

STANDARDS COMMITTEE

27 SEPTEMBER 2017

REPORT OF THE MONITORING OFFICER

A.2 OUTCOME OF INVESTIGATION – FAILURE TO COMPLY WITH THE MEMBERS' CODE OF CONDUCT

(Report prepared by Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

In accordance with the District Council's Complaints Procedure, the Monitoring Officer is required to report the outcome of an investigation to the Standards Committee.

EXECUTIVE SUMMARY

Mr Anthony Chandler and Mr William Hones (the Complainants) submitted separate complaints alleging that the behaviour of Councillor Lis Bennison (Councillor Bennison) had breached the Members' Code of Conduct (**Appendix 1**), which was adopted by full Council on 26 November 2013 together with the Complaints Procedure.

The alleged breaches related to:

- (i) Paragraph 3.1: The Leadership Principle of Public Life;
- (ii) Paragraphs 3.2: In fulfilling the Duties and Responsibilities, a Councillor must not:
 - (b) disrespect others; and
 - (c) bully or harass any person
- (iii) Paragraph 3.4(a): A Councillor must not conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute; and
- (iv) Paragraph 3.7(a): A Councillor must comply and observe the law.

The Complaint Form completed by Mr Chandler referred to initial contact with the Monitoring Officer in 2016, regarding the alleged assault by Councillor Bennison however, no further action could be taken, at that time, under the Members' Code of Conduct whilst criminal proceedings against Councillor Bennison were being considered by Essex Police. The incident had occurred at the Clacton Airshow in August 2016, whereby Councillor Bennison whilst acting as a steward on behalf of the District Council assaulted Mr Chandler, a member of the public.

Mr Chandler contacted the Council's Monitoring Officer and confirmed that Councillor Bennison had been convicted of assault at Southend Magistrates Court on 13th July 2017. Subsequently, a Complaint Form was completed and received on 19th July 2017. A

second Complaint Form concerning the same incident was received from Mr William Hones on 25th July 2017.

On 23rd August 2017, all parties were notified of the Monitoring Officer's decision, that due to the criminal conviction it was not appropriate to take 'no further action' or seek informal resolution or mediation. However, it was not considered a detailed investigation was required, as the conviction is the outcome of criminal proceedings before the Magistrates Court. Therefore, a light touch investigation would be undertaken and referred to the Standards Committee. To carry out a detailed investigation would be an unnecessary use of resources, in both cost and time and prolong determination of this matter.

If an investigation concludes that there is evidence of a failure to comply with the Code of Conduct, the Council's Complaints Procedure at Section 7.1 provides the Monitoring Officer with the authority to obtain an informal resolution, in consultation with the Independent Person, without the need for a hearing by the Standards Committee. Consultation has also been undertaken with the Leader of the Council and Group Leader on suitable sanctions, as these are within their discretion (as per Section 8 of the Complaints Procedure).

Through the investigation, a written apology has been received from Councillor Bennison accepting that breaches of the Code of Conduct have occurred.

RECOMMENDATION

That the Standards Committee:

- (a) Notes the outcome of the investigation undertaken by the Monitoring Officer in respect of Councillor Lis Bennison;**
- (b) Agrees with the findings of the Monitoring Officer that evidence exists that there has been a breach of the Members' Code of Conduct;**
- (c) Notes the written apology contained within the body of the Report;**
- (d) Notes the comments of both Independent Persons;**
- (e) Endorses the referral to the Committee to consider the sanctions; and**
- (f) Determines what action to take in respect of Councillor Bennison, as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct.**

BACKGROUND - SUMMARY OF THE MONITORING OFFICER'S CONCLUSIONS:

In accordance with paragraph 5.5 of the Council's Complaints Procedure, at the end of the investigation, the Investigating Officer (in this case the Monitoring Officer) will produce a draft report ("the Investigation Report") and will, in all cases, send copies of that draft report, in confidence, to the Complainants and to the Member concerned, to give all parties an opportunity to identify any matters in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments on the draft Investigation Report, the report will be finalised. The Investigation Report is attached as Appendix 2 and includes the comments received back from both Councillor Bennison and Mr Chandler, nothing further was received from Mr Hones.

Section 9 of the Report contains the conclusions on each allegation of the complaints received. This includes a recommendation that evidence exists of Paragraphs 3.4(a) and 3.7(a) and the Leadership principle being compromised and in breach of the Code of

Conduct. Therefore, the matter is referred to the Standards Committee to decide upon the sanctions.

Complaint:

In fulfilling the Duties and Responsibilities, a Councillor must not:

(b) disrespect others; and

(c) bully or harass any person (Paragraph 3.2)

The Monitoring Officer, acting as the Investigating Officer concludes that there is no evidence that Councillor Bennison disrespected, bullied or harassed Mr Chandler to compromise or breach Paragraph 3.2.

