

Item No. 5.	Classification: Open	Date: 10 January 2022	Meeting Name: Audit, Governance and Standards (Conduct) Sub-Committee
Report title:		Complaint LF2021-01	
Ward(s) or groups affected:		All	
From:		Doreen Forrester-Brown, Monitoring Officer	

RECOMMENDATIONS

1. To note the report of the Investigating Officer.
2. To note that the report concluded there is evidence of a failure to comply with the Code of Conduct by the subject member.
3. To note the decision of the Monitoring Officer to resolve this complaint by Local Resolution and without the need for a hearing by the sub-committee.

Summary of complaint

4. The Councillor set up a Twitter account, @SouthwarkYIMBY ('the Account'), in November 2017 through which the subject member made anonymous posts on Twitter regarding housing related issues and proposed developments in Southwark.
5. During the latter part of 2020 and in February 2021 the Councillor used the Account to post tweets directly relating to two campaigns regarding specific proposals for development on the Priory Court development and a proposed development on the Elim Estate.
6. In February 2021 the Councillor was contacted by the South London Press who stated that they believed he was behind the Account, which he admitted.
7. The Councillor then resigned from their role as Cabinet Member for Housing, issuing a written apology which was also read out at Council Assembly on 24 February 2021. The Member also referred themselves to the Monitoring Officer to determine whether there was a breach of the Code of Conduct for Members.
8. Upon becoming aware that the Councillor was behind the Account, the Complainant made his complaint. In that complaint he refers to a tweet posted on 11 February 2021 in response to tweets made by the @BallcourtGarden twitter account managed by the complainant.

9. The Complainant states the tweet was aggressive, and that the use of the word 'nimbysism' was offensive, intended to undermine the integrity of the campaign group and the Councillor's behaviour was dishonest and not in accordance with the Code of Conduct.
10. The Complainant also stated if the comments were made by the Councillor, this demonstrated behaviour contrary to the Council's Code of Conduct. A copy of the Code of Conduct is attached as Appendix 1.
11. Following consultation with the Independent Person, the Monitoring Officer instructed David Kitson, Partner at Bevan Brittan LLP as the Investigating Officer (IO) in accordance with our 'Arrangements for Dealing with Standards Allegations under The Localism Act 2011, (The Arrangements). A copy is attached at Appendix 2.

The report of the investigating officer

12. The redacted report of the IO dated 9 November 2021 is attached at Appendix 3.
13. In accordance with paragraph 27 of our Arrangements, the Monitoring Officer considered the report of the Investigating Officer and considered the report to be sufficient.

Findings of the investigating officer

14. These are detailed at paragraph 1.4 in Appendix 3 and summarised below.
15. Having carefully considered the issues, the available documentation and the information gathered by way of interviews, we have found that (albeit very finely balanced) the Code:
 - 15.1 did apply to the Councillor in relation to those tweets about Priory Court and the Elim Estate Ball Court;
 - 15.2 did apply in relation to other tweets and retweets that referred to schemes and developments in which the Councillor had been involved in his official capacity; but
 - 15.3 did not apply in relation to the residue of tweets by the Account as these were more general in nature.
16. The Investigating Officer further commented at paragraph 1.7 of his report that the tweets referring to specific developments and schemes in which the Councillor had been involved in a formal capacity (mainly retweets) are generally inoffensive and uncontroversial.
17. With reference to tweets regarding Priory Court and Elim Estate Ball Court, the content was 'at time provocative', but did not amount to a breach.
18. The Investigating Officer found that by acting anonymously there is evidence of a failure, by the Councillor, to comply with the Code of Conduct.

19. The Councillor and Complainant were provided with a copy of the report of the Investigating Officer together with a summary of the findings and recommendations.
20. In accordance with our Arrangements, the Monitoring Officer also sought the views of the Independent Person.

Recommendations of the investigating officer

21. The Investigating Officer makes the following recommendation at paragraph 1.18 of their report:

“In light of the above, we do not recommend that any further action is required. Further, we are of the opinion that this matter can reasonably be resolved without the need for a hearing, which in our view would not be in the public interest nor a beneficial use of Council resources. As stated above, the sanctions/actions available following a hearing fall significantly short of the consequences that have come to bear quite independently of the standards process.”

22. The Monitoring Officer has considered the recommendation of the Investigating Officer, consulted with the Independent Person, Complainant and Councillor, and determined that this matter can be reasonably resolved without the need for a hearing.

