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Report of an investigation under section 59 of the Local Government Act 2000 by Tim Revell appointed by the Monitoring Officer for the London Borough of Hillingdon into an allegation concerning Councillor Anita MacDonald.

DATE: 17th October 2011

PRIVATE AND CONFIDENTIAL

Contents

- 1 Executive summary**
- 2 Councillor MacDonald's details**
- 3 The relevant legislation and protocols**
- 4 The evidence gathered**
- 5 Background**
- 6 Reasoning as to whether there have been failures to comply with the Code of Conduct**
- 7 Representations on the draft report**
- 8 Finding**

Appendix A Schedule of evidence taken into account

PRIVATE AND CONFIDENTIAL

1 Executive summary

1.1 It is alleged that Councillor MacDonald's conduct in an exchange of e-mails with Councillor Duncan constituted a breach of paragraphs 3(1), 3(2)(b) and 5 of the Members' Code of Conduct in that specifically:

- she engaged in a course of e-mail correspondence with Councillor Duncan during which she made a libellous and untrue statement about her and also a former Labour Group Leader, Rod Marshall, which she copies to all Labour councillors and the Labour Secretariat thus involving officers and the whole group in a matter which she regarded as confidential;
- furthermore, following the issuing of a statement of denial by Councillor Duncan, Councillor MacDonald responded with an even more vicious, unprovoked attack on her in an e-mail dated 23rd June 2011 which Councillor MacDonald copied to all Labour councillors and the Labour Secretariat.

1.2 The outcome of the investigation is that while engaged in an official capacity Councillor MacDonald breached paragraphs 3(1), 3(2)(b) and 5 of the Members' Code of Conduct.

2 Councillor MacDonald's official details

2.1 Councillor MacDonald was first elected to Hillingdon Council in 2006 and was re-elected on 6th May 2010 for a further term of four years. She was Deputy Leader of the Labour group from the elections in 2010 until 3rd May 2011. She was a member of the Standards (Assessment) Sub-Committee in 2010/11 attending four meetings. Councillor MacDonald gave a written undertaking to observe the Code of Conduct on 6th May 2010

2.2 Councillor MacDonald attended a training session on the current Members' Code of Conduct on 6th October 2010.

3 The relevant legislation and protocols

3.1 The Council at its meeting on 28th June 2007 adopted a Code of Conduct (the Code) pursuant to the Local Authorities (Model Code of Conduct) Order 2007. The following paragraphs are included:

- 3(1) you must treat others with respect;
- 3(2) (b) you must not bully any person
- 5 you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

PRIVATE AND CONFIDENTIAL

4 The evidence gathered

4.1 I have taken account of oral evidence from the complainant, Councillor Duncan, from the subject member, Councillor MacDonald and from the following witnesses:

- Councillor Lynne Allen, member of the Labour group
- Councillor David Allam, member of the Labour group
- Councillor Peter Curling, member of the Labour group

4.2 The witnesses interviewed were those suggested by either the complainant or the subject member. I did not interview two of the individuals proposed by Councillor MacDonald as the information it was suggested they could provide was not in my view relevant to this investigation. I have relied only on the signed notes of the interviews with these witnesses in taking account of the oral evidence given to me. These notes are attached in Appendix A (documents 008, 009, 011, 012, 013 & 014) to this report.

4.3 I have also taken account of documentary evidence obtained from the Monitoring Officer. This is the report and appendices considered by the Assessment Sub-Committee on 14th July 2011, the written summary of the Sub-Committee's consideration and correspondence between the Monitoring Officer, the complainant and the subject member. The other documents I have had regard to in dealing with the matter are the additional statement from Councillor Duncan dated 10th September 2011 (document 010), Councillor MacDonald's initial response to me sent on 29th July 2011 (document 006) and Councillor Duncan's note of a conversation with Councillor Gilham (document 017).

5 Background

5.1 Councillors Duncan and MacDonald are both members of the Labour group at Hillingdon and have been political colleagues since Councillor MacDonald's election in 2006, Councillor Duncan having previously first been elected in 2002. Interviews with both parties indicated that initially their relationship was constructive and congenial but over time it deteriorated. Following the May 2010 elections Councillor MacDonald was elected Deputy Leader of the Labour Group and relations deteriorated further. Both parties agree that there were two key issues behind this adding to the tensions between them.

5.2 The first issue concerned the operation of the Labour group fund whose purpose was to support the work of the group in campaigning, publicity and administration. The fund was financed by contributions from members of the group. Councillor MacDonald challenged the way in which the fund had operated expressing particular concerns about the apparent lack of audited accounts for the period 2006 to 2010 and the use of cash payments to staff. Councillor Duncan believed that all payments had been made legitimately and that Councillor MacDonald was attempting to damage the reputation of Councillor Harmsworth, Councillor Duncan's partner, who as Chief Whip from 2006 to 2010 was responsible for the fund. Both parties expressed the view

PRIVATE AND CONFIDENTIAL

that the manner in which the other party conducted themselves during this period amounted to bullying.

