

FOR THE ATTENTION OF JEREMY CHAMBERS

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21st June 2019

Dear Jeremy Chambers,

Complaint of Councillor Brett

We refer to your letter of 21 May 2019 informing our client that the “investigation” into the complaint by Cllr Brett had been completed.

We act on behalf of Nesil Caliskan in connection with all matters concerning the handling of the above matter. This letter is a supporting document as part of Cllr Caliskan’s appeal.

There are several reasons why our client does not accept the findings and recommendations by you in relation to this complaint. The underlying issue is that that the investigation itself is fundamentally flawed. The majority of voices listened to as part of the interviews conducted are of Councillors who are long standing political opponents to Cllr Caliskan, therefore there is a clear bias. This alone would be grounds for a Judicial Review based on the flawed and unreasonable investigation; and apparent clear bias.

Enfield Council’s existing *Procedure for Handling Complaints against Councillors and Co-opted Members* is a wholly inadequate document because it is not in line with national legislation, specifically the Localism Act 2011. As the Chief Monitoring Officer, you are responsible for ensuring that such procedures, alongside the Council’s Constitution, are fit for purpose. You are required to propose changes when they are not. The process followed in response to the complaint is also flawed because there was no opportunity provided to our client to consult the Independent Person before you decided the matter should be investigated and handed it to an Investigator.

We have set out our concerns below.

1. Abuse of Process

Flawed Council Procedure and process not followed in line with the national legislation

The *Procedure for Handling Complaints against Councillors and Co-opted Members* has serious flaws which calls into question how any complaint can be handled or investigated in a fair manner. The procedures do not mention issues of fundamental significance such as: confidentiality;

whether the Councillor Conduct Committee will be a public meeting; what checks and balance there are on the fairness in the process; and what opportunity, if any, is there for the accused to have representation at the Conduct Committee in accordance with the rules of natural justice. Enfield Council's *Procedure for Handling Complaints against Councillors and Co-opted Members* also makes no reference to the Localism Act 2011.

The Council's process followed in handling this complaint was not in line the Localism Act 2011. As Chief Monitoring Officer, you are required to ensure that processes are in line with national legislation.

On the 21 January 2019 our client received an email from you stating:

"I have received a complaint against you under the Code of Conduct, made by Cllr Brett, a copy of which is attached.

I have consulted one of the Council's Independent Persons who agrees with me that the matter ought to be investigated. I will be appointing an external investigator to consider this matter and I will write to you again shortly with details of their appointment."

On the 4 February 2019 our client received an email from you outlining the initial assessment criteria which determines whether the complaint warrants further action. In the email, you confirmed to our client that you had made your initial assessment, you consulted the Council's Independent Person and you concluded that:

"...on the face of the information provided, should be referred for investigation. Sarah Jewell, when consulted, agreed with this view. This is the decision I have taken, and I have appointed Eversheds Solicitors to carry out the four investigations."

Section 28 (7) of the Localism Act 2011 states:

Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person—

- (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and
- (b) whose views may be sought—
 - (i) by the authority in relation to an allegation in circumstances not within paragraph (a),
 - (ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and
 - (iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.

No right of appeal was offered to our client on your arbitrary and unilateral decision in your capacity as the Chief Monitoring Officer to hand the matter over to the investigator. Our client was also not given the opportunity to contact the Independent Person before you took the decision to hand the complaint to the investigator. This is a clear breach of process and in contradiction with national guidance and the Localism Act 2011.

Council's complaint process used for political purpose

On 15 May 2018 our client, 29, was elected Leader of Enfield Council by the ruling Labour Group of Councillors, becoming the first woman to hold the post and the youngest council leader in London. She took over from Doug Taylor, who had led the Council for the previous eight years. Our Client has worked extremely hard to progress in her career and after many years campaigning in politics she was delighted to have been elected to this senior political role, her greatest achievement thus far.

Since commencing her role however, there has been a coordinated witch-hunt and smear campaign against our client, including from members of her own Party. In many cases, it is clear that a handful of people from the Council have been leaking and sharing information to the press – to that end, there have been a constant barrage of articles, which effectively provides a weekly running commentary on our client, that have been negative and accusatory. Most recently, and in relation to the complaint submitted by Cllr Brett, there has been press coverage in the Enfield Independent. Our client was contacted by the journalist at the Enfield Independent and asked to respond to comments provided by both Cllr Brett and Cllr Anderson. It is clear that the letter from you to our client, detailing the complaint and the findings of the “investigation”, were shared by Cllr Brett with the journalist. This was done so before the appeal deadline and is a demonstration in itself that Cllr Brett's intention all along – which is usage of the Council's Complaint Procedure for political purposes.

