be deemed by some to be, *"unacceptable"* or *"abusive"*, such opinions are not in of themselves enough to demonstrate a failure to comply with the Code as they are not personally abusive or indeed deliberately false.
32. Finally, it was suggested by Cllr Graham and Monitoring Officer Mr Weavers that Cllr Locker's tweet could be encouraging the public to *"abuse"* CEOs. It is unclear whether the concern is with the public voicing an opinion - or whether the suggestion is that Cllr Locker's tweet is encouraging the commission of a crime under the Public Order Act. On examination of the

[Crown Prosecution Charging Standard](#) it is submitted that Cllr Locker's tweet falls far short of attracting any criminal liability.

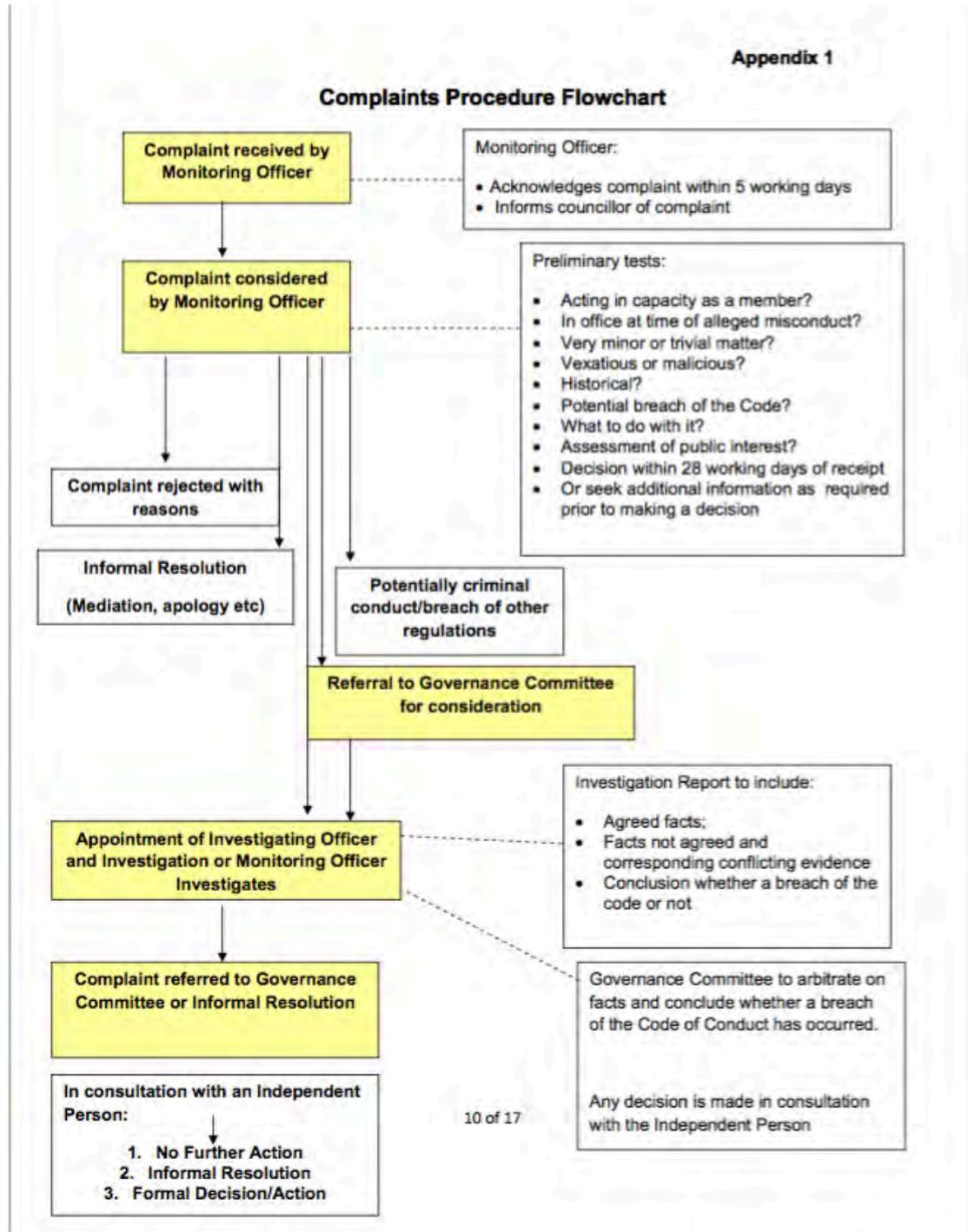
Conclusion

33. Cllr Locker was tweeting in a personal capacity and his private life conduct is not subject to the Code.
34. Even if the Monitoring Officer and/or Governance Committee does not agree with the above point, Cllr Graham's complaint appears to be politically motivated and/or simply motivated by malice or 'tit for tat'.
35. Even if the Monitoring Officer and/or the Governance Committee does not agree with the above point, parking enforcement in the Borough is a matter of public and political interest – and as such, Cllr Locker has the freedom under Article 10 to be robust as he has not indulged in personal abuse of another or told deliberate lies.

**KRISTIN HEIMARK
BARRISTER**

**28 September 2015
Stoke Newington Chambers**

APPENDIX 1: COMPLAINTS PROCEDURE FLOWCHART. *SOURCE: Councillor Code of Conduct: Arrangements for dealing with complaints (Appendix 1)*



APPENDIX 2: STANDARDS COMPLAINTS ASSESSMENT PROCEDURE. *SOURCE: Councillor Code of Conduct: Arrangements for dealing with complaints (Appendix 3)*

Appendix 3

Colchester Borough Council

STANDARDS COMPLAINTS ASSESSMENT CRITERIA

Complaints which would not normally be referred for investigation

1. The complaint is not considered sufficiently serious to warrant investigation; or
2. The complaint appears to be simply motivated by malice or is "tit-for-tat"; or
3. The complaint appears to be politically motivated; or
