

## MONITORING OFFICER DECISION NOTICE

### Brent Members' Code of Conduct

#### Complaints about the conduct of Councillor John Duffy

##### The complaints

On 26 June 2017, the Council's Chief Executive, Carolyn Downs, made a Members' Code of Conduct complaint about Cllr John Duffy, Kilburn Ward. The complaint alleged that Cllr Duffy had breached the general principles of conduct, in particular, integrity and leadership and breached the following general obligations:

- 4(1): You must treat others with respect.
- 4(2)(b): You must not bully any person.
- 4(2)(e): You must not make frivolous, vexatious or repeated complaints against another member or an officer of the Council.
- 5: You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.

The Code of Conduct amplifies the general principles of integrity and leadership in the following terms:

- Integrity: You should not place yourself in situations where your integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
- Leadership: You should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

The factual and evidential bases of the complaint is an email sent by Cllr Duffy on 26 June 2017 to the Chief Executive and all councillors criticising the Chief Executive. The broader context is as follows.

On 26 June 2017 at 15:01, the Chief Executive sent an email to the Mayor giving her advice regarding a request for an extraordinary meeting of the Full Council in response to the Grenfell Tower tragedy. The Chief Executive advised on the legal and constitutional rules, explained the procedure for calling an extraordinary/special meeting and set out the options and possible permutations. The Chief Executive also mentioned the member drop in session which had been arranged and suggested that the discussion of this very important topic could take place at a scheduled meeting of Full Council on 10 July 2017 - which had been in all members' diaries for some time - and that normal rules could be suspended to enable a fuller and longer discussion. The email stated that *"Clearly the decision to have the meeting before the 10/07/17 is your decision but I thought it transparent to share with all Councillors my advice to you."* Accordingly, when sending her email to the Mayor, the Chief Executive copied in all other councillors.

Shortly afterwards at 15:36, in his email reply (also copying in all councillors), the Mayor thanked the Chief Executive for her helpful advice and expressed his agreement. The Mayor, however, confirmed that: *"If 5 councillors sign a requisition asking me to call an extraordinary meeting I will consider their request very carefully before making my decision."*

Cllr Duffy initially replied by email at 16:21 (also copying in all councillors) and then re-sent his email at 16:29. In substance, the emails are virtually identical: the second email inserted a few more words which are immaterial to my decision. For ease of reference, I have reproduced below the actual content of Cllr Duffy's second email with the additions underlined.

*"The CEO behaviour is disgraceful and out of touch with reality. She says it's not her decision but clearly she is trying to manipulated the Mayor and the situation.*

*She is well aware there was more than enough members support for a special meeting but she has decided to ignore that.*

*The Labour group should not stand by while she swans off to "gold"  
(Personally I do not think they are doing a good job , the evacuation in Camden was a shambles)telling everybody else what to do , while she neglects Brent residents and thinks a bosses bulletin will suffice for our residents and local councillors Her first loyalty should be to Brent .*

*Disgraceful behaviour and what I have come to expect from this CEO who is out of touch with Brent residents and seeks to enhance her own reputation instead allowing Brent residents information".*

The reference to "gold" in Cllr Duffy's email is to the Chief Executive participating in the London-wide emergency support provided to Kensington and Chelsea Council following the Grenfell Tower fire.

Given that these email exchanges lie at the heart of this complaint, they are appended to this decision in full.

On 1 July Cllr Liz Dixon also made a complaint about Cllr Duffy email. Cllr Dixon complained that:

*"In an apparent attempt to make representations on behalf of his residents Cllr John Duffy has made a number of widely distributed disparaging remarks about the personal and professional integrity of Brent's Chief Executive, Carolyn Downs. In doing so, Cllr Duffy also publicly belittled the importance and effectiveness of London's Gold Command structure and process. While Cllr Duffy has every right to make representations, and is free to speak critically in holding Brent Council to account, on this occasion his disreputable behaviour has fallen below the expected standard and as such Labour Group Executive is taking this action. This complaint is made on the basis of comments made in the attached emails which we believe to be entirely unwarranted, defamatory, malicious and vexatious."*

