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STANDARDS PANEL

Wednesday, 4 December 2019

Present: Councillors P Gilchrist P Stuart
L Rennie (In place of C Blakeley) G Wood

In attendance: Independent Person Mr J McCosh

1 APPOINTMENT OF CHAIR

RESOLVED: That Councillor Phil Gilchrist be elected Chair for this meeting of the Panel.

2 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

No declarations of interest were made.

3 ARTICLE 9 OF THE COUNCIL'S CONSTITUTION, THE MEMBERS' CODE OF CONDUCT AND PROTOCOL

The Panel considered a copy of Article 9 of the Council's Constitution along with copies of The Members' Code of Conduct and the Protocol which detailed the arrangements for Investigating and Making Decisions in relation to allegations made under The Members' Code of Conduct.

RESOLVED: That

- (1) the contents of the documents provided be noted; and
- (2) the Panel will be guided by the documents provided during the course of its decision making in respect of the complaint to be considered.

4 EXEMPT INFORMATION - EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED: That

- (1) the Panel considers the disclosure of information in respect of this complaint as defined by paragraphs 1 and 5 of Part I of Schedule 12A (as amended) to that Act and publicity surrounding this matter would not have a material impact on the fairness of the

procedures and it is in the public interest for the Panel to continue to hear the complaint in public and make a determination on it; and

- (2) the Independent Investigator, Press and Public be invited to remain in the meeting.**

5 CONSIDERATION OF A STANDARDS COMPLAINT

The Panel had regard to the findings that were set out by the Investigator and to the representations made by the subject Member. Members of the Panel asked a number of questions of the Investigator, subject Member and a complainant which were answered accordingly.

Exempt Information - Exclusion of the Press and Public

RESOLVED:

That under section 100 (A) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the next item of business only, on the grounds that it involves the likely disclosure of exempt information as defined by paragraphs 1 and 5 of Part I of Schedule 12A (as amended) to that Act in that it contains information relating to an individual and of which a claim to legal professional privilege could be maintained in legal proceedings. The Public Interest test has been applied and favours exclusion.

Panel Deliberations

The Panel deliberated in private before informing of its decision in the presence of both the Investigator and the subject Member, complainant and the press and public. The details are contained in the attached Decision Notice.



STANDARDS PANEL

4 December 2019

Complaint against Councillor David Burgess-Joyce

Standards Complaint

DECISION NOTICE

Panel Membership: Councillors P Gilchrist (Chair), L Rennie, P Stuart and G Wood.

Independent Person: Mr J McCosh.

Solicitor: Mr C Hughes (acting on behalf of the Monitoring Officer).

Subject Member: Councillor D Burgess-Joyce.

Complainant(s): Mr R Calvert, Ms M Cadle, Miss G Jenkinson, Mr S Williams, Mr D Hughes, Mr P Jones, Mr P Cardin.

Investigator: Miss V Shaw, Deputy Monitoring Officer.

1. Background

In July 2019 seven complaints were received by the Council about a tweet by Councillor Burgess-Joyce on 17 July 2019 which allegedly breached the Members Code of Conduct.

The Monitoring Officer appointed his deputy to carry out the investigation which was completed in September 2019. Her report is now referred to the Standards Panel in accordance with the Council's arrangements for dealing with such complaints.

2. Summary of the Complaint

- i) Seven complaints were received from members of the public in relation to the alleged conduct of Cllr David Burgess-Joyce.

- ii) The complaints all relate to a tweet which Cllr Burgess-Joyce posted on social media on 17 July 2019 in which he accused David Lammy MP of doing more damage to community cohesion than any Klu Klux Klan member.

3. Relevant Legislation and provisions of the Code of Conduct

- (A) The Localism Act 2011 has governed standards of conduct for elected members in England since July 2012. Under sections 27 and 28 of the 2011 Act, the Council:
 - a. is under a duty to promote and maintain high standards of conduct by Members and co-opted Members of the authority;
 - b. must adopt a Code of Conduct which is consistent with the statutory principle of selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
- (B) The Council adopted a new Code of Conduct (“the Code”) with effect from 1 August 2014. The Council also adopted new arrangements for dealing with allegations that a Member had failed to comply with the Code.
- (C) So far as material, the Wirral Borough Council Code provides as follows:

...”General Obligations

- 1. *When acting in your role as a Member of the Council:*
 - 1.1 **DO** treat others with respect;
 - 1.2 **DO NOT** conduct yourself in a manner which is contrary to the Council’s duty to promote and maintain high standards of conduct of Members”0

4. Consideration of the issue of the Complainants non-attendance at the hearing

The Deputy Monitoring Officer explained that the complainants had been informed of the date of the Panel and invited to attend but with the exception of Mr Cardin, they considered it was now an internal matter for the Council and they would not therefore be attending the Panel.

5. Consideration as to whether the Code of Conduct had been breached

- (a) The Panel gave careful consideration to the Investigator’s Report and the submissions and representations made by Cllr Burgess-Joyce and

by Mr Cardin which elaborated upon what they had stated in the report of the Investigator.

