

LUTON BOROUGH COUNCIL STANDARDS SUB-COMMITTEE
LOCAL ADJUDICATION PANEL HEARING- 13 OCTOBER 2020
(SKYPE MEETING)
DECISION NOTICE

Subject Member: Councillor Tom Shaw

1. Details of the Complaint

1.1.A complaint was received on 17th October 2019 from Ms Gerry Taylor, then LBC Corporate Director for Public Health and Wellbeing ("the Complainant"), alleging that Cllr Tom Shaw ("the Subject Member") had failed to comply with the Council's Code of Conduct for Members ("the Code") by tweeting the following message on 11th October 2019 at 1721 hours;

"I honestly thought this was an April fool's joke but it seems that yet again we have overpaid people at the town hall trying to think of crazy schemes and ignoring the real world."

In making this tweet the Complainant states that the Subject Member demonstrated a lack of respect for Council Officers, called into question their professionalism and by making derogatory comments about Council staff and decisions, which publically risked bringing the Council into disrepute.

The Complainant identified possible breaches of paragraph's 3.2 and 3.6 of the Code.

2. Local Assessment Panel (11th November 2019)

2.1 On 11th November 2019 the Local Assessment Panel ("LAP") of the Luton Council Standards Committee met to consider the allegations.

2.2 The LAP considered and agreed with the Independent Person's conclusion set out in paragraph 8.1 of his report and decided, on the information before them and on the balance of probabilities, that Cllr Shaw may have breached paragraph's 3.2 & 3.6 of the Code. Given the content of the tweet, the position occupied by Cllr Shaw as a member of the Executive and his subsequent actions in refusing to promptly remove it when requested to do so, there was sufficient evidence for the complaint to proceed to the next stage.

2.3 In accordance with their remit, the LAP decided to refer the complaint to the Monitoring Officer for further investigation or appointment of an investigator or to seek resolution.

3. Local Adjudication Panel Hearing (13th October 2020)

3.1 Attendance

3.1.1 The Panel who met on 13th October 2020 comprised Councillor's J.Petts, S.Saleem and J.Young. Councillor J. Petts chaired the meeting.

3.1.2 In attendance were; Cllr Tom Shaw (Subject Member), Mr Glen Jenkins (Legal rep for Subject Member), Mr Jimmy Cummings (Trade Union Rep for Subject Member), Mrs Angela Claridge (Monitoring Officer), Ms Georgina Butcher (Independent Investigator), Mr C. Fogden (Independent Person), Mr John Jones (Co-opted Member), Mr A. Maslen (Co-opted Member), Mr P.Orr (Co-opted Member), Also in attendance were Mr R. Popat (Principal Solicitor & Clerk to the Panel) and Ms S. Bharaj (Note taker).

3.2 Preliminaries

3.2.1 There were no representations from either the Monitoring Officer or the Subject Member that the meeting should be held in private. The meeting was held in public and the papers were made openly available at this stage.

3.2.2 There was discussion, and representation on behalf of the Subject Member, at the outset that the complainant did not allege bullying so it was unclear why the Independent Investigator had investigated this aspect.

3.2.3 It was agreed by the Panel that, as bullying formed no part of the complaint, it should not have been within the remit of the investigation. It was agreed by the Independent Investigator to amend her report to remove all reference to bullying.

3.2.4 The Panel agreed that the complaint identified possible breaches of paragraph's 3.2 and 3.6 of the Code. As regards paragraph 3.2 only the first limb (i.e. alleged failure to show respect) was relevant here.

3.3 Findings of Fact

3.3.1 The Panel noted that the Subject Member admitted the basic facts of tweeting the message complained about on 11th October 2019 and then failing to remove it for 10 days after being requested to do so by the Council's Chief Executive.

3.3.2 The Panel noted the factual dispute between the Subject Member and the Independent Investigator about what had prompted the Subject Member's tweet. Based on the information before them, and on the balance of probabilities, the Panel found there was no evidence to support the Subject Member's assertion that his tweet was in response to a separate tweet from the Council's press office about cleaning up drinking in St. Georges Square.

3.4 Investigation Findings

3.4.1 The Panel noted from the Investigating Officer's report (and in particular paragraph's 5.3 and 9.3), and the discussion at the meeting, that the Subject Member had made clear that, as his account was set to private, the tweet being complained about, would only have been seen by his followers. In addition to this

his followers have to go through a disclaimer to the effect that the stated views were his own personal views and not those of the Council.

3.4.2 Whilst this did not feature in the Investigating Officer's investigation/report, the Panel agreed that this was relevant to the preliminary question of whether the Subject Member was acting in his capacity as a Councillor's at the time of the alleged misconduct. In this regard, the Panel were mindful, given paragraph's 2.1 and 2.2 of the Code, of the need to establish, whether the Code was engaged which was dependent on whether the Subject Member was acting in his capacity as a Councillor at the time of the alleged misconduct.

3.4.3 Whilst the Panel noted that the Subject Member's twitter handle/user name was @lutoncllr , they decided that there was not sufficient evidence, on the balance of probabilities, to justify a finding that the Code was engaged. This was based on their finding that the Subject Member was not acting in his capacity as Councillor at the time of the alleged misconduct, particularly given that the Subject Member's twitter account was set to private and included a clear disclaimer.

3.5 Decision on Breach

3.5.1 On the basis of its findings of fact and in relation to the investigation, and upon considering the agenda papers including the Investigating Officer's Report and upon considering the views of the Independent Person, the Panel made the following decision:

- i. Despite their findings in relation to fact, given their finding that that the Code was not engaged, as the Subject Member was not acting, or gave the impression that he was acting, in his capacity as Councillor, at the time of the alleged misconduct, there was not sufficient evidence, on the balance of probabilities, to justify a finding of a breach of the Code in respect of the complaint.

3.6 Evidence Considered (13th October 2020)

3.6.1 The following documents and information were considered by the Panel for the purposes of this complaint:

3.6.2 The Monitoring Officers Report (including minutes of Local Assessment Panel Hearing ('LAP') held on 11th November 2019 and the Decision Notice of the LAP) .

3.6.3 Appendix A- Complaint from Ms Gerry Taylor (Corporate Director) dated 17th October 2019.

3.6.4 Appendix B- Report entitled; "Smoke Free Initiatives" considered at the Council's Executive on 10.12.2018 (Consultation RE: St Georges Square starts at paragraph 19).

3.6.5 Appendix C- Minutes from the Council's Executive 10th December 2018 (Agenda Item 13).

3.6.6 Appendix D- Copy of Cllr T Shaw tweet dated 11th October 2019.

3.6.7 Appendix E- Report of Independent Investigator (Georgina Butcher) dated 16th March 2019.

3.6.8 Appendix F- Part 9 of the Constitution- Code of Conduct for Members and Co-opted Members.

3.6.9 Appendix G- Independent Person (Chris Fogden) Report dated 4th November 2019 to LAP Meeting held on 11th November 2019

Rajesh Popat

Principal Solicitor

Clerk to the Local Assessment Panel Hearing

2nd November 2020