

BRIGHTON & HOVE CITY COUNCIL

STANDARDS PANEL

10.00am 6 OCTOBER 2014

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors: Lepper, Littman and A Norman

Independent Persons & Co-opted Members: Dr David Horne

PART ONE

1 PROCEDURAL BUSINESS

1a Declaration of Substitutes

1.1 There were none.

1b Declarations of Interest

1.2 There were none.

1c Exclusion of the Press and Public

1.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

1.4 RESOLVED - That the press and public not be excluded from the meeting during consideration of Items 2 and 3.

2 HEARING OF AN ALLEGATION THAT A COUNCILLOR HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT FOR MEMBERS - CASE BHC-015722

2.1 The Chair welcomed everyone to the meeting and introduced the Panel Members. The Chair confirmed that he was the Independent Member of the Panel and as such would Chair the hearing. Although he was on the Panel his role was to Chair the hearing and not to vote on the decision. The Chair noted that there were two items to be considered, and

each of those would be dealt with separately. He then outlined the process for the two hearings. The Investigating Officer would present their report, and then the Panel and Councillor Duncan would have the opportunity to raise any questions. Councillor Duncan would then have the opportunity to make any submissions to the Panel, and then the Panel and the Investigating Officer would have the opportunity to put questions to him. There would then be an opportunity for the Investigating Officer and Councillor Duncan to make a final submission. The Panel would then withdraw from the meeting to deliberate and reach any decisions on the findings of the report before returning and declaring their decision. If the Panel found that there had been a failure to comply with the Code of Conduct for Members, Councillor Duncan would then be invited to make representations with regard to the sanctions (if any) that the Panel may impose. The Panel would then once again go into recess to consider possible sanctions. The Panel would then return to state their decision.

The Chair invited the Investigating Officer to outline their report in regard to case BHC-015722.

- 2.2 The Investigating Officer stated that this matter related to a tweet posted by Councillor Duncan on 16 June 2014. The tweet read *'Blasphemous 7yo wants 'Islam book' to press flowers in (it's big and heavy). Should I stone her to death when I get home from work?'*. The tweet had been made at a time when members of the BME and Muslim communities, Senior Council Officers, the Police, and Home Office were discussing ways of reducing the likelihood of young Muslim men (and women) from the community going to Syria to fight. Mr S Choudhury, in his capacity as President of the Brighton District Bangladeshi Shomity, complained to the Council that as a Muslim he found the tweet to be deeply distasteful and hurtful to himself and other Muslims. A petition signed by 34 members of the Bangladeshi community complaining about the tweet was later shown to the Investigating Officer. Mr Choudhury said that he felt that the tweet reinforced the view that Islam was a violent religion when love and prosperity were at the centre of its teachings. He said that there was no reference in the Qur'an to stoning a child to death and was horrified that Councillor Duncan should infer that to be the case. In Islam a child was seen as flower and therefore pressing a flower between the pages of the Qur'an gave rise to the suggestion that Islam wished to suppress children and make life unbearable for them. He said that he felt that the comments were not befitting of a Brighton and Hove City Councillor and did more to divide the community than to bring people together. The Investigating Officer said that in response to the complaint Councillor Duncan had removed the tweet, and said that he hadn't intended to offend or upset anyone nor to divide communities and create hate and unrest. He said he did not believe that Islam was a violent religion, and that his tweet was aimed at a small minority of extreme adherents of Islam who practised violence in the name of their religious beliefs. He said his tweet related to an actual child and that he was not referring to the Qur'an but to another book called Islam: Art and Architecture.
- 2.3 The Investigating Officer said that the facts of the complaint weren't in dispute, but the question for the Panel was whether there had been a breach of the Council's Code of Conduct for Members. The Investigating Officer suggested there had been a breach of Paragraph 3(1) *'You must treat others with respect'*, and Paragraph 5 *'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'*.

The Chair invited questions to the Investigating Officer.