- (b) The Panel was satisfied that a satisfactory investigation and report had been undertaken and produced in relation to the complaint and that there were reasonable explanations for the delay in completing the report.
- (c) The Panel examined in detail all matters and issues arising from the complaint during the hearing and was satisfied that all parties had been afforded a fair opportunity to clarify any specific points and ensure the Panel understood their respective positions and responses.
- (d) The Panel considered the views and representations of the Independent Person. The Independent Person was satisfied that a thorough investigation had been undertaken and agreed the findings and conclusions reached as detailed within the Investigator's report. He considered that the comments made by Councillor Burgess-Joyce were not racist or racially motivated.

6. Findings of fact

- (1) On or about 17 July 2019 Councillor Burgess-Joyce posted a tweet on social media in response to an earlier tweet by David Lammy MP in which he had criticised Donald Trump for having made a racist tirade against four Congress women.
- (2) Mr Burgess-Joyce tweeted "Mr Lammy, if Mr Trump is racist, then he's no doubt learnt it from you. You are an expert in virtue signalling black issues. You pretend to speak for black people yet you do more damage to community cohesion than any KKK member".
- (3) Seven members of the public submitted complaints to the Council's Monitoring Officer on 17 July 2019 about Mr Burgess-Joyce's tweet which they regarded as racist and highly offensive.
- (4) The tweets were published on the BBC website on 17 July 2019 and by the Liverpool Echo on 24 July 2019.
- (5) Councillor Burgess-Joyce had on 17 July 2019 published apologies to David Lammy for his "not well chosen and in poor taste" words. He stated to the Investigating Officer that he had been fatigued after recently suffering from a family bereavement but accepted that he had been wrong to make the analogy with the KKK. He denied that his comments were racist.
- (6) Councillor Burgess-Joyce had been suspended from the Wirral Conservative Group and from the Conservative Party as a result of his tweet.

- (7) The tweet had been made by Councillor Burgess-Joyce in his capacity as a Ward Councillor. The tweet was headed "Councillor David Burgess-Joyce" and he admitted to the Investigating Officer that he used Twitter for posting matters relating to Council work and only occasionally as an individual.
- (8) The reference to the KKK was highly offensive to Mr Lammy and the complainants as it compared his actions to an organisation renowned for its racism, violence and lawlessness.
- (9) The Panel recognised that Article 10 of the European Convention of Human Rights protected freedom of speech and in particular robust comments about the actions of political figures. In this instance, however, the Panel concluded that Councillor Burgess-Joyce's tweet was, by its comparison of Mr Lammy with the KKK, highly insulting to Mr Lammy and went beyond the bounds of forthright yet acceptable political discourse. It therefore crossed the line for expressions of political opinion which were protected by Article 10.
- (10) The Panel concluded that Councillor Burgess-Joyce was aware at the time of the tweet that his words would cause offence to Mr Lammy and that he intended those words to have that effect because of his antipathy to Mr Lammy whom he regarded as a political opponent who was guilty of raising racial tensions.

7. Decision of the Standards Panel

The Standards Panel decided that Councillor Burgess-Joyce comments on Twitter had breached the Council's Code of Conduct in that he had not treated Mr Lammy with respect and had conducted himself in a manner which was contrary to the Council's duty to promote and maintain high standards of conduct of members.

8. Reasons for the Decision

Councillor Burgess-Joyce's tweet on 17 July 2019 used extremely offensive language to attack Mr Lammy by, in particular, comparing his actions with those of the KKK for which there was no objective justification (as Councillor Burgess-Joyce himself admitted).

9. Actions

The Panel took into account the mitigation advanced by Councillor Burgess-Joyce namely his swift and unreserved apology to Mr Lammy and that he may have been fatigued and troubled by a family bereavement at the time of the tweet.

The Panel nonetheless regarded the tweet as highly inflammatory at a time of political tensions which required all Members to treat with respect their

political opponents however forthright their criticism of their opinions or actions.

The Panel therefore determined that:

- (a) the Monitoring Officer be instructed to write a formal warning letter to Councillor Burgess-Joyce reminding him of the need to comply with the Members Code of Conduct;
- (b) Councillor Burgess-Joyce should promptly apologise (through officers) to all the complainants in writing for breaking the Code of Conduct. Any failure to do so should be reported to the Conservative Group Leader;
- (c) the Panel's decision be reported to the next public meeting of the Standards and Constitutional Oversight Committee for reference;
- (d) the Panel recommend to the Conservative Group Leader that Councillor Burgess-Joyce's position be reviewed following on from the disciplinary action already taken, in the light of the Panel's conclusions and decisions;
- (e) the Panel instructs the Monitoring Officer to arrange appropriate training for Councillor Burgess-Joyce and should he fail to attend the training, that failure be reported to the Standards and Constitutional Oversight Committee.

The Panel also believed it would be appropriate that Councillor Burgess-Joyce should make an apology to the Full Council at the earliest opportunity for his failure to comply with the Code.

10. Right of Appeal

This Decision Notice and the full Investigators report will be published on the Council's website unless a request seeking permission to appeal is made under paragraph 18 of the Council's Arrangements for Investigating and Making Decisions in relation to allegations made under the Member's Code of Conduct.

Signed



Date

21 December 2019

Councillor Phil Gilchrist
Chair of Standards Panel