On 3 July 2017, the Chief Executive also complained about a further chain of emails between Cllr Duffy and officers (and copied to all councillors) which she felt demonstrates vexatiousness. The email exchanges concern an additional briefing session arranged for Members on fire safety in Brent. In his exchanges on 29 June 2017, Cllr Duffy, amongst other things, made further critical remarks about the Chief Executive's advice to the Mayor. For example, "...it proves her strategy of kicking everything to the 11<sup>th</sup> was flawed..."; "Why did she change her mind, was it because before the ink was dry on her email stopping a special meeting the facts were becoming clear that her decision was wrong and was unravelling in front of her" and "The CEO had decided not to have a special meeting and the Mayor and some other councillors support it and now we are in a mess and we look like we have something to hide". Cllr Duffy copied all other councillors as well as other members of the Corporate Management Team into his email.

## **The response**

In his initial response to the Monitoring Officer, Cllr Duffy reaffirmed his criticisms of “Gold”. For example, *“I do not think Gold are doing a good job, you cannot make me say they are. They are useless and need to get their act together and start relating to the victims in K+C.”*

Cllr Duffy also repeated his criticisms of the Chief Executive. For example, *“The CEO made no attempt to contact me before she cancel the meeting....”*, and *“She mislead Councillors saying I had not enough Councillors knowing that I had”*.

Cllr Duffy also claimed that the Monitoring Officer was not impartial.

In a subsequent response to the Monitoring Officer, Cllr Duffy said *“I honestly do not care, what you do as I think the CEO behaviour is out of control and she believes because she wares a gold badge at meetings she is above dealing with local Councillors and residents*

*It is clearly is no use complaining about her, as it will be you who will deal with complaint. You and the CEO have sought to misuse your powers to curtail debate.”*

## **The issues**

Under section 27(1) of the Localism Act 2011, the Council has a duty to promote and maintain high standards of conduct by members and co-opted members of the Council. Enforcing the general principles and obligations set out in the Code of Conduct is key to discharging this important statutory duty.

In accordance with the Council’s complaints procedure, the Monitoring Officer carried out an initial assessment of the complaints and found that they fall within the scope of the Code of Conduct. Cllr Duffy’s emails clearly relate to Council business and ward matters and it is equally clear that he was acting in his capacity as a councillor.

My determination of the complaints are set against the following legal and political background.

Councillors are entitled to criticise officers and their decisions and, depending on the circumstances, do so publicly and robustly. Criticism does not in itself amount to bullying or failing to treat someone with respect. Councillors are also entitled to challenge officers as to why they hold their views and officers can reasonably expect to be held accountable for their views, decisions and actions. However, if criticism is a personal attack or of an offensive nature, it is likely to cross the line of what is acceptable behaviour. Similarly, unwarranted comments which undermine public confidence in the administration of local government affairs and/or impair the mutual trust and confidence between members and officers are unlikely to be acceptable.

Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour. Amongst other things, bullying behaviour attempts to undermine an individual.

When a Code of Conduct complaint concerns something a member is alleged to have said or written (as in this case), a finding of breach will only be lawful if it fully respects the important right to freedom of expression enjoyed by members of local authorities in the interests of effective local democracy.

My decision has accorded due respect to Cllr Duffy’s fundamental right to freedom of expression. This right has a long tradition in our common law and was embedded in

domestic statute law by the Human Rights Act 1998. Article 10 of the European Convention on Human Rights provides that:

*“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

*2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are 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.”*

This includes a right to express views which others may find objectionable or even offensive. Further, comments which constitute political expression attract an enhanced level of protection under Article 10. There are limits however. And the right itself is limited and not absolute which means it has to be balanced against the duty to promote and maintain high standards of conduct by members. Further, the right has to be balanced against competing rights such as the Article 8 right to private life etc. which includes the protection of the reputation of others.

### **The decision**

In accordance with the Members’ Code of Conduct Complaints Procedure, before deciding the outcome of this complaint, I consulted the Council’s Independent Person and have taken her views into account.