4. It appears that there can be no breach of the Code of Conduct; e.g. that it relates to the Councillor's private life or is about dissatisfaction with a Council decision; or
5. It is about someone who is no longer a Councillor; or
6. There is insufficient information available for a referral; or
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances e.g. allegation of bullying, harassment etc; or
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Governance Committee; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the councillor complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

Complaints which may be referred to the Governance Committee

1. It is serious enough, if proven, to justify the range of actions available to the Governance Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or

3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or
4. The complaint is about a high profile Councillor such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate; or
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him to investigate.

Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and councillors' time. This is an important consideration where the complaint is relatively minor.

APPENDIX 3: CORRESPONDENCE BETWEEN CLLR BEN LOCKER AND ANDREW WEAVERS, MONITORING OFFICER – BOTH OF COLCHESTER BOROUGH COUNCIL

From: Andrew Weavers [<mailto:Andrew.Weavers@colchester.gov.uk>] **Sent:**
14 September 2015 11:59 **To:** Ben Locker
> **Cc:** Dennis Willetts - Cllr - own email
Peter Sheane
<Peter.Sheane@colchester.gov.uk> **Subject:** Tweet

Dear Councillor Locker

It has been brought to my attention that you posted the tweet below on 12 September 2015.

I have received a complaint about the language used which is clearly directed at council officers. I need to remind you that it is not acceptable for Councillors to use this type of language towards council officers and accordingly I request that you issue a public apology within the next 48 hours as your conduct does not meet the expected behaviours contained in the Borough Council's Member Code of Conduct.

If you feel that the ticket was not justified then you need to appeal using the normal channels.

