

16th June 2019

Dear Jeremy

Whilst I thank you for your letter dated to Mr Rahman on dated 4th July 2019, regrettably, I do not believe you have stated anything that changes my views as set out in the letter to you from Mr Rahman dated 21st June 2019. Nor does your response convincingly address the key issues with the investigation.

The complaint is a party-political matter and indeed was already being dealt with by my political party. It was never appropriate for it to be considered by the Council's Councillor Conduct process. I have consulted with the previous Chair of the Councillor Conduct Committee who has informed me that, during the previous administration working alongside the previous Monitoring Officer, complaints that were about party-political decisions and were already being dealt with by a political party, were kept out of the Councillor Conduct Committee.

I kindly ask that the Councillor Conduct Committee have sight of this letter from me to you so that they are aware of my opinion, along-side Mr Rahman's letter which sets out in detail the reasons why I am appealing your decision. I do not intend on setting out all the reasons again in this letter. However, there are a few points that arise in your letter to me on the 4th July 2019 which I would like to respond to.

No rationale or example provided to explain investigations judgement for bullying

Your letter to me states that your conclusions are based on '*how*' I made my decision to remove the Cabinet member and my '*behaviour*' when I used powers that I was entitled to exercise. You do not provide any detail or examples of any particular behaviour but instead refer to Ms Woodhead's letter. I have read Ms Woodhead letter from the 28th June 2019.

There seem to be two aspects of the investigation: my decision itself and the process leading to the removal of the Cabinet Member; and my conduct at a meeting on the 19th November following my decision to remove the Cabinet Member from her post.

My decision to remove the Cabinet Member

Both you and Ms Woodhead refer to my decision to remove Cllr Brett as '*premature*'. It is not the role of council officers or an Independent Investigator to pass judgment as to what is a serious political matter and as such, the speed and process a political leader chooses to use in response. Moreover, both you and the Independent Investigator do not acknowledge that my decision to remove Cllr Brett from her post was upon advice from yourself as Chief Monitoring officer that was '*you have the authority to remove and appoint Cabinet members as you see fit*'.

Central to any Cabinet Member's role is an understanding of the importance of collective decision making. Therefore, it was entirely reasonable for me to expect that Cllr Brett fully understood that her decision to walk out of a Cabinet meeting to avoid voting on a report was a deliberate act to break an agreed collective decision. I took the decision to remove Cllr Brett from her Cabinet post following a series of emails during which I provided the opportunity for Cllr Brett to apologise for her action which broke an agreed Cabinet and Labour Group decision. My decision to remove Cllr Brett from her Cabinet role was after I discussed the matter with the Labour Group Whip, whom is a Labour Group Officer.

Timeline leading to my decision to remove Cllr Brett from the Cabinet:

7pm Wednesday 14 th November	Cabinet meeting when Cllr Brett breaks an agreed collective political decision.
10am Thursday 15 th November	<p>I wrote to Cllr Brett expressing my concern about her decision and stated that:</p> <p><i>'I would like to give you the opportunity to meet and explain why you took the decision to break a collective position by Cabinet to support the NLWA plan, before I decide what the appropriate step is for me to ensure I protect the integrity of the Cabinet structure for this Labour Council.'</i></p>
12.02pm Friday 16 th November	Cllr Brett responds to my above email and states that she is not available to meet until the 19 th or 26 th November.
12.08pm Friday 16 th November	<p>I write to Cllr Brett:</p> <p><i>'Thank you for responding to me. I would prefer to meet you today, with Daniel and the Chief Whip. Given the severity of the matter, and that I first emailed you yesterday morning following the public Cabinet meeting on Wednesday 14th November, I do not think my request is unreasonable. The integrity of the Cabinet structure of this Labour Council has utmost importance in allowing us to effectively run the administration.</i></p> <p><i>The meeting I am requesting with you should also include Daniel, as he is Deputy Leader, and the Chief Whip. This is a Cabinet matter and therefore it is not appropriate for non-cabinet members to attend.</i></p> <p><i>I hope you are able to email me, Daniel and Ergin back today before 4pm to confirm what time you are able to meet. I am also very happy to receive your explanation via email if you prefer. If I do not receive a response today, I will be considering the appropriate steps I need to take.'</i></p>
1.18pm Friday 16 th November	<p>I wrote to Cllr Brett:</p> <p><i>'Dear Yasemin</i></p> <p><i>I am willing to receive a written apology from you today, before 4pm, addressed to Cabinet, for breaking an agreed position, as well as a commitment that you will not demonstrate such behaviour going forward (walking out of a public cabinet meeting in order to avoid voting on a report). I deem an adequate written statement from you necessary before the weekend, in order to show we have a strong Cabinet structure. I am unwilling to allow the situation to fester over the weekend.'</i></p>