Cllr Duffy’s reaction to the Chief Executive’s advice was entirely without justification. The Chief Executive had stated the legal and constitutional rules accurately. And the rules had been applied correctly: at the time of writing, a request for an extraordinary meeting of Full Council had been received from 4 members only (i.e. not 5); in any event, the request had not been signed by the members and was not accompanied by a notice of the motion to be debated at the meeting as required by the constitution. The advice was balanced, set out the options and stated in clear terms that the decision had to be made by the Mayor. The advice was also given transparently.

Against that background, the allegation (which was stated twice) that the Chief Executive’s behaviour was “disgraceful” and that she was trying to manipulate the Mayor and the situation was unacceptable. As was the suggestion that “The Labour group should not stand by while she [the Chief Executive] swans off to “gold”” and the accusation that the Chief Executive “seeks to enhance her own reputation”.

Cllr Duffy’s response was an unreasonable and excessive personal attack. These comments are unequivocally and deliberately offensive, disparaging and defamatory. Although I acknowledge that the Grenfell Tower fire is an emotive issue and feelings were running high at the time, the comments I have referred to amount to an unjustified attack of a personal nature and do not concern fire safety issues.

In my view, those aspects of Cllr Duffy's email crossed the line and failed to treat the Chief Executive with respect and brought his office and the Council into disrepute. This is especially so because Cllr Duffy copied all other councillors into his email. This amounts to breach of obligations 4(1) and 5 of the Code of Conduct as well as the obligation to maintain a high standard of conduct and, in particular, the principles of integrity and leadership (see para. 3).

I am also satisfied that the email Cllr Duffy sent on 26 June 2017 in overall terms either by itself, or when read in conjunction with his email exchanges on 29 June 2017, is vexatious and unjustifiably offensive and bullying in nature. The persistent and targeted criticisms of the Chief Executive in emails which were sent to all other councillors and senior officers have no reasonable foundation, were intended to undermine the Chief Executive and have a harassing effect.

This amounts to breach of obligations 4(2)(b) and 4(2)(e) of the Code of Conduct as well as the obligation to maintain a high standard of conduct and, in particular, the principles of integrity and leadership (see para. 3).

For these reasons, I am satisfied that my findings of breach are a necessary and proportionate interference with Cllr Duffy's right to freedom of expression. The Council has an important statutory duty to promote and maintain high standards of conduct by members and the serious, deliberate and unfounded accusations of wrongdoing which Cllr Duffy repeated and disseminated to others crossed the line and amount to an unreasonable and excessive personal attack. In addition, such an attack on the Chief Executive, without consequence, could expose other officers to similar treatment.

Further, the unfounded accusations of manipulating and misleading others and acting out of self-interest and other such personal attacks do not attract the higher level of protection that political expression does. Alternatively, even if they did, the findings of breach would still be necessary and proportionate in all the circumstances.

For completeness, I note that Cllr Duffy was also disparaging about "gold" and made other criticisms of the Chief Executive being "out of touch" and neglecting Brent residents. As set out above, Cllr Duffy has a fundamental right to hold opinions on these matters and to express those opinions. As a matter of law, I do not have to agree with or approve of Cllr Duffy's comments in order to respect his fundamental right to make such comments.

Cllr Duffy has not disputed that he sent the emails the subject of the complaints under consideration. In any event, I am satisfied that there are no factual issues which need investigating before a decision can be made because the meaning of the emails which has caused offence and the context is clear. For these reasons, I have been able to conclude that there has been a clear breach of the Code of Conduct without an investigation.

### **The sanction**

I recommend that Cllr Duffy apologises to the Chief Executive within 5 working days of the end of the period for requesting a review of my decision.

This decision notice will also be published on the Council's website for 6 months and will be formally reported to the Standards Committee.

I am satisfied that these measures are proportionate to the clear and serious breaches of the Code of Conduct by Cllr Duffy.

In accordance with the Members' Code of Conduct Complaints Procedure, as far as the complainants are concerned my decision is final and there is no right of appeal or right of internal review against my decision.

As far as Cllr Duffy is concerned, he may request in writing within 10 working days of receiving this decision notice that the Monitoring Officer review my decision that he breached the Code of Conduct and/or the sanction imposed. The reasons for requesting a review must be given and any new supporting documentation provided.

**LOOQMAN DESAI**  
**DEPUTY MONITORING OFFICER, BRENT COUNCIL**

**25 JULY 2017**