

Rahman Lowe Solicitors  
29<sup>th</sup> Floor  
One Canada Square  
Canary Wharf  
London  
E14 5DY  
**FAO Zillur Rahman**

Please reply to: Jeremy Chambers  
(See below)  
E-mail: [jeremy.chambers@enfield.gov.uk](mailto:jeremy.chambers@enfield.gov.uk)  
Phone: 0208 379 4799  
Textphone:  
Fax:  
My Ref:  
Your Ref:  
Date: 4 July 2019

Dear Mr Rahman

### **Complaint of Councillor Brett**

I refer to your letter dated 21 June 2018 indicating that you act for Councillor Nesil Caliskan in respect of "all matters" concerning the complaint of Councillor Brett. Please can you confirm that you are instructed in respect of Councillor Caliskan's appeal and provide written authority from Councillor Caliskan to that effect. I will respond to your letter in the order in which it is set out.

It is not accepted that the investigation was fundamentally flawed or that there was bias. Nor is it accepted that there are grounds for judicial review. The current process is not exhausted until the end of the appeal process and any application would therefore be premature at this stage. In any event, you will be more than aware that you are required to follow the Judicial Review Pre-Action Protocol. Furthermore, any application will be strenuously defended on the basis that a lawful and fair process has been followed and there is no reasonable basis for judicial review. If an application for judicial review is made please ensure that this correspondence is placed before a judge considering an application for leave and also notify me of any application you make so that appropriate representations can be made on behalf of the Council.

The Council's Code of Conduct is consistent with the Localism Act 2011 and fit for purpose and your contention that it is not is rejected. Section 28(8) of the Localism Act 2011 requires that the Council's arrangements under which decisions on allegations can be made must include taking account of the views of an independent person before a decision is taken on an allegation it has decided to investigate. There is a discretion on the authority to consider the views of the independent person in other instances (for example on general matters relating to conduct or whether or not to proceed with an investigation)

**Jeremy Chambers**  
Director of Law & Governance  
Enfield Council  
Civic Centre, Silver Street  
Enfield EN1 3XY

[www.enfield.gov.uk](http://www.enfield.gov.uk)

Section 28(8) also says that the views of the independent person “may” be sought “by a member ...of the authority if that persons behaviour is the subject of an allegation”. I agree that Councillor Caliskan was entitled to seek the views of the independent person about the matter and she was advised of this by me in an email dated 4 February 2019 that she could speak to the independent person. The Council has appointed 2 independent persons to preserve fairness and so that conflicts of interest can be avoided. The process of seeking the views of the independent person is not a preliminary investigation stage, its purpose is to ensure account is taken from an independent source about whether or not a complaint should be taken forward and as part of my role in ensuring high standards of conduct are promoted and maintained and that their input is considered by me in respect of decisions to investigate allegations.

### **Abuse of Process**

The Council Procedures do not have flaws. They refer to the Localism Act 2011, key principles, eligibility criteria, a requirement that complaints are made in writing and procedures for the Councillor Conduct Committee. There is a discretion for the Committee to invite the complainant and the member complained about to attend. If Councillor Caliskan wishes to attend the appeal hearing to make oral representations please let me know so that the Committee can be asked about this request in good time before the hearing. I have no part in that decision and it is a matter for the Committee. It would therefore be helpful if you could write a letter to me explaining the reasons for your request so that I can put this to the Committee as soon as possible.

The process the Council followed in deciding to investigate this complaint was consistent with the Localism Act 2011 and the Council’s Code of Conduct and related procedures. I consulted with the independent person in accordance with Section 28(7)(b) of the Localism Act 2011. The process does not involve seeking information from interested parties or gathering evidence; that is for the next stage of an investigation. There is no right of appeal at that preliminary stage. Your client was provided with an opportunity to consult the independent person, as set out in my email dated 4 February 2019.

### **Council’s complaint process used for political purposes**

Your comments about Councillor Caliskan’s hard work to progress her career and delight in being appointed as Leader of the Council and her comments that she has been subjected to a witch hunt and smear campaign are noted. These were considered by the investigator and reflected in Mrs Woodhead’s report

and findings at paragraphs 4.7 and 4.9.1.12. The concerns about a smear campaign and party political dispute were also considered by me in making my findings. I also consulted with the independent person about this matter when considering Mrs Woodhead's report before making a decision about the allegations, in accordance with sections 27 and 28 of the Localism Act 2011.

The concerns which were raised by Councillor Caliskan and further set out in your letter can also be considered again at the appeal hearing. I am saddened to hear that there has been further press coverage about the complaint and that the details about the investigation have been shared with the press. I asked all those involved to respect the confidentiality of the process and hoped that request would be respected. However, I could not compel them to do so.

I do not agree with your conclusion that paragraph 3.1.1 of Mrs Woodhead's report (that a complaint by a councillor about another member of their party is unusual) supports the contention that Councillor Brett is seeking to use all means at her disposal to target your client for political motives.

Turning to your point about using dual processes, I am obliged to deal with complaints where a breach of the Councillor Code of Conduct is alleged in accordance with the arrangements the Council has set up under the Localism Act 2011. I have no control over or involvement in any separate political or party disciplinary processes. The case of *Harvey v Ledbury Town Council* [2018] EWCH 1151 makes it clear that the Code of Conduct process rather than a grievance process should operate in cases where there is a potential breach of the Councillor Code of Conduct.