Complaint:

A Councillor must not conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute (Paragraph 3.4(a)):

The Monitoring Officer concludes that a criminal conviction for assault is prima facie evidence that the Councillor's actions brought the Council into disrepute and consequently, there is evidence that paragraph 3.4(a) has been compromised and breached.

Complaint:

A Councillor must comply and observe the law (Paragraph 3.7(a))

The Monitoring Officer concludes that a criminal conviction is without doubt evidence that Councillor Bennison's actions failed to comply with the law and consequently, there is evidence that paragraph 3.7(a) has been compromised and breached.

Principles of Public Life:

In addition to Paragraphs 3.4(a) and 3.7(a) of the Code of Conduct it is necessary to revisit that elected members are required to conduct themselves in a way which is consistent with the Principles of Public Life and that *"holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs"*. Therefore, in obtaining a criminal conviction for assault, Councillor Bennison has contravened the Openness Principle of Leadership. Councillor Bennison has provided comments surrounding the incident and in effect, believes she was in tackling poor behaviour. However, slapping an individual and using violence is not a reasonable reaction of an elected member and does not promote or maintain high standards of conduct or demonstrate Leadership.

SANCTION

Councillor Bennison has through the investigation apologised for the incident, but does not acknowledge that her actions have breached the Code of Conduct. The Monitoring Officer is authorised, in consultation with one of the Independent Persons and in accordance with Section 7.1.1 of the Council's Complaints Procedure, to seek an informal resolution. However, in these circumstances, it is proportionate to refer the matter to the Standards Committee to determine whether any other sanctions are appropriate due to the fact a criminal conviction for assault has been obtained whilst acting in her official capacity at a council event.

Section 8 of the Complaints Procedure sets out what action the Standards Committee can take where a Member has failed to comply with the Code of Conduct.

- 8.1 The Standards Committee has the power to take action in respect of individual Members as may be relevant and proportionate, and necessary to promote and maintain high standards of conduct. Accordingly the Standards Committee or Sub-Committee may:-
- 8.1.1 Publish its findings in respect of the Member's conduct on the Council's website;
 - 8.1.2 Report its findings to Council for information;
 - 8.1.3 Recommend to the Member's Group Leader that they are removed from any or all Committees or Sub-Committees of the Council;
 - 8.1.4 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - 8.1.5 Instruct the Monitoring Officer to arrange training for the Member;
 - 8.1.6 Recommend to the relevant Group Leader that the Member be removed from all outside appointments to which they have been appointed or nominated by the authority;
 - 8.1.7 Recommend to the relevant Group Leader the withdrawal of facilities provided to the Member by the Council, such as a computer, website and/or email and internet access; or
 - 8.1.8 Recommend to the relevant Group Leader the exclusion of the Member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 8.2 In each circumstance, where the Member subject of the complaint is the Group Leader, appropriate alternative arrangements will be required. This will be dependent upon whether the Group has allocated a Deputy to undertake this role, involve the Group Leader directly or an independent individual or suitable alternative, depending upon the circumstances.
- 8.3 In each circumstance, where the Standards Committee or Sub-Committee recommend the Group Leaders take action, it is expected that the Group Leader will within 6 weeks of the referral to them, or as soon as reasonably practicable thereafter, submit a report back to the Standards Committee or Sub-Committee giving details of the action taken or proposed to comply with the Committee's direction.
- 8.4 The Standards Committee or Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' special responsibility allowances.

COUNCILLOR'S RESPONSE

In the response to the Monitoring Officer's decision to investigate, Councillor Bennison submitted the following statement as an apology:

"I wish to put on record my sincere apologies for any embarrassment caused to Tendring District Council or grievance to the people of Clacton resulting from my conviction for an assault, taking place at the 2016 Clacton Airshow.

On that day, there were no police nor officials near to my brochure selling point and, therefore, as a quasi-representative of authority I felt obliged to try to stop a man dangerously driving at speed so very close to spectators. I had to make an

immediate decision of action to save lives, including those of very young children. Memories of very recent terrorist murders of the innocent by a man in Nice careering a vehicle into crowds also entered my mind. Having had no police nor crowd control training, I did what I thought necessary to stop this current danger. It seems that I was unintentionally over-zealous.

Regrettably, an altercation took place with the man, Mr Chandler, but only over a matter of a few seconds, during which time he punched me in the face and used loud, disgusting, threatening language and my hand accidentally touched his face. All I had tried to do was prevent injury or worse to spectators at our Airshow.

For this I was prosecuted for assault but, unaccountably, Essex Police have taken no action whatsoever against Chandler.

In his judgement, the District Judge said Chandler drove in a thoroughly dangerous manner and said he admired me for taking action. He called Chandler a 'boorish bloke' and a 'boorish oaf' and found that he had assaulted me and had thought of nobody's safety. He sentenced me to an Absolute Discharge, strongly stating that there would be no award for prosecution or victim costs. The Judge also strongly criticised the CPS for bring this prosecution and could not conceive why Chandler was not prosecuted for careless driving, threatening behaviour and assault on me.