Yours sincerely

Andrew Weavers
Monitoring Officer
Corporate and Financial Management
Colchester Borough Council
Tel: 01206 282213



From: Ben Locker [REDACTED] >
Date: 15 September 2015 at 10:14:28 BST
To: Andrew Weavers <andrew.weavers@colchester.gov.uk>
Subject: Tweet re Parking Partnership

Dear Mr Weavers,

Many thanks for your email.

I would like to clarify the context and intent of the tweet you refer to.

I tweeted after getting a parking ticket on my old Triumph Herald. The battery had gone flat. I rolled it down Prior Way and tried to jump start it. That failed. I bought jump leads and tried to get it going using power from my other car. That failed. So I made sure it was safely parked and, because I knew there was a restriction between 2pm and 3pm, put a clear note in the window saying 'Flat battery - will move this afternoon.'

So I was naturally annoyed when I went to buy a new battery, only to find I had been ticketed when I returned. The parking restrictions are there to discourage commuters from clogging the street, not penalise motorists in trouble. As you suggest, I will be appealing the ticket through the proper channels.

Regarding the tweet, my intent was to highlight what I perceive to be the NEPP's inflexibility, which I believe is down to tough targets. I made certain not to say anything offensive about the individual enforcement officer who ticketed my car - he or she was doing their job, and if they have to meet targets who can blame them for ticketing a car on a single yellow line during a restricted period?

Instead, my tweet was aimed at the organisation rather than officers, although I am sorry a complainant has thought otherwise. The tweet, as clearly stated in my Twitter profile, was also in a personal capacity and not as a Councillor.

I am happy to submit this to your judgement. If you still feel that my intent was to aim bad language at CBC officers (albeit in the context of them undertaking NEPP business), then I will of course tweet an apology and make clear that I intended to criticise NEPP as a corporate entity. However, I would like to assure you that this was not the case and am happy to delete the tweet and move on.

Kindest wishes,

Ben

From: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Date: 15 September 2015 at 11:52:59 BST
To: 'Ben Locker' [REDACTED] >
Subject: Tweet re Parking Partnership

Dear Councillor Locker

Thank you for your email.

Whilst I can sympathise with the circumstances that led to the ticket, the difficulty is that you cannot switch on and off your responsibilities as a councillor. The Council has agreed via the Constitution certain rules and one of these is not criticising officers in public. I can see your point regarding the NEPP and the policy adopted by it, however your tweet does give the impression that you were directing your comments at the CEO concerned who was carrying out his or her duties.

I would suggest that the best way of resolving this would be for you to apologise and take the action suggested in the last paragraph of your email.

Kind regards

Andrew

Andrew Weavers
Monitoring Officer
Corporate and Financial Management
Colchester Borough Council
Tel: 01206 282213
www.colchester.gov.uk

From: Ben Locker [REDACTED] >
Date: 15 September 2015 at 12:02:56 BST
To: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Subject: Re: Tweet re Parking Partnership

Dear Andrew,

Thanks for the advice. I'll do that now.

Kindest,

Ben

From: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Date: 15 September 2015 at 17:26:55 BST
To: 'Ben Locker' [REDACTED] >
Subject: RE: Tweet re Parking Partnership

Dear Ben

I have seen your tweet and am disappointed that it is not exactly what we agreed. The issue for us is that CEO's experience a lot of verbal abuse in the course of their job and we as the employer need to ensure that we do everything to protect them.

It could be seen that your original tweet was encouraging this. However the chairman of the NEPP, Councillor Mitchell is satisfied with your apology.

Andrew

Andrew Weavers
Strategic Governance Manager
Corporate and Financial Management
Colchester Borough Council
Tel: 01206 282213
www.colchester.gov.uk

From: Ben Locker [REDACTED] >
Date: 15 September 2015 at 17:39:50 BST
To: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Subject: Re: Tweet re Parking Partnership

Dear Andrew,

I'm sorry you feel that way. I thought I had covered what we agreed. I deleted the original tweet, apologised if it was thought I was directing it at an individual. The only bit I couldn't fit in was the clarification that I was criticising NEPP as a corporate entity. But then I reasoned it would probably be unhelpful to name them again.