	<p>I did not receive a written apology address to the Cabinet.</p>
<p>13.33pm Friday 16th November</p>	<p>Cllr Brett responded to my above email:</p> <p><i>'Dear Nesil</i></p> <p><i>I am happy to meet with you Monday morning if my colleague Ayfer Orhan is able to join me.</i></p> <p><i>In addition, I am not aware of having broken any agreed Cabinet decision and apologise if this is how it is being perceived by all. This was not my intention. I hope to explain my actions with relevant information in full.'</i></p> <p>I felt that Cllr Brett's unwillingness to meet before the weekend and her clear lack of recognition that she had broken an agreed Cabinet position, despite having served in the Cabinet for many years and as a Labour Councillor for many more, demonstrated her complete disregard to her fellow Cabinet Members, Labour colleagues and the importance of collective responsibility. Her action was damaging to a Labour Council. I had already made it clear that I was expecting a written apology addressed to Cabinet, for breaking an agreed position, as well as a commitment from Cllr Brett that she would not demonstrate such behaviour going forward.</p>
<p>4.02pm Friday 16th November</p>	<p>I wrote to Cllr Brett:</p> <p><i>'Dear Yasemin</i></p> <p><i>Sadly, since our public Cabinet Meeting on Wednesday evening you have not provided an adequate explanation to myself as Council Leader and Chair of Cabinet, as to why you took a decision to break the previously agreed collective position by Cabinet to support the NLWP. As I have previously said, the integrity of the Cabinet structure of this Council has upmost importance in allowing us to effectively run the Labour Administration.</i></p> <p><i>Unfortunately, you have left me with no choice but to suspend you from the Cabinet until we are able to meet, at which point I hope you will provide a full explanation and a willingness to demonstrate that you understand the way collective decision making works, and your role within that. I would also hope that you be able to reflect on how important it is to protect the integrity of the Cabinet structure for the Council and how your actions earlier this week, may well have been viewed by our political opponents.</i></p> <p><i>I will be informing Jeremy Chambers shortly via email. I do not intend to appoint anyone else to your position as Cabinet</i></p>

	<p><i>Portfolio Holder for Public Health; as I would hope to be able to reappoint you into your post within the next two weeks, once we've had the opportunity to discuss your actions and reflect upon them together.</i></p> <p><i>Regards,</i></p> <p><i>Nesil'</i></p>
<p>On Friday 16th November 4.07pm</p>	<p>I wrote to you, Jeremy Chambers:</p> <p><i>'Dear Jeremy</i></p> <p><i>I am writing to inform you that I am removing Cllr Yasemin Brett from her Cabinet post for Public Health from immediate effect.</i></p> <p><i>I will not be appointing anyone else to replace her. I intend to reappoint Cllr Brett within two weeks. In the meantime, I will take responsibility for the Public Health portfolio.</i></p> <p><i>Regards,</i></p> <p><i>Cllr Caliskan'</i></p>

Ms Woodhead states that *'Although Councillor Caliskan was entitled to select members of her Cabinet and remove them if she wishes, this was done in an inappropriate way'*. Neither the Independent Investigator's report or any of the letter from you and Ms Woodhead have provided an explanation as what constituted as *'inappropriate'* and why it constitutes as bullying. The series of emails in which Cllr Brett demonstrates a lack of willingness to provide an adequate apology to Cabinet member led to my decision to remove her from the Cabinet. You have been unable to explain what aspect of my emails were *'inappropriate'*. I would kindly ask that the Councillor Conduct Committee takes this into account when considering my appeal.

