

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 9 May 2019	<b>Meeting Name:</b> Audit Governance and Standards Committee (Standards) Sub-Committee
<b>Report title:</b>		Complaint Reference LF002 - 18	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Director of Law and Democracy	

## RECOMMENDATION

1. That the sub-committee:
  - i) considers whether or not the Subject Member has failed to comply with the Code of Conduct and,
  - ii) if he has, what further action should be taken, if any.
  - iii) To note that they must provide reasons for any decisions it takes.

## SUMMARY OF COMPLAINT

2. A complaint dated the 12 March 2018 was made by Meadow Partners on behalf of Andrew McDaniel, Partner in Meadow Partners against Councillor Peter John OBE, Leader of Southwark Council ("the Subject Member"). The complaint is attached as Item 1 of the Appendix. The complaint relates to some tweets made by Councillor John in respect of Meadow Partners, in October 2017 and April 2018 and in particular refers to their involvement with the Dulwich Hamlet Football Club ("the Club") and associated proposed development of land at Champion Hill.
3. The complaint was discussed by the Council's Monitoring Officer, Doreen Forrester-Brown with the Council's Independent Person. Ms Forrester-Brown informed Meadow Partners and Councillor John on 24 May 2018 that three tweets made by him were to be investigated
4. The Monitoring Officer informed Councillor John that the tweets would be investigated as possible breaches of limb 10 of the Code of Conduct. Limb 10 states:  
*"always treating people with respect, including the organisation and public I engage with and those I work alongside".*
5. The Monitoring Officer appointed Olwen Dutton, a solicitor of the Senior Court of England and Wales and a Partner in the firm of Anthony Collins Solicitors LLP, as investigating officer ("IO") in accordance with the Arrangements for Dealing with Standards Allegations under the Localism Act 2011 ("the Arrangements"). A copy is attached as Appendix A.
6. The IO prepared a report.

7. The Monitoring Officer reviewed the IO's report and was satisfied that the IO's report was sufficient.
8. Following an attempt at local resolution the Monitoring Officer placed the matter for hearing before this sub-committee.

### **Findings**

9. Firstly the IO made a finding that the Code of Conduct applies to the three tweets made by Councillor John.
10. Next after careful consideration and after weighing carefully all the evidence, the IO made a finding that on the evidence in front of her concerning the first two tweets referred for investigation made in October 2017; there is evidence that it is reasonable to find that Councillor John was not in breach of Limb 10 of the Code of Conduct of Southwark Council.
11. However, after careful consideration and after weighing all the evidence the IO came to the conclusion that as regards the third tweet referred for investigation, made in April 2018, it is reasonable to find that it was a breach of Limb 10 of the Code of Conduct in that by tweeting "Is this the most stupid development company in history or simply the nastiest" Councillor John did not treat Meadow Partners with respect.
12. The IO is of the view that the content of this third tweet is such that it is probable that it would not receive protection under Article 10 of the European Convention on Human Rights (ECHR)
13. Article 10 of the ECHR provides the right to freedom of expression and information, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas

### **The hearing**

14. The Monitoring Officer reviewed the IO's report and was satisfied that the report was sufficient. The Monitoring Officer arranged for the matter to be sent for hearing before the conduct sub-committee of the audit, governance and standards committee ("the conduct sub-committee") after deciding with the independent person, that local resolution was not possible.

### **The conduct sub-committee**

15. The conduct sub-committee, will decide, on a balance of probabilities, whether the Subject Member was in breach of Limb 10 of the Code of Conduct in relation to the tweet he sent April 2018.. It will do so by considering the IO's report and any representations made by the IO or their representative and the written or oral representations made by the subject member, any evidence given and any other relevant issues.
16. The conduct sub-committee meeting will be open to the public and the press. However, the public and press may be excluded from those parts of the meeting where confidential or exempt information under Schedule 12A of the Local Government Act 1972 as amended is disclosed.

