

**Tendring District Council
Monitoring Officer Investigation Report**

***(In accordance with the Council's Complaints Procedure
– alleged breach of the Members' Code of Conduct)***

Report date: 18th September 2017

**Lisa Hastings
Monitoring Officer
Head of Governance and Legal Services
Tendring District Council**

1. INTRODUCTION & BACKGROUND:

- 1.1 I am the District Council's Monitoring Officer and Head of Governance and Legal Services.
- 1.2 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.
- 1.3 Tendring District Council adopted the Members' Code of Conduct in November 2013.
- 1.4 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.
- 1.5. The Complaint Form completed by Mr Chandler referred to an email sent to the Monitoring Officer in 2016, which was the initial contact 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.
- 1.6 On 17th July 2017, 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.

- 1.7 A second Complaint Form concerning the same incident was received from Mr William Hones on 25th July 2017.
- 1.8 On 19th and 25th July 2017, acting as the Monitoring Officer for Tendring District Council, I wrote to Councillor Bennison, providing copies of the respective complaint forms and requesting comments to the allegations of a potential breach of the Code of Conduct, as I was obliged to consider this aspect further. In accordance with the Complaints Procedure, 15 working days are provided for responses to be received.
- 1.9 On 23rd August 2017, all parties were notified of my decision as Monitoring Officer, 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 referral 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.

2. SCOPE OF THE INVESTIGATION:

- 2.1
 - (a) Whether Councillor Bennison acted in an official capacity?
 - (b) Whether the criminal conviction proves there has been a breach of the Code of Conduct?
 - (c) If there is evidence of a breach of the Code of Conduct, which paragraphs have been contravened?
- 2.2 Section 5 of the Complaints Procedure sets out how an investigation is conducted and under Section 5.6, the investigation report must contain a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct. Annex E of the Complaints Procedure sets out the Investigation Procedure.

2.3 When providing the parties with my Decision Notice, I informed them that my intention was not to conduct interviews, unless I received a specific request to do so. However, the parties were invited to provide any additional comments they wished to submit as part of the light touch investigation to ensure that I have gathered all the evidence.

2.3 If the 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 without the need for a hearing by the Standards Committee.

3. INTERVIEWS:

3.1 Due to the fact that the conviction is an outcome of the criminal proceedings in the Magistrates' Court, the only matter which required determination is whether that conviction proves there is a failure to comply with the Members' Code of Conduct. Therefore, no individuals have been interviewed through this investigation, although as set out in 2.3 above the parties were invited to request an interview if they wished to provide any additional information. Councillor Bennison, requested that the Judge's summing be included within the report to the Standards Committee together with an extract of Section 44 of the Offences Against the Person 1861. Mr Hones wanted to ensure all aspects of his complaint would be considered within the investigation. No further information was supplied by Mr Chandler.

4. DOCUMENTATION:

4.1 I have requested and/or been supplied with the following key documents. This is an exhaustive list of all the documents that I have considered:

- a. Complaint Forms dated the 19th & 25th July 2017 (Appendix A & B);
- b. Email sent in September 2016 from Mr A. Chandler being the initial contact regarding the assault (Appendix C);

- c. Written responses from Councillor L Bennison dated 27th July and 25th August 2017 (Appendix D);
- d. Notes of the District Judge's reasons received from the Magistrates' Court (Appendix E) plus a note referring to Section 44 of the Offences against the Person Act 1861 (not enclosed as ruled out by the District Judge as irrelevant); and
- e. Monitoring Officer Decision Notice issued to all parties (Appendix F).

5. PROCEDURAL MATTERS:

Was Councillor Bennison acting in an official capacity?

- 5.1 This is clearly the case. Section 2.2 of the Members' Code of Conduct applies:
- (a) Whenever a Councillor is present at a meeting of the Council; or
 - (b) Whenever they act, claim to act or give the impression they are acting in the role of a Member, to which they are elected or appointed; or
 - (c) Whenever they act as a representative of the Authority.
- 5.2 Councillor Bennison was acting a steward on behalf of Tendring District Council at its Air Show in Clacton in August 2016. In addition, Councillor Bennison was wearing an identity badge as well as a t-shirt which would have identified her as a steward.

