

Agenda item 10(i)

GOVERNANCE AND AUDIT COMMITTEE MINUTE EXTRACT 26 JULY 2016

12. Complaints in Relation to Councillor Buston

Councillor Pearson introduced Barbara Pears, Independent Person, who was attending the Committee for this item to provide advice to Committee members. Councillor Pearson stated that both members of the public and Councillors who wish to speak would be restricted to three minutes, with Councillor Bourne and Councillor Buston limited to ten minutes. In addition, only one contribution to the discussion would be permitted from each member of the Committee.

Councillor Willetts voiced concern that Councillors contributions would be limited to just one occasion on this important issue.

Andrew Weavers, Monitoring Officer, and author of the report, set out the contents of the report and the decision required. The Committee is required to make an initial assessment on whether Councillor Buston's conduct potentially amounted to a breach of the Members' Code of Conduct, and if so whether either one or both of the complaints requires no further investigation or merits further investigation. If the Committee determines that it does not require any further investigation it can take no further action or consider providing advice. If the Committee agree that further investigation is required then an external person would be appointed to conduct an investigation. The Committee were informed that the decision would need to be based on the information provided within the report and the letter that had been circulated to members from Councillor Buston regarding training that he had attended.

Andrew Weavers informed the Committee of the background of the complaints. Andrew Weavers stated that the complaints allege that Councillor Buston did not comply with the Members Code of Conduct paragraph three relating to not breaching equality enactments. The Equalities Act 2010 provides that travellers are a group of society which are afforded protected characteristics. In addition the Council, as a public authority is required by the act to comply with the Public Sector Equality Duty which has due regard to eliminate discrimination, advance equality of opportunity and foster good relations between different groups of people in society when carrying out functions. Councillors are required to take the Public Sector Equality Duty into account when taking decisions and when undertaking communications in relation to their role as a Councillor.

In relation to these complaints, the Committee is required to decide whether Councillor Buston's comments potentially breached part of the Public Sector Equality Duty which relates to fostering good relations between different groups. Andrew Weavers outlined that Councillor Buston had stated that he was representing the views of residents in his ward, which comes under Freedom of Expression as part of the Human Rights Act 1998. Andrew Weavers stated that this is a qualified right and is subject to restrictions prescribed by law within a democratic society, which includes the prevention of disorder or crime and protection of reputation or rights of others. If the Committee decides that the complaints merit further investigation, these issues will be looked into in greater detail.

Andrew Weavers, following a query from Councillor Willetts, clarified that travellers are a group with protected characteristics under the category of race.

Have Your Say

Terry Cheelds

Terry Cheelds attended the meeting requesting assistance from Colchester Borough Council to answer a question from his son. He stated that his son, whilst walking to school, had witnessed travellers cutting down hedges, driving four wheel drive cars on fields and leaving behind waste. His son had questioned why this was able to occur, when local residents would not be able to do the same.

Further to this, Mr Cheelds stated that the Cowdray Centre Development Site was broken into by travellers. Whilst the Police were called and were helpful, the travellers stated that if the criminal damage charge was dropped they would leave the area, which they did. Mr Cheelds believed that there should be more protection for Colchester residents and questioned why this situation can be allowed to occur.

Mike Hardy

Raised a point of clarification with the monitoring officer, as he understood that there was only protection to certain groups of travellers; Romany Gypsies and Irish Travellers. Other travelling communities are not covered by the Act, and therefore do not have protected statuses.

Mike Hardy stated that the Equalities Act defends groups against discrimination and defines the types of discrimination which are protected characteristics. Mike Hardy distributed an information sheet on the types of discrimination taken from the Government website.

Mike Hardy stated that in relation to Councillor Buston, no comments were made on any protected characteristic and therefore has not breached the Equalities Act or the Members Code of Conduct.

Mike Hardy also commented on the second complaint, believing that Councillor Bourne's interpretation of Councillor Buston's intent was inaccurate.

Councillor Cope

Councillor Cope highlighted his concerns regarding the visibility of the legal processes when issues with travelling communities are raised with the Police. Councillor Cope also believed that more information should be provided to Councillors and residents to understand the processes and to prevent the perception that nothing is happening.

Councillor Cope highlighted a number of incidents that had occurred in his ward that were reported to Police, but no information then passed on to Councillors or local residents.

Councillor Cope also questioned whether this particular issue could be a diversity, ethnicity or equality issue given that the report does not contain information from the Essex Countywide Travellers Unit on who the travellers were on that particular site.

Councillor Lissimore

Councillor Lissimore stated that she was not originally intending to speak at the meeting and thanked Councillor Cope for opting to speak at the meeting.

