

LUTON BOROUGH COUNCIL STANDARDS SUB-COMMITTEE
LOCAL ADJUDICATION PANEL HEARING- 12 OCTOBER 2020
(SKYPE MEETING)
DECISION NOTICE

Subject Members: Councillor's Waheed Akbar, Tahir Malik & Asif Masood

1. Details of the Complaint

1.1. Between the period of 25th July 2020 and 6th August 2020 the Monitoring Officer received complaints from various members of the public namely :

- I. Mr David McBain;
- II. Ms Alison Hooper;
- III. Mr AL (Member of the public who wishes to remain anonymous in the public domain);
- IV. Mr Ahmed Ali and
- V. Mr Nick Jarman

The complainants alleged that the Subject Members had breached national Coronavirus restrictions/government guidance on outdoor gatherings, in place since 1st June 2020, in the circumstances of their attendance at an event/gathering on Tuesday 21st July 2020, which also breached the Council's Code of Conduct for Members ("The Code").

In addition to the specific complaints referred to above, and in the same period, the Council also received over 100 other complaints through its website and email correspondence relating to the Subject Members attendance at the same event/gathering on Tuesday 21st July 2020.

2. Local Assessment Panel (13th August 2020)

2.1 On 13th August 2020 the Local Assessment Panel ("LAP") of the Luton Council Standards Committee met to consider the allegations.

2.2 The LAP decided that the Subject Members may have breached paragraph's 3.1, 3.6 and 3.11 of the Code but were mindful, in the light of paragraph 2.2 of the Code, of the need to establish whether the Code was engaged which was dependent on whether the Subject Members were acting in their capacity as a Councillor at the time of the alleged misconduct.

2.3 In accordance with their remit, the LAP decided to refer the complaint to the Monitoring Officer for further investigation to establish;

i. In what capacity did the Subject Members attend the event/gathering on 21st July 2020? (and then subject to that) ;

ii. Whether the Subject Members breached the Code?

3. Local Adjudication Panel Hearing (12th October 2020)

3.1 Attendance

3.1.1 The Panel who met on 12th October 2020 comprised Councillor's S.Saleem, R.Roche and J.Petts. Councillor S.Saleem chaired the meeting.

3.1.2 In attendance were Angela Claridge (Monitoring Officer), Mr. C. Fogden (Independent Person), Ms. P. Brennan (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 Members that the meeting should be held in private. The meeting was held in public and the papers were made openly available at this stage.

3.3 Findings of Fact and Reasons

3.3.1 After carefully considering all the documents provided to them; the answers given to questioning by the Monitoring Officer and the Subject Members; the representations from the Co-opted Members and the Independent Person and the legal advice advanced, and on the balance of probabilities, the facts of the case were accepted by the LAP as they appeared in the Monitoring Officer's Report in respect of paragraphs 3.2, 3.3 and 3.4 as follows;.

"3.2 Cllr's Akbar, Malik and Masood attended an event on 21.07.2020 held at a private house in the LU4 postcode area. The photographs of the event... show them as part of a group of approximately 12 individuals, sitting outside in a private garden, praying, eating together and in a group photograph. Cllr's Akbar, Malik and Masood have confirmed the event was a prayer meeting for the victims of Covid-19. In a telephone interview with the host of the event (SHS) on 02.09.2020 he verified this was the case as some of his close friends had died of the virus.

3.3 At that time, the Government's guidance was that a maximum of six people were able to meet outdoors, including in the garden, as long as those from different households stay 2 metres apart, or more than 1 metre with a face covering.

3.4 Luton itself was on the Governments “watch list” of the top ten local authority regions at that time with the highest rate of Covid-19 infection, with the LU4 postcode showing a statistically higher rate of cases than the rest of the town. All elected Members were receiving weekly email updates (emails were distributed 03.07.2020, 10.07.2020 & 17.07.2020) from Public Health colleagues providing an update of the situation both within Luton and when compared to the rest of the country...”

3.3.2 The Panel noted that the Subject Members admitted the basic facts of attending the event/gathering on 21st July 2020 and thereby breaching Government Guidance around Covid-19 in place at that time, in particular by not leaving when it became apparent that ‘the rule of six’ was breached. The Panel also noted the Subject Members apologies and Cllr Malik’s resignation of the Mayorship.