The Standard of proof

- 5.3 The civil standard of proof is applicable to this matter (on the balance of probabilities).

The Code of Conduct

- 5.4 The Code of Conduct applicable to this investigation is that adopted by the District Council in November 2013.

Independent Persons

- 5.5 As part of any investigation, the Councillor who is the subject of the complaint has the opportunity to speak to an Independent Person as part of the process, in accordance with the Independent Person Protocol contained within the Council's Constitution. If this opportunity is taken, a different Independent Person will be

consulted by the Monitoring Officer. The Independent Person allocated to the Councillor is able to provide their thoughts and comments to the Monitoring Officer to take into account, but it does not form part of the investigation. If such comments are received, they will be provided to the Standards Committee in the covering report.

6. CONVICTION & SENTENCE:

- 6.1 It is not disputed that Councillor Bennison has received a criminal conviction for assault against Mr Chandler at Southend Magistrates Court on 13th July 2017. This was the outcome of a criminal prosecution which concludes in a judgement that the defendant is guilty of the crime charged. Consequently, it has not been necessary to investigate the facts surrounding the incident, as the criminal conviction is evidence that Councillor Bennison was guilty of assault as determined by a District Judge in a court of law. The Judge's reasons for the decision has been captured in a note compiled by a court official and are attached to the report as Appendix E.
- 6.2 The sentence attached to the conviction was an 'Absolute Discharge', which means no further action is taken, since either the offence was very minor, or the court considers that the experience has been enough of a deterrent, however the offender will receive a criminal record.

7. EVIDENCE GATHERING:

- 7.1 As part of the Complaints Procedure, any Councillor the subject of a complaint has the opportunity to respond to the allegation when it is initially made. The initial response prior to the investigation commencing is contained within the Decision Notices dated 23rd August 2017 (Appendix F).
- 7.2 Councillor Bennison has not been interviewed however, confirmed her during a telephone conversation in which procedural matters were being clarified, Councillor Bennison confirmed her understanding and acceptance as to why it was necessary for a further investigation to be undertaken by the Council's Monitoring Officer in accordance with the Council's Complaints Procedure. It was confirmed the

investigation related to whether by virtue of the criminal conviction Councillor Bennison had failed to comply with the Members' Code of Conduct.

- 7.4 The Complainants have not interviewed and did not wish to provide any additional information to be taken into account, other than that which was contained within their complaints.
- 7.5 I indicated to all the parties that if they wished to provide me with any further material during the investigation stage they could do so.
- 7.6 In the response 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.

Agreed facts and Facts in dispute

8.1 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, harassment 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.

9. PARAGRAGHS OF THE CODE OF CONDUCT

9.1 Complaint: Alleged breach of Leadership Principle of Public Life (Para 3.1);

9.1.1 The Leadership Principle of Public Life states "*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*". This is one of 7 Principles of Public which all elected members of Tendring District Council shall have regard to when conducting themselves in their official capacity.

9.1.2 For the Code of Conduct to be breached it is necessary to look at the Rules of Conduct set out in paragraphs 3.2 to 3.7. The Principles of Public Life exist as underlining principles to the rules therefore whether Leadership has been compromised will be revisited after consideration of the remaining subsections of paragraph 3 of the Code, referred to in the complaints.

9.2 **Complaint: In fulfilling the Duties and Responsibilities, a Councillor must not:**
(d) disrespect others; and
(e) bully or harass any person (Paragraph 3.2)

9.2.1 'To disrespect others' requires demonstration of a lack of respect and at first, it would be reasonable to assume that a conviction for assault is evidence of being disrespectful to the individual. However, the reasons given by the District Judge in his decision are relevant because the Judge takes into account the evidence of the witnesses before passing judgement. The note of the proceedings confirms he found that the member of public had used unpleasant language prior to the assault. Respect is to show consideration for each other.