- 2.4 Councillor Norman asked for confirmation that Councillor Duncan had had access to the report, and was advised he had. Councillor Norman then asked if Councillor Duncan had had the opportunity to comment on the complaints, and was referred to Appendix 3 to the report which showed his response.
- 2.5 The Chair referred to paragraph 5.6 of the report and asked if the Investigating Officer had been aware that the reference to the 'Islam book' was not a reference to the Qur'an. He said that it wasn't until the communication from Councillor Duncan (appendix 3).
- 2.6 Councillor Duncan asked whether, as there had been reference to the timing of the tweet, the Code of Conduct had different meanings at different times. The Investigating Officer said that the Code of Conduct was constant, and had been agreed and signed by members when they were elected to become a Councillor. A statement may have a greater or lesser impact depending on local or national events that were occurring at the time of the statement.
- 2.7 Councillor Duncan said that when he sent the tweet he had not been referring to the Qur'an and therefore the complaint had been based on a falsehood. The Investigating Officer said that it had been believed to be a reference to the Qur'an. He said that Mr Choudhury had clearly perceived it as being a reference to the Qur'an. In any event the reference to stoning a child to death was distasteful.

The Chair invited Councillor Duncan to make his submission

- 2.8 Councillor Duncan stated:
The facts aren't in question at all. I made a couple of jokes in public which offended some people. It wasn't my intention to cause offence, but offence was nonetheless caused, offence for which I promptly apologised. No, it is the law itself which is in question today. It's a very simple question: do the provisions of the Code of Conduct for members defined in this Council's constitution in accordance with the Localism Act 2011 take precedence over the freedoms guaranteed in the European Convention of Human Rights, as incorporated into UK law in the Human Rights Act 1998? That is the question for today's panel to decide. Article 10 of the European Convention of Human Rights allows free expression without interference by public authority, except in well defined circumstances. These must be prescribed by law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. Both are necessary for an exception to be lawful under the terms of the Convention
The Code of Conduct for Members is prescribed by the Localism Act 2011, so the first of these conditions is clearly met. Is the second? There are six possible reasons for any restrictions of Article 10 being necessary in a democratic society and therefore lawful:
1. In the interests of national security, territorial integrity or public safety. None of these were impacted by either of tweets in question. Therefore this condition does not apply.
 2. For the prevention of disorder or crime. It has not been alleged that either of the tweets in question contributed in any way to crime and disorder. Therefore this condition does not apply.

3. For the protection of health or morals. It has not been alleged that either tweets in question led to any negative impact on public health or public morality. Therefore this condition does not apply.
4. For the protection of the reputation of others. This is the question on which your legal judgement will turn, I imagine. Could my tweets have caused damage, in a lawful sense, to the reputation of any others? I would argue that this has been impossible, since no other party was identified in either of the tweets in question, identification being a key factor in the legal definition of reputational damage from which legal protection is necessary. If no individual has been named, it is impossible to protect their reputation. What of the Rights issue. As paragraph 5.32 of Item 2 makes clear, the tweet in question (Item 2) caused offence, but 'not being offended' is not a right as defined in law. The report you are considering today makes no specific allegations that the tweet sought to limit the enjoyment of the rights of others in any other way. Similarly paragraph 6.29 (Item 3) accurately recounts that the tweet in question caused 'anger' and 'disgust' but 'not being made to feel anger or disgust' is not a right as defined in law. Again, the report you are considering today makes no specific allegations that the tweet (Item 3) sought to limit the enjoyment of the rights of others in any other way. Therefore this condition does not apply.
5. For preventing the disclosure of information received in confidence. It has not been alleged that either of the tweet in question led to the disclosure of any information received in confidence. Therefore this condition does not apply.
6. For maintaining the authority and impartiality of the judiciary. It has not been alleged that either of the tweets in question led to the disclosure of any information received in confidence. Therefore this condition does not apply.