The manner of removing a Cabinet Member, whether it is by email or in person, is not detailed anywhere nor should it be a factor in the Councillor Code of Conduct which is not intended to govern the relationship between Cabinet Members. Nor should the Councillor Code of Conduct be allowed to dictate how the political Leader undertakes his or her relationship with Cabinet Members.

Ms Woodhead's letter states:

"On balance, I concluded the decision was made using that power as a punishment, particularly since it was for a 2 week period."

"The power of a Leader to remove a Cabinet member usually used as a process to reallocate Portfolio responsibilities and managed in a timely way to ensure continuity."

I am obliged to challenge the findings because it cannot be allowed to diminish the authority of the Leader of the Council to select his or her Cabinet, nor should it damage or dilute the expectation of any political party that Cabinet Members abide by collective responsibility. The purpose of removing a councillor from Cabinet is not just to change portfolios. It can be a

punishment and often is if that councillor cannot accept collective responsibility or is not conducting portfolio work in line with the overall political and strategic direction as set out by the Leader of the Council. Ms Woodhead is right to note that my decision to remove Cllr Brett from her cabinet position was with the intention to reoffer Cllr Brett the opportunity to once again serve in Cabinet after her punishment of two weeks, or before the two weeks was up if she apologised to cabinet colleagues for breaking an agreed position.

It is entirely inappropriate for council officers to pass political judgment as to what political issues or councillor conduct, such as breaking an agreed cabinet position, are serious enough to warrant political party discipline. Furthermore, your advice to me did not provide any caveats whatsoever about what the process of removing Cabinet Members is '*usually used*' for and nor can Ms Woodhead's opinion on this be retrospectively applied to this case.

Conduct of the meeting on the 19th November 2019

Please note, the meeting on the 19th November between myself, Cllr Brett, Cllr Erbil, Cllr Anderson and Cllr Orhan took place after I had removed Cllr Brett from the Cabinet. The meeting was held by me with the view of re-appointing Cllr Brett to the Cabinet if she was able to demonstrate to me that, having reflected on the matter, she understood the importance of collective decision-making. At this meeting Cllr Brett did not acknowledge that she understood she had broken an agreed Cabinet position; therefore, I was unwilling to appoint her back to the Cabinet any sooner than the 2 weeks I had already stated.

The Investigator's report does not state that my email correspondence in the lead up to removing Cllr Brett had breached a Code. Therefore, despite there being a distinct lack of detail as to what constitutes as to my '*behaviour*' being a breach of the Code, I can only conclude that it is my '*behaviour*' towards Cllr Brett at the meeting on the 19th November 2019, following my decision to remove her that is being judged. Therefore, it is unclear why you are asking me to apologise for removing a Cabinet Member when you did not conclude that the email correspondence between me and Cllr Brett that led to my decision to remove the Cabinet member breached the Code.

In her letter to you on the 28th June 2019, Ms Woodhead refers to 4.9 in her substantive report and the three individuals she interviewed which has influenced the conclusions of her report: Cllr Anderson, Cllr Orhan and Cllr Pite. It is unclear why Cllr Pite has been interviewed given she did not attend the meeting on the 19th November. It is also important for the Councillor Conduct Committee to be aware that Cllr Orhan has also been a complainant about my conduct at the meeting on the 19th November 2019. In relation to Cllr Orhan's complaint, Ms Woodhead did not find that I breached the Code of Conduct. I explained to the Investigator that I found Cllr Orhan's manner aggressive and intimidating during the meeting on the 19th November 2019. Orhan's behaviour was deliberately disruptive, which is an opinion I believe was shared and expressed by the Labour Group Whip who was present at the meeting.