9.2.2 'To bully' is to intimidate a weaker person and again having reviewed the District Judges reasoning, and there was no evidence that Mr Chandler was intimidated by Councillor Bennison. 'Harassment' requires action to be continuous and this was clearly a one –off incident.

9.2.3 **Therefore, I would conclude that there is no evidence that Councillor Bennison disrespected, bullied or harassed Mr Chandler to compromise or breach Paragraph 3.2.**

9.3. **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)):**

9.3.1 Mr Hones alleges that any reasonable person would clearly believe that Councillor Bennison has brought both the office of the Member and the Authority into disrepute. I have to agree with this statement, an elected member receiving a criminal conviction of assault for an incident which occurred at a Council event will no doubt

have a detrimental impact on the reputation of the Council and Councillor Bennison herself. I have read the Councillor's response to the allegations and the apology but the fact remains a member of the public was slapped by an elected member whilst acting in an official capacity representing the District Council.

9.3.2 Therefore, as Monitoring Officer I have to conclude 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.

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

9.4.1 There is no dispute that the law has not been complied with, as a criminal conviction for assault was received. I have taken into account the Judge's reasons in his decision and the sentence however, to obtain a conviction the Judge has decided that the law was breached, which falls foul of the Members' Code of Conduct

9.4.2 Therefore, as Monitoring Officer I have to conclude 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.

10. CONCLUSIONS

Complaint:

10.1 I have already found that evidence exists to support findings that Councillor Bennison's criminal conviction for assault brings both her and the Council into disrepute and that her behaviour failed to comply with the law, being breaches of the Code of Conduct.

10.2 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 be 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. I have read Councillor Bennison’s comments surrounding the incident and in effect, believed she was in tackling poor behaviour however, slapping an individual is not a reasonable reaction of an elected member and does not promote or maintain high standards of conduct or demonstrate Leadership.

Sanction:

10.1 It must be noted that Councillor Bennison has through the investigation apologised for the incident. Although, I am 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, I believe that 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 has been obtained.

11. CONSULTATION WITH AN 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".

12. OBSERVATIONS

12. In response to my draft report I received a letter(s) from the Complainant(s) and from Councillor Bennison. I will set out a summary of the points made:

(a) The Complainant(s):

(i) Mr Chandler:

- *After reading through the report I am contacting you as I am disappointed by the constant accusations about myself made by Councillor Bennison. Councillor Bennison has made claims I was speeding and trying to run down families and young children with my vehicle and that she was assaulted by me. I have held my driving licence for fifteen years and I have never had a driving conviction or any penalty points on my license and I am a safe and careful driver.*
- *As I explained to the Court, Pier Gap is a short dead end road not a motorway, and the road was open to vehicles there were others parked on the road and on the Pier. On the day of the air show there was thousands of families and people attending the air show, if someone was trying to run down families there would of been an immediate response from the police and hundreds of witnesses and I would of been arrested and quite rightly so.*
- *There was other witnesses on the day who saw Councillor Bennison approach my stationary vehicle and slap me across the face.*
- *Since that day even after being found guilty of assaulting me and admitting her actions to the attending police officers, Councillor Bennison has shown no remorse for her actions on the day towards me.*
- *In Councillor Bennison's apology letter to the Council I read how a father dropping his children off for a family event was compared to the terrible terrorist atrocities which happened in France in 2016 which I feel is highly disrespectful to all those sadly affected by what happened in France and quite inappropriate.*
- *Our police and court services in this country do not arrest and prosecute people for no reason, if there was any truth to these claims then I would of been the person arrested and charged.*

(b) Councillor Bennison:

- I have no further comments to make

- 13.** In response to these observations, I have nothing further to add for the purposes of the undertaking the investigation, other than to state that the criminal proceedings would have related to Councillor Bennison as an individual and the Code of Conduct applies to elected members acting in public life, who are under a statutory duty to promote and uphold high standards of conduct..

Lisa Hastings,
Investigating Officer,
18th September 2017