Local resolution

23. Paragraphs 28-31 of our Arrangements detail the resolution and remedial action required where a matter can be resolved without the need for a hearing. Having carefully considered these matters, the Monitoring Officer has decided that a Local Resolution is appropriate for the following reasons:

- The Councillor immediately accepted responsibility for their actions and issued a public apology at Council Assembly.
- The Councillor acknowledged throughout the investigating process that their actions were not appropriate and has repeatedly expressed remorse.
- The Councillor resigned from Cabinet.
- The Councillor sent a written apology to the Complainant on 24 June 2021.
- The Councillor has attended Code of Conduct and Social Media Training since the Complaint was received and the self-referral to the Monitoring Officer.
- The Councillor has agreed to undertake a conciliation meeting with the Complainant if requested.

Localism Act 2011 sanctions

24. The provisions of the Localism Act 2011 S28(11) details the sanctions a local authority can impose where it is found that a member is in breach of the Code of Conduct following an investigation; in summary, the sanctions are:

- a) Censure or reprimand the member.
 - b) Recommend that Council Assembly censure or reprimand the member.
 - c) Recommend removal for Cabinet, or portfolio responsibilities.
 - d) Instruct the Monitoring Officer to arrange training.
 - e) Removal from outside bodies.
 - f) The withdrawal of facilities from the member.
 - g) Exclusion of the member from council offices or other premises.
25. The Monitoring Officer is of the view that the actions and consequences for the Subject member in this instance are more severe than any which could be recommended under the current Standards Regime. The Monitoring Officer cannot identify any further sanction which the Sub-Committee could impose which has not already been self-imposed by the Member. In addition, the Member from the outset of the complaint and investigation process publically accepted their behaviour was inappropriate, accepted responsibility, apologised and referred themselves to the Monitoring Officer for investigation. The Member immediately resigned from Cabinet.
26. For the reasons stated above the Monitoring Officer is of the view that this Complaint should be concluded by Local Resolution, and in accordance with our procedure is reporting the matter to the Sub-Committee. The Monitoring Officer is further of the view that there is no need to expend further public funds in holding a Sub-Committee hearing to consider imposing sanctions for a finding of breach where the sanctions available under the legislation in this case are limited, and indeed the self-imposed sanctions by the Member have gone beyond those under the current regime.

Disclosure and public interest

27. Throughout their investigation the Investigating Officer refers to this particular complaint being complex and finely balanced; this is due to the question of whether the Councillor was acting in their capacity as a Councillor and when the Code of Conduct should apply to their conduct. The legislation and subsequent case law is complex. In addition, the particular facts of this case and the limitations of the current Standards Regime make this case one where there will be significant public interest. For this reason it is the intention of the Monitoring Officer to take the unusual step of publishing a redacted copy of the Investigating Officer's report on our website and in an open report to the Sub-Committee.

Consultation

28. In accordance with our Arrangements, the Monitoring Officer has consulted the Subject Member, Complainant and Independent Person during the course of this complaint and in determining to resolve the complaint by Local Resolution.

Community impact statement

29. The Code of Conduct for Members and our Arrangements for Dealing with Code of Conduct Complaints in accordance with provisions within the Localism Act

2011 are important for maintaining public confidence and good governance for elected representatives.

Legal implications

30. The Localism Act 2011 details the arrangements which Local Authorities must have in place local arrangements for managing the conduct of Elected Members. The Act further requires the Council to have in place arrangements for investigating complaints against Elected Members. The Code of Conduct for Members and the Arrangements for Dealing with Standards Allegations form part of our Constitution.
31. S28 (11) of The Localism Act 2011 prescribe the only sanction which the Standards-Sub-Committee can impose if the member is found to be in breach of the Code of Conduct.

Resource implications

32. Any resources implications can will be managed within the allocated resources for this area of work.

Socio-economic, health and climate change implications

33. There are no specific socio-economic, health or climate change implications arising from this report.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

34. Not required.

APPENDICES

No.	Title
Appendix 1	Code of Conduct
Appendix 2	Arrangements for Dealing with Standards Allegations
Appendix 3	Standards Investigation Report

AUDIT TRAIL

Lead Officer	Doreen Forrester-Brown, Director of Law & Governance	
Report Author	Doreen Forrester-Brown, Director of Law & Governance	
Version	Final	
Dated	16 December 2021	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law & Governance	Yes/No	Yes/No
Strategic Director of Finance & Governance	Yes/No	Yes/No
Cabinet Member	Yes/No	Yes/No
Date final report sent to Constitutional Team	17 December 2021	