Additionally I was called by Wendy Brading at the Gazette minutes after the apology and spent a good 20 minutes making clear to her I was not criticising any individual at all. As I said to you, I wasn't - even if my tweet was clumsy.

I believe the original complaint was brought by another councillor. If so, all they have done is publicise the issue more widely, which certainly isn't and wasn't my intention.

Kindest wishes,

Ben

From: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Date: 17 September 2015 at 10:36:26 BST
To: 'Ben Locker' [REDACTED] >
Subject: Tweet re Parking Partnership

Dear Ben

Thank you for your email.

Following our exchange of emails and the Gazette article, I have been in contact with the Council's Independent Persons in accordance with the Council's arrangements for dealing with Member conduct issues and provided them with all the background information in relation to this matter. They have agreed that this matter should be referred to the Governance Committee. Accordingly I will be writing a report for the 13 October meeting when it will consider what action to take.

Regards

Andrew

Andrew Weavers
Strategic Governance Manager
Corporate and Financial Management
Colchester Borough Council
Tel: 01206 282213
www.colchester.gov.uk

From: Ben Locker [REDACTED] >
Date: 17 September 2015 at 10:55:22 BST
To: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Cc: Dennis Willetts [REDACTED] >
Subject: Re: Tweet re Parking Partnership

Good morning Andrew,

Many thanks for letting me know. Please keep me informed.

Given that I sit on the governance committee, I assume I will need to arrange a substitute to avoid any conflict of interest. I have copied in Cllr Willetts as my group leader so he is aware of the situation.

Kindest wishes,

Ben

From: Ben Locker [REDACTED] >
Date: 17 September 2015 at 11:07:43 BST
To: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Cc: Dennis Willetts [REDACTED] >
Subject: Re: Tweet re Parking Partnership

Dear Andrew,

One further request, if I may.

When you originally advised me that you believed my tweet did not meet the expected behaviours contained in the Members' Code of Conduct, could you please refer me to the relevant parts that you feel I contravened?

Kindest wishes,

Ben

From: Ben Locker [REDACTED] >
Date: 18 September 2015 at 15:30:03 BST
To: Andrew Weavers <andrew.weavers@colchester.gov.uk>
Subject: Re complaint against me

Dear Andrew,

Please see the attached letter regarding the recent complaint against me.

Have a good weekend.

Kindest wishes,

Ben

[COPY OF ATTACHED LETTER ON THE NEXT TWO PAGES]

Ben Locker

106 Bergholt Road
Colchester
Essex CO4 5AQ

18 September 2015

Andrew Weavers
Monitoring Officer
Colchester Borough Council
Rowan House
Sheepen Road
Colchester
Essex CO3 3WG

Dear Andrew,

Thank you for our email correspondence in respect of a complaint that has been made against me. I am concerned about the way in which this complaint is being handled and would be grateful if you would revert to me by return with the following information:

1. I am concerned that I have yet to be informed of the precise complaint, the maker of the complaint or which provision(s) of the Code I have allegedly breached. I am not able to fully answer the complaint without this basic information.
2. I am also concerned that in your email to me of 17 September at 10:36 you say that you will be writing a report on the matter for the 13 October meeting of the Governance Committee, *"when it will consider what action to take"*.

I am further concerned by yesterday's press release which states, *"Especially as a member of the Governance Committee Cllr Locker is expected to have a higher standard of conduct than that being displayed"*.

It appears that you have already formulated your finding.

To meet common law standards of fairness, I am advised I should be given the opportunity to make a fully informed comment on the allegation and the evidence – prior to your reaching an adverse finding.

Please confirm that a fully reasoned report which spells out any alleged breaches of the Code will be prepared and that a draft will be sent to me for my comment before being finalised.

Please also will this report address why the author considers that the complaint is so serious that it cannot be resolved by an informal resolution, if that is indeed the finding.