- 5.3 The second issue concerned Councillor Garg who became Chief Whip in May 2010 and had also been a Labour party parliamentary candidate in May 2010. In July/August 2010 an allegation was made that Councillor Garg had previously accepted a police caution for an incident of domestic violence that he had not declared during the Labour party's parliamentary selection process. He was suspended from the Labour group pending an investigation by the Labour party. Councillor MacDonald was seen as sympathetic to Councillor Garg's position while Councillor Duncan was not.
- 5.4 Both Councillors Duncan and MacDonald suggested that the other had an ulterior motive in pursuing the differences between them. Councillor Duncan suggested that Councillor MacDonald wished to discredit her and also Councillor Harmsworth through the allegations about the Labour group fund as they would be giving evidence against Councillor Garg. Councillor MacDonald believed that the allegation against Councillor Garg and the hostility towards her were caused by their questions about the operation of the Labour group fund and were intended to deflect them from the inquiries they were pursuing. Councillor MacDonald also alleged that Councillor Duncan initiated this complaint to delay an investigation by the Labour party into the operation of the Labour group fund.
- 5.5 The preceding paragraphs set out the context that gave rise to an exchange of e-mails and a subsequent complaint to the standards committee. However, while understanding the context of any complaint is important this is not an investigation into those matters which is for the Labour party to resolve. I will only be taking a view on those allegations referred for investigation by the Assessment Sub-Committee.

6 Reasoning as to whether there have been failures to comply with the Code of Conduct

- 6.1 Before considering each of the alleged breaches of the Code the nature of the evidence needs to be considered. The most significant pieces of evidence are the series of e-mails between Councillors Duncan and MacDonald (document 001). In particular the e-mails at appendices 5 and 9 contain the statements by Councillor MacDonald that gave rise to the complaint. Councillor MacDonald has confirmed that she sent these e-mails to Councillor Duncan and that she intended to copy them to all members of the Labour group as she thought that they should be aware of the issues raised. The e-mails were also copied to the staff in the Labour group secretariat. Councillor MacDonald indicated that this was not intended and apologised for this in her response to the Assessment Sub-Committee. When interviewed Councillor MacDonald said that she regretted sending the e-mails and the language used in them but was angry at the situation and wanted to confront the issue head on (document 013).

PRIVATE AND CONFIDENTIAL

6.2 The first alleged breach of the Code concerns paragraph 3(1) requiring members to treat others with respect. Guidance on the Code¹ from Standards for England (SfE) makes a clear distinction between robust discussion and criticism of the views of others on the one hand and unreasonable or excessive personal attack on the other. Expressing strong views about the operation of the Labour group fund to a political colleague would normally be regarded as coming within the definition of robust political discourse which is inherent in democratic politics. However, the use by Councillor MacDonald of the phrase in the e-mail of 22nd June,

“To which that member replied to you that you did it during the time that Rod Marshall was the Leader, as you considered it to be his personal slush fund. I consider the same to be the case now.”

and subsequently in the e-mail of 23rd June,

“Of course I will apologise, right after you apologise for spreading libellous gossip about me before the AGM, in order to reinstate the person you sleep with.”

go beyond this and are aimed at the person and their personal characteristics. They also allege corrupt practice on the part of Councillor Duncan which is a very serious allegation to make. To compound this e-mails were copied to all Labour councillors and the staff in the group secretariat. I therefore conclude that this use of language by Councillor MacDonald amounts to a breach of paragraph 3(1) of the Code of Conduct.

6.3 The second alleged breach of the Code concerns paragraph 3(2) (b) requiring members not to bully any person. SfE has characterised bullying as offensive, intimidating, malicious, insulting or humiliating behaviour which may happen once or be part of a pattern of behaviour. However, although this part of the Code does not prevent legitimate challenge or discussion if criticism is a personal attack or of an offensive nature it is likely to cross the line of what is acceptable behaviour. In considering whether bullying has occurred it is necessary to have some objective evidence rather than just the subjective opinion of the person alleging the bullying. One of the examples of suitable evidence given by SfE² is the circulation of inappropriate e-mails critical of a fellow member. It is difficult to come to any other conclusion but that the phrases from the e-mails of 22nd & 23rd June quoted in paragraph 6.2 above constitute a personal attack of an offensive nature. This conclusion is supported by the circulation of the e-mails to all Labour councillors and the staff in the group secretariat. I therefore conclude that this use of language by Councillor MacDonald in these e-mails amounts to a breach of paragraph 3(2) (b) of the Code of Conduct.

¹ The Code of Conduct Guide for Members May 2007

²

<http://www.standardsforengland.gov.uk/CaseinformationReporting/OnlineCaseReview2010/Paragraph3/Paragraph32b/QandA/>

PRIVATE AND CONFIDENTIAL

6.4 The third alleged breach of the Code concerns paragraph 5 requiring that members do not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute. There does not have to be any criminal activity for this paragraph to be engaged and activity which brings the honesty and integrity of a member into question could be sufficient. The key test is whether a member's conduct 'could reasonably be regarded' by an objective observer as bringing their office or authority into disrepute. SfE³ define such conduct as:

- reducing the public's confidence in that member being able to fulfil their role; or
- adversely affecting the reputation of members generally, in being able to fulfil their role.