Since none of the six possible reasons for any restriction of Article 10 being necessary in a democratic society and therefore lawful apply, it would appear that the second condition is not met, and therefore Article 10 of the European Convention on Human Rights does indeed protect me from any interference by public authority in this case. Since a finding that the Code of Conduct for Members has been breached would indeed constitute interference by public authority, it would appear the panel has no option but to reject the recommendations contained in today's report, and find that the Code of Conduct for members has not been breached, unless it takes the view that the Code of Conduct legally 'trumps' the protection of the European Convention on Human Rights. This is an important point of law, and I wish members of the Panel well in their deliberations. However, I wish at this stage to state clearly my intention to lodge a formal appeal, in order to have this point of law clarified by a higher authority, should the Panel find otherwise.

The Chair invited questions to Councillor Duncan.

- 2.9 Councillor Lepper asked for confirmation that he had signed the Code of Conduct, to which Councillor Duncan said he couldn't remember but believed he'd signed it when he was first elected in 2007. Councillor Lepper then asked if he had understood what he was signing, to which he replied he couldn't remember. Councillor Lepper said the Council always provided training on Code and asked if he had attended, to which he said that he couldn't remember. Councillor Norman said although he may not recall signing it and what the Code said, he would have been provided with a copy. Councillor Duncan accepted he would have been given a copy but noted that it was not in the paperwork for the hearing.

- 2.10 Councillor Littman noted that there was a question over which book the tweet referred to, but asked why the word 'blasphemous' had been used. Councillor Duncan said it was an off the cuff remark. Councillor Littman suggested that using the 'blasphemous' and 'Islam book' in the same sentence could lead people to think it was a reference to the Qur'an. Councillor Duncan said that people could interpret it how they wished. Councillor Littman asked whether, in retrospect, he felt it had been wise to issue the tweet. Councillor Duncan said that as a result he had had his whip removed and had become unemployed and that wasn't a situation he wanted to be in. Councillor Littman then asked if he felt that making a reference to a child and pressing flowers was culturally insensitive. Councillor said that he wasn't aware that children were seen as 'flowers'.
- 2.11 The Chair asked if he felt that his tweet 'treated others with respect'. Councillor Duncan said that it hadn't occurred to him at the time, but accepted that it was capable of being misunderstood and that was why he had removed the tweet.

The Chair invited the Investigating Officer and Councillor Duncan to make their final submissions

- 2.12 The Investigating Officer said he had no further comments.
- 2.13 Councillor Duncan reiterated that the issue was whether the Code of Conduct took precedence over the freedoms guaranteed in the European Convention of Human Rights, as incorporated into UK law in the Human Rights Act 1998.
- 2.14 The Chair said the Panel would move to Item 3, and then go into recess to consider the recommendations for both Item 2 and Item 3.
- 2.15 The Panel reconvened after considering both Items 2 and 3. The Chair stated the following in response to both Item 2 and Item 3:

The Panel considered the allegation that Cllr Duncan failed to comply with the council's Code of Conduct for Members, specifically paragraphs 3.1 'you must treat others with respect' and paragraph 5 'you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

The Panel noted that the facts of case were not in question, and that both the tweet and the identity of the tweeter were in the public domain. The Panel was satisfied that it was reasonable for members of the public to assume that by issuing his tweet, Councillor Duncan was not acting solely as a member of the public but as a councillor, and therefore that the Code applied.

The Panel noted the level of complaint, especially among the Islamic community, which the tweet of 16 June 2014 had generated.

The Panel noted Councillor Duncan's comments that in his tweet he was not referring to the Qur'an. The Panel felt, notwithstanding Councillor Duncan's assertion that he was not referring to the Qur'an but a book on Islamic art and architecture, that any reasonable person would assume the tweet was in fact referring to the Qur'an.

The Panel recognised that had the tweet been made at any time, it would have been capable of being disrespectful and of bringing the council into disrepute. However, the timing of the tweet was an additional factor as it happened at a time when members of the BME and Muslim communities, senior council officers, the Police, and Home Office were discussing ways of reducing the likelihood of young Muslim men from the community going to Syria to fight.