3. Finally, I am informed that you are already of the view that the Governance Committee is "*likely*" to pass a motion that I am not a fit person to serve on it. If true, it would seem sensible for you to appoint an independent Investigating Officer and for them to formulate findings in respect of this matter.

Please may I hear from you with regard to all of the above points now as a matter of some urgency.

Your sincerely,

Ben Locker

From: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Date: 18 September 2015 at 15:55:01 BST
To: 'Ben Locker' [REDACTED] >
Subject: complaint against me

Dear Ben

Thank you for your email.

I will provide you with a full reply early next week to the points raised in your letter.

Have a good weekend.

Kind regards

Andrew

Andrew Weavers
Strategic Governance Manager
Corporate and Financial Management
Colchester Borough Council
Tel: 01206 282213
www.colchester.gov.uk

From: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Date: 21 September 2015 at 16:25:56 BST
To: 'Ben Locker' [REDACTED] >
Subject: Complaint

Dear Ben

Further to your email of 18 September 2015, I am now able to formally respond to your points as follows:

1. I received the complaint from Councillor Graham. The basis of his complaint is that by your tweet you were:
(a) setting the example that publicly abusing council staff is ok; and
(b) effectively encouraging residents to abuse civil enforcement officers and that this sort of behaviour was totally inappropriate for a councillor.

This would amount to a breach of paragraph 3 (1) of the Code (You must treat others with respect). In addition the Nolan Principle of Integrity states "not to place themselves(Members) in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour".

2. Under the Council's Localism Act Arrangements the process of dealing with complaints regarding Member conduct has been delegated by the Council to me as Monitoring Officer. I will always try and resolve the situation informally if I can. However in this instance the complainant was not satisfied with your tweeted apology and accordingly I decided to consult the Independent Persons who the Council has appointed (in accordance with the Localism Act) to advise on Member complaints. Their advice to me was that this complaint should be referred to the Governance Committee as your apology was not accepted and also since you are a member of the Governance Committee which has amongst its terms of reference responsibility for upholding Member conduct and standards.

The process will be that I will prepare a report for the 13 October 2015 Governance Committee meeting which will set out the facts (which are not in dispute) of the complaint and the details of what happened. I should be grateful if you could prepare and send me a statement by Friday of this week which sets out your version of events which I shall include in the report in its entirety. I will let you have a copy of the report before it is published in the agenda. I will not be making a specific recommendation to the Committee but will detail what options are available to it in accordance with the Council's Arrangements.

3. I am not aware whether the Committee is likely to pass such a motion and it will be up to the Members on the day to decide. In the event that they were to pass such a motion it would have to be referred to full council who would have to vote on it.

I look forward to hearing from you.

Kind regards

Andrew

Andrew Weavers

Strategic Governance Manager
Corporate and Financial Management

Colchester Borough Council

Tel: 01206 282213

www.colchester.gov.uk

From: Ben Locker [REDACTED] >
Date: 21 September 2015 at 16:41:59 BST
To: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Subject: Re: Complaint

Dear Andrew,

Many thanks for your email.

Before we proceed further, could you please send me by return a copy of Cllr Graham's original complaint?

Kindest wishes,

Ben

From: Ben Locker [REDACTED] >
Date: 22 September 2015 at 09:19:55 BST
To: Andrew Weavers <andrew.weavers@colchester.gov.uk>
Subject: Copy of Cllr Graham's complaint

Dear Andrew,

I am still concerned that do not have the necessary information to respond to the complaint against me. I have instructed a barrister in the matter and she has asked me to supply:

- 1) A timestamped copy of Cllr Graham's original complaint
- 2) Your response to my letter of 21 September, particularly regarding the unanswered points under (2).

I have also consulted CBC's *Arrangements for dealing with complaints*. I am very concerned that the procedure for the complaint itself and for dealing with the press is not being followed.