Councillor Lissimore stated that local residents are fully in support of Councillor Buston, and that she had not been made aware of any complaints received other than that from Councillor Bourne.

Councillor Lissimore also reminded the Committee of the incidents that had originally led to Councillor Buston's letter, and that the comments within the letter were reflecting the residents' comments on the circumstances.

Councillor Lissimore requested that membership of political parties be put to one side on this issue and that Councillors look at the words used in making their decision.

Councillor Jarvis

Councillor Jarvis spoke to the Committee and protested at the limitation on length of time allotted to speak on the issue. Councillor Jarvis clarified to the Committee the circumstances behind the inclusion of his name in the original e-mail heading which related to an e-mail template displaying the shared ward information. Following receipt of the complaint Councillor Buston immediately clarified that Councillor Jarvis was not responsible for the comments, and this highlighted the conduct of Councillor Buston.

Councillor Jarvis stated that he had recently visited Hilly Fields and had spoken to a number of residents who indicated their upset at the current situation. Councillor

Jarvis also highlighted his frustration with the Police, who have the power to remove encampments without going through the courts. In this circumstance, the Police deemed it inappropriate to invoke Section 50 of the Criminal Justice Act.

The Hilly Fields site is a scheduled ancient monument, which is the highest protection given to sites under planning law. Councillor Jarvis highlighted the issues that had occurred on the site, which local residents were not permitted to do. Councillor Jarvis also questioned how much more damage to local amenities could be permitted.

Councillor Jarvis also highlighted his concern that the complaint was lodged due to party political reasons. Councillor Jarvis commented on commitment to the Human Rights Act and free speech and that Local Councillors should not be afraid of reflecting the views of their residents.

Councillor Jarvis stated that he believed the matter should not have come before the Governance and Audit Committee, and that there should be no further action taken.

Councillor Bourne

Councillor Bourne stated that part of her Portfolio relates to gypsy and traveller encampments under environmental protection section. As Portfolio Holder, Councillor Bourne regularly corresponds with the Essex Countywide Traveller Unit to discuss additional pitches and liaison sites.

Councillor Bourne stated that as Councillors it is necessary to manage expectations of local residents and to help to foster good relations between those who share protected characteristics and those who do not. With regard to the complaint, Councillor Bourne stated that she objected to the language used by Councillor Buston regarding the unauthorised encampment on Hilly Field. Councillor Bourne felt that the language used by Councillor Buston breached the Members Code of Conduct as it did not help to foster good relations between those who share protected characteristics.

Councillor Bourne stated that she was aware that for some residents having strangers in their local area is not welcome and can be perceived as a threat, especially when local residents do not share the same characteristics. In these situations it is necessary for Councillors to tread a cautious and respectable path when dealing with these matters.

When incidents with the travelling community occur Colchester Borough Council, Essex Police, the County Council and the Essex Countywide Travellers Unit have a protocol which has been in place for a number of years. As a result of the number of complaints and conversations held with Councillors, the Council is now reviewing this protocol. Cabinet will shortly be receiving a presentation from the Essex Countywide Travellers Unit and discuss the best way forward to deal with concerns.

Councillor Bourne stated that if Councillors have concerns regarding gypsies and travellers, they can be raised with officers or with the Portfolio Holder. Unfortunately Councillor Buston did not choose either of these potential routes. Councillor Bourne stated that the initial complaint to the monitoring officer was regarding the language used by three different Councillors. Councillor Goss apologised for comments in the press and attended equality and diversity training and Councillor Jarvis had responded quickly and stated that he didn't mean to cause offense. Councillor Bourne stated that she had spoken to members of all political parties, including Labour, regarding issues around travellers and the language used, which can stigmatise communities. Whilst the comments made may seem honest, they can lead others to take more extreme actions. In each discussion with Councillors, they had understood the reason behind making contact and not reiterated the words in future articles and communications.

Councillor Bourne stated that Councillors, as community leaders have a leadership role, and if Councillors use intemperate and incautious language it can vindicate others to be more extreme in their views.

Councillor Bourne highlighted that following comments in the local newspaper regarding Syrian refugees she had spoken to the paper and had a retraction printed. Councillor Bourne also denied that this was a party political issue, and that she had not commented in the press or on social media about this particular case. As part of the Councillors role, Councillor Bourne stated that she wished that Councillor Buston would take advice on the language used, and highlighted an extreme comment that had been posted by a member of the public underneath the article which included Councillor Buston's comments.

Councillor Buston

Councillor Buston formally objected to the time limits being imposed on his speaking time when defending accusations on this matter. Councillor Buston was disappointed that this issue had been brought to the Governance and Audit Committee.