The Panel carefully considered Councillor Duncan's statement made during his submissions, in particular his contention that his right under Article 10 of the Human Rights Act took precedence over the council's Code of Conduct; and that for the Panel to find a breach of the Code would breach his right to freedom of expression. The Panel noted that Councillor Duncan's written response to the complaint, as conveyed during his submissions at the Hearing itself, did not in any way refer to his right to freedom of expression. This argument was only raised following publication of the papers for the hearing.

The Panel had access to legal advice during its deliberations. The council's lawyer, on behalf of the Monitoring Officer, advised that whilst under the Human Rights Act it is unlawful for a public authority to act in a way which is incompatible with a Convention right, Article 10 – the right to freedom of expression – is a 'qualified right'; further, the council's Code of Conduct is framed within the ambit of Article 10(2) which in certain circumstances makes it lawful to interfere with a person's Article 10(1) rights.

The Panel was advised that the extent of any such interference must be proportionate and engage one or more of the justifications set out in Article 10(2). The Panel was further advised that under case law, political expression or the expression of a political view attract a higher degree of protection under Article 10, whereas expression in personal or abusive terms does not attract the same higher level of protection. The limits of what is acceptable is wider where the subjects of the expression are politicians acting in their public capacity, since politicians lay themselves open to close scrutiny of their words and deeds and are expected to possess a thicker skin and greater tolerance than ordinary members of the public. In the view of the Panel, Councillor Duncan's tweet was directed to a section of the community and not at a fellow politician.

Furthermore, one of the permitted justifications for restriction of Article 10 rights is the protection of the reputation or rights of others. The Panel felt that the reputation of both the local Muslim community and the council had been impugned by the tweet. In light of this, the Panel considered that Councillor Duncan's tweet did not enjoy the unqualified protection of Article 10(1).

RESOLVED – That Councillor Duncan:

- (a) failed to comply with paragraph 3(1) of the council's Code of Conduct for Members ('You must treat others with respect'); and
- (b) failed to comply with paragraph 5 of the council's Code of Conduct for Members ('You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute').

- 2.16 The Chair then invited Councillor Duncan to make any representations with regard to any sanctions the Panel may make.
- 2.17 Councillor Duncan noted the Panel's decision, and said that he believed there should only be two possible sanctions; the law of the land and the ballot box. Further, if the Panel did decide to impose any sanctions those should not be applied until the end of the appeal process.
- 2.18 The Panel noted Councillor Duncan's comments and went into recess to consider possible sanctions.
- 2.19 The hearing reconvened and the Chair read out the following statement:

Having heard Councillor Duncan's representation as to sanctions he considered appropriate in light of the Panel's findings, the Panel considered the range of sanctions available to it and determined the following in respect of both breaches of the Code of Conduct.

Firstly, that Councillor Duncan be subject to formal censure by this Standards Panel for failing to meet the standards of behaviour required of all councillors under the Code of Conduct for Members, specifically for failing to treat others with respect and bringing the council into disrepute; and that this censure be made publicly available and reported to the meeting of full Council on 23 October 2014.

Secondly, that, in light of this censure and the Panel's determination that it is inappropriate for someone who has repeatedly brought the council into disrepute to represent the council in the role of Chair or Deputy Chair of any committee, a recommendation be made to the meeting of full Council on 23 October 2014 that he be removed for the remainder of this municipal year from the role of Deputy Chair of both the Licensing Committee (Licensing Act 2003 Functions) and the Licensing Committee (Non Licensing Act 2003 Functions).

- 2.20 The solicitor to the meeting explained the appeal process and stated:

There is a right of appeal for the subject Member and any of the complainants against the decision of the Standards Panel. If any of these persons wishes to exercise this right, they should write to the council's Monitoring Officer*, stating they wish to appeal the Standards Panel decision, with reasons for doing so. The appeal request will only be granted if one or more of the following criteria are met:

- (1) the hearing was procedurally flawed; a relevant consideration was not taken into account; or an irrelevant consideration was taken into account;
- (2) new evidence or material has arisen with a direct and significant bearing on either of the allegations;
- (3) the Panel's decision was irrational, meaning it was so unreasonable that no sensible Standards Panel, having applied its mind to the complaints, could have arrived at that decision.