My letter to Councillor Caliskan dated 21 May 2019 sets out the process I followed in considering the report of the investigator, the consultation process with the independent person, and careful consideration and my independent view about the appropriate findings and conclusion that there had been a breach of the Councillor Code of Conduct. I followed the correct procedures fairly and do not accept there was any abuse of process. It would not have been appropriate or a fair process to refer my conclusions and decision to the Chief Whip or the Labour Party for action. That would have been a potential breach of data protection principles and inconsistent with my responsibilities under the Localism Act 2011 and wider general responsibilities as Monitoring Officer. I cannot think of another regulatory or litigation process where different procedures are amalgamated in the way you suggest.

Your comments about the long documented history in this matter are noted. The complaint of Councillor raised a number of serious allegations about bullying and breach of the Councillor Code of Conduct. These were set out in detail in the complaint form and it would not have been reasonable or in accordance with the Procedures for Handling Complaints to reject those on the basis of the context and history of the relationship between the councillors involved. I carefully considered whether this matter was suitable for informal resolution or no further action. There was no basis to reject the complaints in accordance with paragraph 3.2 of the Council Procedure for Handling Complaints against Councillors and Co Opted Members. I do not consider they were frivolous or vexatious, rather they were serious allegations. Since they related to councillor conduct, the correct forum for their consideration was the Conduct procedures rather than court or other independent procedures. The decision was made in the context of serious incidents as alleged in the complaint form.

The reference to determination of the complaint within 3 months in paragraph 4.2 of the Procedure for Handling Complaints against Councillors and Co-opted members refers to the initial assessment as to the options and whether the matter should be referred for investigation or for a decision of the Councillor Conduct Committee. I carefully considered the criteria including whether further action was warranted or whether a local settlement was possible. Given the nature of the allegations I did not think a local settlement was appropriate or likely prior to investigation. I spoke to Councillor Caliskan informally after I had made my decision following receipt of the independent report and she indicated that she was unwilling to apologise to Councillor Brett, confirming my view that local settlement was unlikely given that was the outcome Councillor Brett was seeking. If Councillor Caliskan is now willing to consider local settlement I can explore that possibility with Councillor Brett.

## **Fairness**

### **Our client acted within her powers.**

I accept that your client was entitled to remove and appoint Cabinet members and have previously advised Councillor Caliskan about that power. The conclusions I reached in this case were focussed on how that power was used and the behaviour of Councillor Caliskan at the time of her decision. I have asked the investigator, Mrs Woodhead to comment on this and also the comments you make on pages 6 -9 of your letter. I enclose a copy of Mrs

Woodhead's letter which amplifies the reasoning for her findings. The purpose of the investigation was to assess whether there was a breach of the Code of Conduct not the process for removing Cabinet members.

### **Witnesses**

Mrs Woodhead comments on this in her letter. I am satisfied that relevant witnesses to the incident were spoken to and their credibility assessed. I have read the additional witness statements provided with the appeal and alluded to in your letter and do not think they add significantly to the investigators report and findings or are persuasive in changing the conclusions I reached. These statements will of course be considered fully as part of the appeal process.

There is no requirement for the councillor who is complained about to be provided with copies of the witness interview notes or for those to be made generally available. Similarly, your clients notes of interview are not provided to the complainants. The complaint form was provided to Councillor Caliskan and the issues raised were raised in the interview and in email correspondence with Mrs Woodhead. The procedures are not analogous to employment law procedures and there is no requirement to follow ACAS Codes of Practice.

### **Our client's complaints**

Section 28(9) and The Council Procedures for Handling Complaints against Councillors and Co-opted Members requires complaints to be made in writing. I have previously advised (but not "instructed" as you say in your letter on page 8) Councillor Caliskan that a formal written complaint needs to be submitted if she wants a matter to be investigated. I do not agree with the view in your letter that my attitude is to use the complaints procedure to settle internal political disputes. Mrs Woodhead has commented in her letter on the issues you raise about the rationale for her conclusions.

It is noted that Councillor Caliskan does not seek findings to be made against Councillor Brett and that she considers these are party political matters. I considered this carefully before initiating an investigation and concluded, as stated previously, that these were serious allegations where the Councillor Code of Conduct was engaged.

Mrs Woodhead's report indicates that she took account of Councillor Caliskan's comments that she had been bullied, that Councillor Brett caused her upset and at times behaved inappropriately. Those factors being taken into account is

reflected in the findings in respect of a number of the allegations of bullying where there was no finding of a breach of the Councillor Code of Conduct.

I strongly rebut the assertion that I have simply accepted the independent report and rubber stamped it without fully considering the methodological robustness of the investigation and report. I also refute your suggestion that the investigation was biased or that I used Council processes and procedures to be used for political purposes. These are serious allegations without foundation, which call in to question my professionalism and integrity. I am deeply offended at the suggestions you make in your letter in this respect and ask you to apologise and retract these unfounded comments.

### **Next steps**

I am not able to retract the findings or withdraw my letter and recommendations, as you request. I have acted impartially and considered the matter carefully in accordance with the law and established procedures. I appreciate Councillor Caliskan disagrees with the conclusions reached but do not accept that I have defamed her or that my findings are misplaced and misconceived. I will make arrangements for an appeal hearing as soon as practicable for all parties involved.

Yours sincerely



Jeremy Chambers  
**Director of Law & Governance**

Enc

**IMPORTANT** - Enfield residents should register for an online Enfield Connected account. Enfield Connected puts many Council services in one place, speeds up your payments and saves you time - to set up your account today go to [www.enfield.gov.uk/connected](http://www.enfield.gov.uk/connected)