Councillor Buston commented that his response to the Monitoring Officer with regard to the original complaint remain, in addition Councillor Buston thanked a number of local residents who had contacted him providing support.

Councillor Buston stated that the comments made were solely in relation to the rule of law, in that everyone is treated equally, and reflected the views of local residents in Lexden and Prettygate. Councillor Buston provided a brief history of the issue at Hilly Fields that led to the comments, including contact with Colchester Borough Council and the Police.

With regard to complaint one, Councillor Buston stated that all statements made were truthful and reflective of residents of the previous ward he represented as part of his role of being a Councillor. Councillor Buston stated that throughout the

comments made he called for all to be treated equally before the law with no exceptions.

With regard to complaint number two, Councillor Buston stated that whilst no official advice or warning was given, no advice was required. Any comments made were not directed to whole communities or groups, only those individuals who had broken the law or treated residents with disrespect. Councillor Buston stated that had the police taken a keener interest then these charges would have been against the individual and not a group. Comments made directly refer to conversations had, and therefore Councillor Buston believed that he complied with the Members Code of Conduct.

Councillor Buston also stated with the language used, he could not see anywhere where he had unlawfully discriminated against anyone; individuals break the law and membership of a group does not entitle them to do this.

Councillor Buston also highlighted that he fully supported the Council motion to help support Syrian refugees in Colchester, and that racism, hate crime and xenophobia had no place in the UK.

Councillor Buston concluded by stating that there was not a justification for the complaint as he was fulfilling his role as an elected Councillor. No part of the e-mails or interviews could be interpreted as breaching equality law or protocol, and he was not aware that anyone other than Councillor Bourne had complained. He requested that the Committee determine that conduct did not potentially amount to a breach of the Code of Conduct. In addition Councillor Buston formally requested the total cost of each traveller site in Colchester, including the legal proceedings, clean up and repairs be furnished to full Council.

Committee Discussion

Councillor Pearson invited members of the Committee to make statements on the report and the information that had been provided.

Councillor Hazell stated that she has known Councillor Buston for a number of years and did not believe that he would stigmatise any group in the community; Councillor Buston was reflecting the views of his residents. Councillor Hazell stated that she believed that Councillor Buston had no case to answer; comments underneath the online article were views of residents who were not happy with the situation.

Councillor Chillingworth stated that the Have Your Say speakers had provided a view of how residents feel about this issue. Councillor Chillingworth did not believe that any illegal action had been undertaken by Councillor Buston, and that he would not in any way encourage any hate or racism. Councillor Chillingworth stated that Councillor Buston was highlighting the incidents that had occurred on the Hilly Fields site, and did not use extreme or unlawful language. With regard to the press article these were reflecting the views of the local residents, and not inciting fear in

residents. Councillor Chillingworth stated that he believed that no further action will be necessary. Councillor Chillingworth also suggested that the Borough should consider having a transit site as this would help to prevent these situations from occurring.

Councillor Barlow stated that it is difficult to divorce the comments regarding the complaint, from comments on the incident that happened on Hilly Fields. Councillor Barlow stated that Councillor Buston's wording led to misinterpretation, and that Councillors should take care of the language that they have used. Councillor Barlow also stated that whilst there could be a breach of the Members Code of Conduct, he was not convinced that an investigation would be in the public interest. Councillor Barlow suggested that a recommendation be made to Cabinet to hold a private meeting between Colchester Borough Council and Essex County Council Councillors and Officers, Essex County Council, Essex Countywide Travellers Unit and the Police to share information and provide a greater understanding of the current situation in Colchester.

The Committee received advice from Barbara Pears, Independent Person; Barbara Pears stated that whilst the case was complex she did not believe that it warranted a further investigation as Councillor Buston was doing the best for his residents.

Councillor Pearson commented on points made by those who spoke at the meeting; Councillor Pearson highlighted that any attempt to trespass on public or private land causes immediate distress. These are matters for the Police and authorities to deal with, if the Police do not provide a suitable solution Councillors are able to take that up with the Police in different means. Councillor Pearson also highlighted that in working in the criminal justice sector, there is no evidence to suggest that members of the travelling community are any more or less likely to be prosecuted than other members of the community. Councillors have a responsibility to the community, and need to be mindful of the whole community they represent and set an example.

RESOLVED that;

- a. Both complaints merit no further investigation.
- b. *RECOMMEND* to Cabinet for consideration that a private meeting between Colchester Borough Council Councillors, Colchester Borough Officers, Essex County Council, Essex Police and the Essex Countywide Traveller Unit be held to share information and provide an update on the situation within Colchester.