Cllr Brett was present at this same meeting and refused to speak. I had no interaction with Cllr Brett during this meeting. It is curious therefore that Ms Woodhead was able to conclude that my '*behaviour*' at this meeting, in contrast to her judgment about the complaint from Cllr Orhan, breached the Code. Ms Woodhead's letter does not adequately articulate what exactly about my '*behaviour*' during this particular meeting she concluded constitutes as bullying and why she concluded a different judgement in relation to Cllr Orhan complaint about the exact same meeting.

Guidance used by Independent investigator to inform conclusions are wholly inappropriate

Ms Woodhead refers to the 'ACAS Code of Conduct'. This is entirely inappropriate as it is not a document of guidance for a political context. Furthermore, Ms Woodhead sites the following cases:

- Harvey v Ledbury Town Council [2018] EWCH 1151;
- Heesom v Public Services Ombudsman for Wales[2014] 4 AllER 269.

The cases cited are not relevant because they are dealt with councillor / officer disputes and not disputes between two Councillors of the same political party. Both these examples are cases of council officers making complaints against Councillors.

Council's complain process used for political purposes

You point out in your letter that I was entitled to seek the views of the independent person about the matter and was advised by you on the 4th February 2019. As my solicitor's letter points out, this was after your original letter to my on the 21st January 2019 in which you confirm that you had already decided to appoint an external investigator to consider the matter. Thus, you had already taken the decision, in consultation with the Council's Independent Persons, to appoint an external investigator. You did so without providing me with the opportunity to speak to the Council's Independent Persons. You state in your letter that the process did not involve seeking information from interested parties or gathering information. However, it is my strong opinion that had you have done so you would have been provided evidence to suggest that this matter was and had been dealt with by another independent complaints process. Indeed, Cllr Brett in November 2018 made the same complaint to both the local Labour Party and national Labour Party. Her local Labour Party considered a motion on this very complaint, which did not pass. It received press and social media attention – resulting in attacks on my character. Her complaint to the national party is still being considered. These complaints pre-date the complaint you received from Cllr Brett in January 2018 and therefore it is clear that the Council process has been used to gain more publicity for her attack on me.

Thank you for noting your disappointment that despite the fact you asked all those involved to respect the confidentiality of the process relating to this complaint, details about the investigation have been shared with the press and the complainant has been quote. This was done so despite the fact the appeal process has not yet been completed. It is further evidence in my view that the Councillor Complaint's procedure has been used to further a personal and political attack on me – the recent press coverage has now compounded the enduring smear campaign – the active participants of which are the complainant and the witnesses approached in the investigation.

As the letter from Mr Rahman states, there is no evidence that you in your position as Chief Monitoring Officer, on behalf of the Council, used your best endeavours to resolve this matter, which is a further breach in the process. You say in your letter to my solicitor that you did not think that a local settlement was appropriate or likely prior to an investigation, based on as you put it the '*nature of the allegations*'. It seems therefore you accept that you did not seek an informal resolution to the satisfaction of all parties before you appointed the Independent Investigator and made your recommendations following the Ms Woodhead's report.

I am unsurprised that both you and Ms Woodhead continue to hold the opinion that the Council Procedures do not have flaws. However, given that you have previously expressed concern

over the robustness of the Council's Constitution which I understand you have been carrying a review of over the past 12 months, I would like to formally request that you also seek the opinion of another independent person in relation to our Council Procedures with the view of proposing any amendments if necessary, alongside changes to the Council Constitution. I am content for this work to be completed after my appeal's process has been completed.

Use of Council resources

Finally, I am aware that over the last few months that as Chief Monitoring Officer you have had to oversee a complaints procedure that councillors have attempted to use for their own politically motivated attack of councillors. I can imagine this has created additional and unnecessary pressure of you and your team, as well as a cost to the Council during what are extremely difficult budgetary constraints. It saddens me that tax payers' money is being wasted in this way. I look forward to the Councillor Conduct Committee hearing the appeal and bringing this matter to a close.

I would like this case to conclude as soon as possible and for the appeal meeting of the Councillor Conduct Committee to be scheduled before the August summer period begins. I am happy to attend the appeal and answer any questions Committee Members might have.

Regards

Cllr Nesil Caliskan