6.5 Breaches of other paragraphs of the Code could, depending on the circumstances, meet the test for a breach of this paragraph. I have found that Councillor MacDonald's actions amounted to both lack of respect (paragraph 3[1]) and bullying (paragraph 3[2] [b]). I believe that an objective observer would regard the use of such language as reducing the public's confidence in both Councillors Duncan and MacDonald being able to fulfil their role. I therefore conclude that the circulation of these e-mails by Councillor MacDonald in these e-mails amounts to a breach of paragraph 5 of the Code of Conduct.

7 Representations on the draft report

7.1 The draft report was sent to the complainant and the subject member on 1st October 2011 inviting comments by 14th October 2011. On 13th October Councillor MacDonald advised me that she had written to Councillor Duncan in the following terms;

"Dear Janet,

Re: Standards Hearing

Further to Tim Revell's recent investigation, I would like to offer my apology for any offence or upset I caused you in my angry, hasty and ill-thought out email.

I understand you were hurt by it, and I would really like to apologise for any offence caused and draw a line under it so we can all move on as a group.

3

<http://www.standardsforengland.gov.uk/CaseinformationReporting/OnlineCaseReview2010/Paragrap h5/QandA/>

PRIVATE AND CONFIDENTIAL

I would also like to save the Group further embarrassment by the long drawn out process of another standards hearing and our internal affairs being heard in public.

Please do accept my apology in the spirit in which it is intended.

Kind regards

Anita MacDonald”

7.2 Councillor Duncan responded;

“Dear Anita

Thank you for your e-mail.

I appreciate your message but as matters are at an advanced stage of the Standards process I consider this should be allowed to conclude and therefore do not wish to comment any further at this stage.

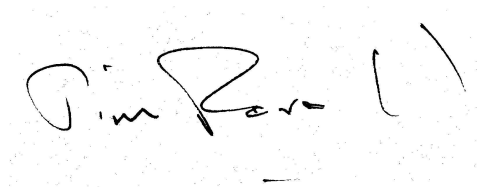
Kind Regards

Janet”

7.3 I have made no amendment to my findings as a result of the comments made.

8 Finding

8.1 I find that while engaged in an official capacity Councillor MacDonald breached paragraphs 3(1), 3(2)(b) and 5 of the Members’ Code of Conduct and recommend that a meeting of the Hearing Sub-Committee be convened to consider the matter.



Tim Revell
Investigator

17th October 2011

Appendix A

London Borough of Hillingdon Members' Code of Conduct – Investigator's report on complaint against Councillor Anita MacDonald

Schedule of evidence taken into account

Core documents

Doc No	Description	Pages
001	Report & appendices considered by Assessment Sub-Committee on 14 th July 2011	11-39
002	Written summary of the Assessment Sub-Committee's consideration of the allegation.	40-42

Notes of telephone conversations, letters, and interviews with witnesses

Doc No	Description	Pages
003	Initial contact letter from investigator to subject member dated 21 st July 2011	43-44
004	Initial contact letter from investigator to complainant dated 21 st July 2011	45-46
005	File note dated 27 th July 2011 of telephone conversation between the investigator and the complainant	47
006	Letter from subject member to investigator sent on 29 th July 2011 giving her initial response to the allegations	48-51
007	Letter from investigator to complainant, subject member and witnesses setting out interview arrangements	52-53
008	Signed note of investigator's interview with Councillor Duncan on 8 th August 2011	54-57
009	Signed note of investigator's interview with Councillor Duncan on 15 th August 2011	58-59
010	Signed statement from councillor Duncan dated 10 th September 2011	60-63
011	Signed note of investigator's interview with Councillor Allam on 15 th August 2011	64
012	Signed note of investigator's interview with Councillor Curling on 15 th August 2011	65
013	Signed note of investigator's interview with Councillor MacDonald on 18 th August 2011	66-67
014	Signed note of investigator's interview with Councillor Allen on 23 rd August 2011	68

PRIVATE AND CONFIDENTIAL

Minutes of meetings and other documentary evidence

Doc No	Description	Pages
015	Declaration of Acceptance of Office signed by Councillor MacDonald on 6 th May 2010.	69
016	London Borough of Hillingdon Members' Code of Conduct.	70-78
017	Note made by Councillor Duncan of conversation with Councillor Gilham on 28 th June 2011	79

Unused evidence

Borough Solicitor's letters of 15th July 2011 to Councillors Duncan and MacDonald advising that the Assessment Sub-Committee had asked that an independent investigation should be undertaken into the complaint

Letter dated 27th June 2011 from NEMS to Councillor Khursheed about the Labour group fund audit 2010/11

Letter dated 21st July to Councillor Duncan about the group fund office cash float

Draft constitution of the Hillingdon Labour Group Fund

Note of interview with Mrs Brooklyn on 18th August 2011.

Statement made by Mrs Brooklyn dated 19th August 2011

Post interview letters to witnesses enclosing agreed witness statements for signature