## **Procedure at the hearing**

17. The initial order of business at the meeting will be as follows:
  - establishing whether the conduct sub-committee is quorate;
  - introductions;
  - the chair will explain how the hearing will be conducted;
  - If a member, having given notice of attendance, fails to attend the hearing, the conduct sub-committee may make a determination in their absence if satisfied that there is insufficient reason for such failure or adjourn to another date where there is sufficient reason to warrant an adjournment
  - consideration of any procedural issues and, in particular, any representations from the Monitoring Officer and/or the subject member as to reasons why the conduct sub-committee should exclude the press and public for any part of the meeting and determination as to whether to exclude the press and public.
18. Next the IO will present the evidence which is relevant to the matter and may call any witnesses, including the complainant to substantiate any matter(s) contained in the report. The subject member or his/her representative may ask questions of the IO and of any witnesses. The conduct sub-committee may ask questions of the investigating officer and of any witnesses.
19. Then the subject member or his/her representative will have the opportunity to make representations and to present the evidence which is relevant to the matter. The subject member or his/her representative may call any other witnesses to give evidence. The investigating officer may ask questions of the subject member and of any witnesses. The conduct sub-committee may ask questions of the subject member or any witness.
20. The conduct sub-committee will ask for the views of the Independent Person.
21. The investigating officer or the subject member or his/her representative may ask questions of the Independent Person.
22. The investigating officer and subject member or his/her representative will be given the opportunity to sum up.
23. The conduct sub-committee may adjourn to consider in private all the evidence and its decision. The conduct sub-committee's legal adviser (who will be a different officer from the IO) and committee clerk will retire with them to provide legal advice or advice regarding the evidence/submissions.
24. Where the hearing sub-committee finds the subject member to be in breach, the IO will be given the opportunity to comment on the most appropriate sanction. The subject member or his/her representative will be given the opportunity to comment on the most appropriate sanction and put forward any mitigating circumstances.
25. The conduct sub-committee will ask for the views of the Independent Person on the most appropriate sanction.

26. The conduct sub-committee may adjourn to consider in private the appropriate sanction. The chair of the conduct sub-committee will state the decision of the conduct sub-committee as to any sanction.

**Community impact statement**

27. Clear arrangements concerning the accountability of members are very important for promoting high standards of conduct. In addition it is important in aiding the decision-making process and helping to boost public confidence in the council. These arrangements ensure that members of the public are aware of the process in place to ensure that high standards of conduct are maintained within the council.

**Legal implications**

28. The purpose of this hearing is to decide whether the subject member has failed to comply with the Code of Conduct and if so, whether to take any action in respect of the member. The arrangements referred to in this report have been made in accordance with section 28 Localism Act 2011.
29. The provisions of section 27 of the Localism Act 2011 require the council to promote and maintain high standards of conduct by members and co-opted members of the authority.
30. Article 10 of the ECHR is a qualified right and, as such, the right to freedom of expression may be limited by a restriction such as the imposition of a sanction for a breach of a Code of Conduct. However, any restriction on freedom of expression needs to respond to a pressing social need, to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued.

**APPENDICES**

No.	Title
A	Arrangements for Dealing with Standards Allegations under the Localism Act 2011

**BACKGROUND DOCUMENTS**

Background Papers	Held At	Contact
Code of Conduct for Members	Legal Services, Southwark Council, 160 Tooley Street, London SE1 2QH	Norman Coombe 020 7525 7678 Allan Wells 020 7525 2130

## AUDIT TRAIL

<b>Lead Officer</b>	Doreen Forrester-Brown, Director of Law and Democracy	
<b>Report Author</b>	Norman Coombe, Head of Corporate Team, Legal Services	
<b>Version</b>	Final	
<b>Dated</b>	30 April 2019	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	N/A	N/A
Strategic Director of Finance and Governance	No	No
<b>Cabinet Member</b>	<b>No</b>	<b>No</b>
<b>Date final report sent to Constitutional Team</b>	30 April 2019	