Could you also confirm whether it is vital I get my statement to you by Friday? As things currently stand, I am unable to properly respond the the complaint made against me as I do not have a copy of the complaint itself, as per section 5.3 of the *Arrangements for dealing with complaints*.

Many thanks for your help. I would be grateful if you could supply me with this information as a matter of urgency.

Kindest wishes,

Ben

From: Ben Locker [REDACTED] >
Date: 22 September 2015 at 09:22:02 BST
To: Andrew Weavers <andrew.weavers@colchester.gov.uk>
Subject: Fwd: Copy of Cllr Graham's complaint

Dear Andrew,

Apologies. Point 2) below refers to my letter of 18 September, not 21 September.

Kindest wishes,

Ben

Dear Andrew,

I am still concerned that do not have the necessary information to respond to the complaint against me. I have instructed a barrister in the matter and she has asked me to supply:

- 1) A timestamped copy of Cllr Graham's original complaint
- 2) Your response to my letter of 21 September, particularly regarding the unanswered points under (2).

I have also consulted CBC's *Arrangements for dealing with complaints*. I am very concerned that the procedure for the complaint itself and for dealing with the press is not being followed.

Could you also confirm whether it is vital I get my statement to you by Friday? As things currently stand, I am unable to properly respond the the complaint made against me as I do not have a copy of the complaint itself, as per section 5.3 of the *Arrangements for dealing with complaints*.

Many thanks for your help. I would be grateful if you could supply me with this information as a matter of urgency.

Kindest wishes,

Ben

From: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Date: 22 September 2015 at 09:28:57 BST
To: 'Ben Locker' [REDACTED] >
Subject: RE: Copy of Cllr Graham's complaint

Dear Ben

Thank you for your email.

- 1) Please find attached a copy of Cllr Graham's original complaint (email dated 12 September)
- 2) I am not quite sure which points you think I have not responded to under (2) in your letter of 18 September?

It would be helpful if you could provide your statement by Friday as the deadline for me to get the report finalised for the Committee meeting is Tuesday 29 September.

Regards

Andrew

Andrew Weavers
Strategic Governance Manager
Corporate and Financial Management
Colchester Borough Council
Tel: 01206 282213
www.colchester.gov.uk

[COPY OF ATTACHED EMAIL ON NEXT PAGE]

From: Dominic Graham <Dominic.Graham@colchester.gov.uk>
Date: 12 September 2015 at 21:30:40 BST
To: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Cc: Paul Smith <Paul.Smith@colchester.gov.uk>, Matthew Young <Matthew.Young@colchester.gov.uk>
Subject: Complaint

Hi Andrew

I'd like to make a formal complaint about Cllr Locker.

He posted the attached tweet his morning.

I'm especially unhappy that he is setting the example that publicly abusing council staff is ok.

He is effectively encouraging residents to abuse the civil enforcement officers. To my mind this sort of behaviour is totally inappropriate for a councillor.

Our staff receive enough abuse whilst carrying out their jobs. This will do nothing but worsen their experience.

Perhaps you could arrange for Cllr Locker to be reminded of his responsibilities?

Many thanks



Cllr Dominic Graham
Colchester Borough Council
Cabinet Member for Street & Waste Services

dominic.graham@colchester.gov.uk

From: Ben Locker [REDACTED] >
Date: 22 September 2015 at 11:57:50 BST
To: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Subject: Re: Copy of Cllr Graham's complaint

Dear Andrew,

Thanks for attaching Cllr Graham's complaint of 12 September to your email of today at 9.30am.

As you are aware, I have been asking for this since 18 September.

Given what I have read in the Council's *Arrangements for dealing with complaints*, you should have sent this to me on your first indication that a complaint had been made.

I am bemused as to why this was not done.

In any event, this matter has been going on since 14 September without my knowing the precise case against me. I ask, in the interests of fairness, that I have a meaningful opportunity to answer this complaint in a structured and comprehensive manner.

