

Private and Confidential

Mr Jeremy Chambers
Enfield Council
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Silver Street
Enfield
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Date: 28 June 2019

Your ref:

Our ref: WOODHEFZ\075727-New

Direct:

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Dear Mr Chambers,

**Re – Appeal by Councillor Caliskan in respect of complaint of Councillor Brett.
Strictly Confidential and Legally Privileged**

Thank you for letting me know that Councillor Caliskan has appealed against your decision that there was a breach of the Councillor Code of Conduct following my investigation. I have read the complaint form dated 21 June 2019 and the accompanying documents, including your decision letter, a letter from Rahman and Lowe dated 21 June 2019 and the supporting letters in Appendix 3 of the complaint.

I thought it would be helpful if I set out my comments on the appeal form and the letter from Rahman and Lowe so that you can respond to that as part of your considerations about the issues set out in the letter and to clarify understanding in advance of the appeal hearing. I will use the headings in the appeal form and letter to try and make the points easy to follow: -

Flawed Procedures and process not followed in line with national legislation.

I have read the Council's procedures for handling complaints against councillors and these are consistent with the requirements in the Localism Act 2011. A particular point is made about the lack of opportunity for Councillor Caliskan to consult with the independent person prior to any decision to investigate. Section 28(7) of the Localism Act 2011 requires the Council to consult the independent person before making a decision about an allegation it has decided to investigate. There is a discretion for the Council to consult the independent person in other circumstances. This often includes general matters or discussion about decisions whether or not a matter should be investigated, as in this case. The decision about whether or not a matter is investigated is for the Monitoring Officer after any consultation. The process is not an initial or preliminary hearing where wider views are considered or comments sought from the individual complained about.

Section 28(7) of the Localism Act 2011 also provides that a member who is complained about may also seek the views of the independent person. The usual process for dealing with this is for a second independent person to offer views, not the independent person who is consulted by the Monitoring Officer. This is to ensure that the integrity of the process is preserved.

The Investigation is fundamentally flawed.

There is a concern expressed in the appeal and letter that interviews were only conducted with individuals who were long standing opponents to Councillor Caliskan and that this

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indicates bias. Councillor Caliskan raised this concern with me during the interview process and it was also evident from the documents I was given and the interviews I undertook. This influenced my decision about a number of the complaints which alleged bullying and in respect of which I concluded there had not been a breach of the Code of Conduct, as set out in paragraph 8 of my report. I considered the broad allegations of bullying separately from the allegation about removal of Councillor Brett as a Cabinet member. It was in respect of those general alleged incidents where interviews with others may have assisted, not in respect of the incident where I found there was a breach of the Code. Furthermore, I had sight of email correspondence which gave a picture of the wider context about the general allegations and views of other councillors, for example Councillor Keazor.

In respect of the complaint about the decision to remove Councillor Brett from her Cabinet role, I interviewed those involved in the meetings, you in respect of the advice you gave and the Chief Whip. My decision was made after careful consideration of all the relevant information, mindful of the context and background as well as usual practice in local authorities.

No rationale or example provided to explain investigations judgement for bullying.

I gave very careful consideration to the allegation of bullying in respect of Councillor Caliskan's decision to remove Councillor Brett as a Cabinet member. The following particular factors were taken into account: -

- There is no legal definition of bullying and each case is considered on its own facts.
- I have reflected upon some of the examples given in an employment law context and considered the definition of bullying in the ACAS Code of Conduct and also where it has been referred to in cases under the Localism Act 2011.
- I was mindful of the provisions in the Localism Act 2011 which require the Council to have a Code of Conduct which reflects the requirement to promote and maintain high standards of conduct and in particular the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership, set out in Section 28 of the Localism Act 2011. These are referred to in the Code of Conduct for Enfield Council, together with other requirements, including an expectation that there is respect for others, not to bully others, a duty to uphold the law, ensuring conduct maintains and strengthens public trust and confidence and not bringing the Council into disrepute.
- I considered relevant caselaw where the Localism Act has been applied, including the following cases: -
 - Harvey v Ledbury Town Council [2018] EWCH 1151;
 - Heesom v Public Services Ombudsman for Wales[2014] 4 AllER 269.
- I considered the specific allegation of bullying in respect of the decision and actions to remove Councillor Brett from her Cabinet role and whether that was beyond what it was reasonable for Councillor Brett to tolerate and concluded it was.
- I found Councillor Brett and other witnesses credible in their account and have summarised the information provided and which I found highly persuasive in section 4.9 of my report.
- That although Councillor Caliskan was entitled to select members of her Cabinet and remove them if she wished, this was done in an inappropriate way.
- I noted the way Councillor Brett described how she was treated, which she identified as bullying behaviour.

- Other witnesses to the incident described it in a similar way.
- I was satisfied that Councillor Brett was subjected to unwelcome, unwarranted treatment which caused a detrimental effect to her.
- As Leader, Councillor Caliskan is in a position of authority and power and I concluded on balance that she had abused that power which humiliated and caused distress to Councillor Brett.
- I took account of the statement by the Leader of the Council that she decided to remove Councillor Brett from Cabinet because she refused to offer a satisfactory apology for declaring an interest at a recent Cabinet meeting.
- Councillor Caliskan did not acknowledge that Councillor Brett may have felt bullied or distressed and referred to feeling she had no choice within the powers she had as Leader of the Council. Councillor Caliskan also referred to the decision as "suspension" which has connotations of disciplinary action being taken and is also not consistent with the way the power is described in the legislation.
- 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.

Biased Investigation – Selection of Witnesses.

I spoke to all relevant witnesses in respect of the decision to remove Councillor Brett from her role as Cabinet member. As well as speaking to Councillor Caliskan, Councillor Brett, Councillor Orhan, Councillor Anderson and Councillor Pite, I spoke to Councillor Erbil, the Chief Whip and Mr Jeremy Chambers, the Council's Monitoring Officer. As Whip, Councillor Erbil was independent as was Mr Jeremy Chambers in his role and Monitoring Officer. These were all individuals involved in the meeting and events which led to the decision by Councillor Caliskan to remove Councillor Brett from her Cabinet role. I accepted the point made by Councillor Caliskan that her view was that she felt the actions of Councillor Brett were politically motivated and a smear campaign. I accepted the view of Mr Jeremy Chambers that a councillor is entitled to declare an interest in a matter and also that it is not usual for councillors to decide not to vote on a matter which is sensitive to their locality or a matter of concern in principle to them. I also accepted Mr Jeremy Chambers view that whether or not a councillor has an interest in a matter is something for them to decide as individuals, rather than something to be prescribed by others.

There was no need to interview others to say that the actions of Councillor Brett were politically motivated and a smear campaign. I was well aware of that general view but did not agree that this possibility justified the behaviour of Councillor Caliskan.

I was provided with email correspondence from Councillor Keazor which influenced my decision that the other allegations of bullying referred to in paragraph 4.8 of my report were unfounded. The way Councillor Caliskan behaved in the removal of Councillor Brett's Cabinet role was evidenced by those present at the meetings and involved in the decision making. There was no need to interview any other councillors who could not provide relevant evidence about that.

I do not accept that my investigation was biased or flawed and I was well aware of the political context for the complaints. I have over 30 years' experience in local government, having worked as a Monitoring Officer in a large Council as well as advising Council's nationally on governance and standard issues. My report was written in the hope that this matter could be dealt with in a spirit of compromise with goodwill on both the part of Councillor Caliskan and Councillor Brett. The suggested mediation and apology process

would amount to an informal resolution of this matter which could form part of the record of the decision making.

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