I would add that he and my barrister advised that this sentence immediately became a spent conviction. I would ask you to read the attached judgement transcript, together with the Section 44 OPA 1861 referred to in the Judge's summing up, to confirm all that I state, and accept newspaper reporting for what it is: wilful journalistic misrepresentation designed to sell newspapers, using the familiar witch-hunt of public bodies and their personnel.

I hope this helps you in your deliberations and I reiterate my deep regret for any hurt to the Council or local residents, no less of course than for the terrible anguish caused to myself and my family. I wish never to be placed in that position again when representing the Council in any way.

As part of any Code of Conduct investigation, it is necessary that the allegations are put to the member who is the subject of the complaint to respond to. Whilst the apology was received, despite being provided with a further opportunity to respond specifically to the complaints, Councillor Bennison did not provide an express admission as to whether the Code of Conduct had been breached. Cllr Bennison:

- believes that her actions demonstrated that she was tackling poor behaviour;
- denies being disrespectful, harassing or bullying;
- denies that neither her office or that of the Council has been brought into disrepute; and
- in respect of the failure to comply with the law, pleaded not guilty to the alleged offence and requested the Judge's summing up and the Section 44 alluded to in his summing up to be included in the report.

It is however, undisputed that a criminal conviction was obtained and the sentence was an Absolute Discharge. Nothing else remains in dispute.

During the investigation and as part of the complaints process, Councillor Bennison

requested to speak to one of the council's Independent Person, which a member who is the subject of a complaint has the right to do. In this case Mr John Wolton was allocated to Councillor Bennison, who passed on the following comments to the Monitoring Officer:

"In my opinion and I believe it would be acceptable to the general public whom I represent, is that to impose any further sanctions on Cllr Bennison would be counter-productive, and would only cause her further anxiety. Whilst waiting for the outcome of the court case has taken almost one year, I strongly believe that no gain would come to TDC and in my opinion would only further fuel the few people we have in our society who are only too willing to see the undermining of our Councillors who work extremely hard to keep Tendring in the friendly way it is perceived."

FORMAL CONSULTATION WITH THE INDEPENDENT PERSON

Clarissa Gosling, one of the Council's Independent Persons has responded

"Thank you for sending the details about this case which you had told me earlier might arise. I would like to make the point that living near Bury St Edmunds I had not seen any newspaper reports in your local paper that are referred to.

There is a great deal of detail involved and justifications given for actions by both sides, but I have tried to boil it down to the actual action complained of: that Councillor Bennison slapped Mr Chandler in the face when he swore at her.

She describes this as 'my hand accidentally touched his face' and her statement blurs over whether he hit her first. He states that 'she slapped me over the right side of my face'. The Magistrate's summing-up said that she slapped him and this was seen by two of the staff. Because of this she received the conviction.

*It is my view, acting as an Independent Person, that initiating **any** violent action is not justified unless it is to prevent imminent harm to another. It appears from the papers I read that Councillor Bennison's action in slapping Mr Chandler was not the only way to prevent driving that endangered the public, but happened because she was angered by being sworn at.*

Councillor Bennison requested that the judge's comments be included, but I have not commented on Mr Chandler's actions in general. I do not believe my sympathies on either side on the driving and general behaviour issues are relevant, as in every circumstance adults should be have the self control to keep dispute verbal not resort to the physical. This should be demonstrated particularly by leaders in the public eye setting an example of dignity and restraint.

Councillor Bennison was clearly acting in her official capacity, wearing a badge and t-shirt, there seems to be no dispute about this, this would have been plain to Mr Chandler and members of the public who witnessed these events. It does not appear however that Mr Chandler was intimidated by her official position. Thus though she did initiate a violent action by slapping him, 'bully or harass' would imply an attack on a weaker from the stronger, and this does not seem to be the case either physically or emotionally.

When acting in an official capacity, Councillor Bennison used physical aggressive action in response to verbal abuse, this is not edifying and in my view does bring her and the Council she represents into disrepute. The force of the action is not important it is a

precedent no one would wish followed privately or publically.

The fact that this led to a criminal conviction has drawn more public attention to the unfortunate event, confirming the facts. I am not sure that a criminal conviction per se brings a councillor into disrepute: though 'a councillor must comply and observe the law' seems to imply that. There are many laws on the statute book and motives for breaking them and the public might consider some more reputable than others.

From the papers I have read, I do not believe it was necessary to use physical violent action in response to the bad language and 'dangerous driving behaviour' Councillor Bennison reported. I am sorry that her apology did not acknowledge this crucial point, even in retrospect, and in my view this lack regret about her actions reflects badly upon her."

APPENDICES

- Appendix 1 – Code of Conduct and Complaints Procedure
- Appendix 2 – Investigation Report dated 18th September 2017 together with enclosures.