A request for an appeal must be received within 10 working days of 6 October 2014.

3 HEARING OF AN ALLEGATION THAT A COUNCILLOR HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT FOR MEMBERS - CASE BHC-015726

3.1 The Chair stated that the hearing would follow the same procedures as for Item 2.

The Chair invited the Investigating Officer to outline their report in regard to case BHC-015726.

3.2 The Investigating Officer stated that this matter related to a tweet posted by Councillor Duncan on 28 June 2014. The tweet read '*Armed Forces Day has certainly brought the hired killers onto the streets of #Brighton today. Hard to explain to my son!*'. The 28 June 2014 was Armed Forces Day, and was marked in Brighton and Hove with a Freedom of the City Parade by the Princess of Wales's Royal Regiment. Between 30 June 2014 and 4 July 2014 60 complaints were received by Brighton & Hove City Council, which was the highest number of complaints received on a single matter. Of those, 33 indicated they happy to have their complaints considered through the Standards Complaints procedure and those complaints are shown in Appendix 2 to the report. On the 30th June 2014 Councillor Duncan issued an apology stating '*Apols for offence caused by tweet re soldiers on streets. Many will hav been remembering loved ones who died & was insensitive to their loss*'.

The Chair invited the questions to the Investigating Officer

3.3 There were no questions

The Chair invited Councillor Duncan to make his submission

3.4 Councillor Duncan referred to the statement he made for Item 2.

The Chair invited questions to Councillor Duncan

3.5 Councillor Littman asked if he felt 'hired killers' was an accurate description of the Armed Forces. Councillor Duncan said members of the Armed Forces were hired i.e. they were paid and they must be prepared to kill, so it was a correct description.

The Chair invited the Investigating Officer and Councillor Duncan to make their final submissions

3.6 The Investigating Officer said he had no further comments.

3.7 Councillor Duncan said he had nothing further to add.

3.8 The Chair then adjourned the meeting at 11.30am and the Panel went into recess to consider the recommendations in both Item 2 and Item 3.

3.9 The Chair reconvened the meeting at 2.05pm after considering both Items 2 and 3

3.10 The Chair stated the following in response to both Item 2 and Item 3:

The Panel considered the allegation that Cllr Duncan failed to comply with the council's Code of Conduct for Members, specifically paragraphs 3.1 'you must treat others with respect' and paragraph 5 'you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

The Panel noted that the facts of case were not in question, and that both the tweet and the identity of the tweeter were in the public domain. The Panel was satisfied that it was reasonable for members of the public to assume that by issuing his tweet, Councillor Duncan was not acting solely as a member of the public but as a councillor, and therefore that the Code applied.

The Panel noted the level of complaint, especially among the Islamic community, which the tweet of 16 June 2014 had generated.

The Panel noted Councillor Duncan's comments that in his tweet he was not referring to the Qur'an. The Panel felt, notwithstanding Councillor Duncan's assertion that he was not referring to the Qur'an but a book on Islamic art and architecture, that any reasonable person would assume the tweet was in fact referring to the Qur'an.

The Panel recognised that had the tweet been made at any time, it would have been capable of being disrespectful and of bringing the council into disrepute. However, the timing of the tweet was an additional factor as it happened at a time when members of the BME and Muslim communities, senior council officers, the Police, and Home Office were discussing ways of reducing the likelihood of young Muslim men from the community going to Syria to fight.

The Panel carefully considered Councillor Duncan's statement made during his submissions, in particular his contention that his right under Article 10 of the Human Rights Act took precedence over the council's Code of Conduct; and that for the Panel to find a breach of the Code would breach his right to freedom of expression. The Panel noted that Councillor Duncan's written response to the complaint, as conveyed during his submissions at the Hearing itself, did not in any way refer to his right to freedom of expression. This argument was only raised following publication of the papers for the hearing.