If Friday is indeed your deadline, it would be helpful if you would explain why you did not advise me of this deadline when you first wrote to me.

As for my unanswered questions, they should be self-explanatory. I have numbered my points in my letter of 18 September to you for your ease of reference. I would be grateful if you would kindly address each one by return.

Kindest wishes,

Ben

From: Andrew Weavers <Andrew.Weavers@colchester.gov.uk>
Date: 22 September 2015 at 12:53:01 BST
To: 'Ben Locker' [REDACTED] >
Subject: RE: Copy of Cllr Graham's complaint

Dear Ben

Thank you for your email.

I agree that you need a meaningful opportunity to answer this complaint. As mentioned in my earlier email it would be helpful if you could respond by Friday but the absolute deadline (for your response to be included in the report which I would like to ensure) is Tuesday if that assists you.

With regard to your letter of 18 September to avoid any confusion I set out my responses below in red:

1. I am concerned that I have yet to be informed of the precise complaint, the maker of the complaint or which provision(s) of the Code I have allegedly breached. I am not able to fully answer the complaint without this basic information.

I received the complaint from Councillor Graham.

The basis of his complaint is that by your tweet you were:

(a) setting the example that publicly abusing council staff is ok; and
(b) effectively encouraging residents to abuse civil enforcement officers and that this sort of behaviour was totally inappropriate for a councillor.

This would amount to a breach of paragraph 3 (1) of the Code (You must treat others with respect). In addition the Nolan Principle of Integrity states "not to place themselves(Members) in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour".

Whilst I did not forward the email from Councillor Graham until today, I did provide you with the details yesterday

2. I am also concerned that in your email to me of 17 September at 10:36 you say that you will be writing a report on the matter for the 13 October meeting of the Governance Committee, "when it will consider what action to take".

I am further concerned by yesterday's press release which states, "*Epecially as a member of the Governance Committee Cllr Locker is expected to have a higher standard of conduct than that being displayed*". It appears that you have already formulated your finding.

I have not formulated any finding as explained below.

To meet common law standards of fairness, I am advised I should be given the opportunity to make a fully informed comment on the allegation and the evidence – prior to your reaching an adverse finding. Please confirm that a fully reasoned report which spells out any alleged breaches of the Code will be prepared and that a draft will be sent to me for my comment before being finalised.

The process will be that I will prepare a report for the 13 October 2015 Governance Committee meeting which will set out the facts (which are not in dispute) of the complaint and the details of what happened. I should be grateful if you could prepare and send me a statement by Friday of this week which sets out your version of events which I shall include in the report in its entirety. I will let you have a copy of the report before it is published in the agenda. I will not be making a specific recommendation to the Committee but will detail what options are available to it in accordance with the Council's Arrangements.

Please also will this report address why the author considers that the complaint is so serious that it cannot be resolved by an informal resolution, if that is indeed the finding.

Under the Council's Localism Act Arrangements the process of dealing with complaints regarding Member conduct has been delegated by the Council to me as Monitoring Officer. I will always try and resolve the situation informally if I can. However in this instance the complainant was not satisfied with your tweeted apology and accordingly I decided to consult the Independent Persons who the Council has appointed (in accordance with the Localism Act) to advise on Member complaints. Their advice to me was that this complaint should be referred to the Governance Committee as your apology was not accepted and also since you are a member of the Governance Committee which has amongst its terms of reference responsibility for upholding Member conduct and standards.

3. Finally, I am informed that you are already of the view that the Governance Committee is “likely” to pass a motion that I am not a fit person to serve on it. If true, it would seem sensible for you to appoint an independent Investigating Officer and for them to formulate findings in respect of this matter.

I am not aware whether the Committee is likely to pass such a motion and it will be up to the Members on the day to decide. In the event that they were to pass such a motion it would have to be referred to full council who would have to vote on it.

Regards

Andrew

Andrew Weavers

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