3.4 Investigation Findings

3.4.1 The Panel noted and accepted reference in paragraph’s 4.3 to 4.7 of the Monitoring Officer’s Report to the decision of the High Court in the Ken Livingstone Case (2005) and its relevance in the circumstances here to the preliminary question of whether the Subject Members were acting in their capacity as a Councillor’s at the time of the alleged misconduct.

3.4.2 The Panel also noted and accepted the findings of the Monitoring Officer set out in paragraph’s 4.11 to 4.17 of her Report in respect of the key question she was asked to investigate by the LAP set out at 2.3 (i) above.

3.4.3 Given this the Panel decided that there was not sufficient evidence, on the balance of probabilities, to justify a finding that the Code was engaged in the light of the investigation findings that the Subject Members were not acting in their capacity as Councillor’s at the time of the alleged misconduct.

3.4.4 The Panel received legal advice that there were, in any event, no legal powers for them to disqualify or suspend the Subject Members, in the circumstances here, as had been requested by some of the complainants.

3.5 Decision on Breach

3.5.1 On the basis of its finding of fact and in relation to the investigation, and upon considering the agenda papers including the Monitoring 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 Members were not acting in their capacity as Councillor’s 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 complaints.

[For completeness, the Statement made by made by Cllr S Saleem the Chair of the Panel at the end of the Hearing held on 12th October 2020 is attached as Appendix 1 to this Decision Notice].

3.6 Evidence Considered (12th 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 Investigation Report.

3.6.3 Appendix A- Complaint from Mr D McBain dated 25th July 2020.

3.6.4 Appendix B- Complaint from Mrs A Hooper dated 27th July 2020.

3.6.5 Appendix C- Complaint from Mr AL dated 31st July 2020.

3.6.6 Appendix D- Complaint from Mr N Jarman dated 6th August 2020.

3.6.7 Appendix E- Complaint from Mr A Ali dated 5th August 2020.

3.6.8 Appendix F- BBC News Article dated 24th July 2020 entitled; "Luton Councillors 'sorry' for lockdown breach".

3.6.9 Appendix G- Sky News Article dated 25th July 2020 entitled; " Coronavirus: Luton Mayor among Councillors breaching lock-down rules at a party".

3.6.10 Appendix H- The Sun Article dated 25th July 2020 entitled; "Mayor of Luton flouts lockdown rules by attending party of twelve, days before coronavirus cases surge in the town".

3.6.11 Appendix I- Daily Mail Article dated 31st July 2020 entitled; "Mayor of Luton broke lock-down rules by attending party for 12 just days before the town was designated an 'area of intervention' by health chiefs over rising coronavirus cases."

3.6.12 Appendix J- Subject Members Press Release dated 24th July 2020.

3.6.13 Appendix K- Councillor Tahir Malik (Luton Council's Mayor) Press Release dated 5th August 2020.

3.6.14 Appendix L- Councillor Waheed Akbar response dated 10th August 2020.

3.6.15 Appendix M- Councillor Tahir Malik (Luton Council's Mayor) response dated 13th August 2020.

3.6.16 Appendix N- Councillor Masood's response dated 6th September 2020.

3.6.17 Appendix O- Initial Assessment by the Independent Person (Mr C Fogden) dated 7th August 2020.

3.6.18 Appendix P- Statement by the Local Assessment Panel dated 13th August 2020.

3.6.19 Appendix Q- Email from Lucy Hubber to Councillors dated 10th July 2020.

3.6.20 Appendix R- Email from Lucy Hubber to Councillors dated 17th July 2020.

3.6.21 Appendix S- Facebook post by the host describing the attendees.

3.6.22 Appendix T- Code of Conduct for Members and Co-opted Members (Part 9 of the Constitution).

3.6.23 Appendix U- Photograph of Cllrs Akbar, Malik and Masood praying at the event on 21st July 2020.

3.6.24 Appendix V- Photograph of Cllrs Akbar and Malik dining at the event on 21st July 2020.

3.6.25 Appendix W- Group photograph including Cllrs Akbar and Malik taken at the event on 21st July 2020.

Rajesh Popat

Principal Solicitor

Clerk to the Local Assessment Panel Hearing

28th October 2020