The Panel had access to legal advice during its deliberations. The council's lawyer, on behalf of the Monitoring Officer, advised that whilst under the Human Rights Act it is unlawful for a public authority to act in a way which is incompatible with a Convention right, Article 10 – the right to freedom of expression – is a 'qualified right'; further, the council's Code of Conduct is framed within the ambit of Article 10(2) which in certain circumstances makes it lawful to interfere with a person's Article 10(1) rights.

The Panel was advised that the extent of any such interference must be proportionate and engage one or more of the justifications set out in Article 10(2). The Panel was further advised that under case law, political expression or the expression of a political view attract a higher degree of protection under Article 10, whereas expression in personal or abusive terms does not attract the same higher level of protection. The limits

of what is acceptable is wider where the subjects of the expression are politicians acting in their public capacity, since politicians lay themselves open to close scrutiny of their words and deeds and are expected to possess a thicker skin and greater tolerance than ordinary members of the public. In the view of the Panel, Councillor Duncan's tweet was directed to a section of the community and not at a fellow politician.

Furthermore, one of the permitted justifications for restriction of Article 10 rights is the protection of the reputation or rights of others. The Panel felt that the reputation of both the local Muslim community and the council had been impugned by the tweet. In light of this, the Panel considered that Councillor Duncan's tweet did not enjoy the unqualified protection of Article 10(1).

RESOLVED – That Councillor Duncan:

(c) failed to comply with paragraph 3(1) of the council's Code of Conduct for Members ('You must treat others with respect'); and

(d) failed to comply with paragraph 5 of the council's Code of Conduct for Members ('You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute').

- 3.11 The Chair then invited Councillor Duncan to make any representations with regard to any sanctions the Panel may make.
- 3.12 Councillor Duncan noted the Panel's decision, and said that he believed there should only be two possible sanctions; the law of the land and the ballot box. Further, if the Panel did decide to impose any sanctions those should not be applied until the end of the appeal process.
- 3.13 The Panel noted Councillor Duncan's comments and went into recess to consider possible sanctions.
- 3.14 The hearing reconvened and the Chair read out the following statement:

Having heard Councillor Duncan's representation as to sanctions he considered appropriate in light of the Panel's findings, the Panel considered the range of sanctions available to it and determined the following in respect of both breaches of the Code of Conduct.

Firstly, that Councillor Duncan be subject to formal censure by this Standards Panel for failing to meet the standards of behaviour required of all councillors under the Code of Conduct for Members, specifically for failing to treat others with respect and bringing the council into disrepute; and that this censure be made publicly available and reported to the meeting of full Council on 23 October 2014.

Secondly, that, in light of this censure and the Panel's determination that it is inappropriate for someone who has repeatedly brought the council into disrepute to represent the council in the role of Chair or Deputy Chair of any committee, a recommendation be made to the meeting of full Council on 23 October 2014 that he be removed for the remainder of this municipal year from the role of

Deputy Chair of both the Licensing Committee (Licensing Act 2003 Functions) and the Licensing Committee (Non Licensing Act 2003 Functions).

3.15 The solicitor to the meeting explained the appeal process and stated:

There is a right of appeal for the subject Member and any of the complainants against the decision of the Standards Panel. If any of these persons wishes to exercise this right, they should write to the council's Monitoring Officer*, stating they wish to appeal the Standards Panel decision, with reasons for doing so. The appeal request will only be granted if one or more of the following criteria are met:

- (4) the hearing was procedurally flawed; a relevant consideration was not taken into account; or an irrelevant consideration was taken into account;
- (5) new evidence or material has arisen with a direct and significant bearing on either of the allegations;
- (6) the Panel's decision was irrational, meaning it was so unreasonable that no sensible Standards Panel, having applied its mind to the complaints, could have arrived at that decision.

A request for an appeal must be received within 10 working days of 6 October 2014.

The meeting concluded at 3.15pm

Signed

Chair

Dated this

day of

2014