By way of context, Cllr Anderson has also recently been quoted in the press and other media outlets attacking Cllr Caliskan. Cllr Orhan is also quoted in the press attacking Cllr Caliskan's bid to become Leader. Cllr Pite, Cllr Anderson, Cllr Orhan and Cllr Brett were all signatories to a letter on 24 June 2018 complaining to the Labour Party about internal Labour Party matters in their attempt to call into question the democratic legitimacy of Cllr Caliskan being elected as Leader. The letter was then leaked to the press further compounding the smear campaign and political attack.

All four of these individuals have a long and documented history of politically attacking and opposing Cllr Caliskan since she was declared she would run as a candidate as Leader. They oppose her Leadership.

<https://www.enfieldindependent.co.uk/news/17663087.row-between-enfield-council-leader-and-former-deputy>

<https://morningstaronline.co.uk/article/labour-right-seeking-take-over-enfield-left-councillors-say>

Knowing the surrounding and background context to which the Cllr Brett's complaint arises is vital in dealing with this complaint. Para 4.7 of Eversheds' 'Independent Report' ("the Report") dated 02 May 2019 states:

“Most of the Councillors I interviewed referred to the change in Leadership of the Labour party in May 2018, when Councillor Caliskan took over as Leader of the Council. This change has caused upset and disruption to relationships within the Labour party and has created a background of general tension as context for the complaint of Councillor Brett...”

We find it remarkable therefore that despite acknowledging the party-political dispute, the so-called investigation by Eversheds, and your findings dated 21 May 2019 have failed to have any regard to it at all when making their findings. Para 13(2) of Chapter 5.1 - Code of Conduct for Members of London Borough of Enfield states that you shall:

“Ensure that such [Council] resources are not used improperly for political purposes (including party political purposes)”;

The wording contains the word “shall” which in legal terms denotes an absolute obligation to do so, which further highlights the flaw in the investigation in failing to consider the fact that Cllr Brett was using this issue and Council resources for party political purposes concerning her, and some of her colleagues’ refusal to accept our client as Leader of the Council. The DCLG guidance is also clear that the Councillor Conduct Committee should not be used for political purposes. This is understood full well by the Council as it is clear that a Council spokesperson, who is quoted in the above Enfield Independent article as saying: *“The internal party politics of the Labour Group are not a matter for the Council.”*

The fact that Cllr Brett was seeking to score political points is further corroborated by the fact that it would seem that she had made these issues known to the press through the interviews provided to them and through her social media postings on the matter. These issues were known to Eversheds and by extension, to yourself, for example, at Para 4.10.4.1 of the Report, it states:

“I also believe that Councillor Brett did not always behave appropriately, for example by recording meetings or in the use of social media about her removal from Cabinet”

Further, the Report even makes clear at Para 3.1.1 that a complaint of this nature is highly unusual, i.e. where a complaint is made by a councillor about another member of their party. This further supports the contention that Cllr Brett is seeking to use all means at her disposal to target our client for the said reasons.

It is clear therefore that this is a political / internal party matter which is being looked into already by the Chief Whip, as well as other processes within the Labour Party, as has been publicly reported. We therefore fail to understand why our client is being put through a dual process and why this investigation was concluded whilst the Chief Whip’s investigation remains ongoing. It is abusive to start two separate processes against our client at the same time. Two separate processes cannot fairly coexist, something you do not appear to have even considered.

The Report and the findings presented, including that outlined in your letter to our client on the 21 June, therefore amount to a clear abuse of process. In accepting the Report without any consideration of your own, shows you have demonstrated a fundamental lack of understanding and appreciation of due process.

As Chief Monitoring Officer you were aware that there is a long-documented history that of Cllr Brett and three of the witnesses interviewed as being vocal and political opponents of our client. As such, and for all the reasons outlined above, this complaint should have been rejected according to the Council own *Procedure for Handling Complaints against Councillors and Co-opted Members*:

3.2a - They are considered to be malicious, vexatious or frivolous

The complaint should have also been rejected according to the Council own *Procedure for Handling Complaints against Councillors and Co-opted Members*:

3.2c - It would be more appropriate for the complaint to be dealt with by a court or under another complaint or arbitration procedure

3.2g - The complaint is being/has been dealt with by another independent complaints process

The supporting statement from Pete Robbins, Head of the Local Association of Labour Group reiterates this.

Furthermore, the investigator's report itself makes clear at Para 3.1.3 Cllr Brett admits herself that this complaint was '*driven by a complaint initiated by Cllr Caliskan*'. The complaint should have therefore been rejected from the outset based on the long-standing principle and guidance of local government that Council processes should not be used for political purposes or for 'tit for tat'. Instead, as Chief Monitoring Officer you should have referred the complaint back to the Labour Group Chief Whip, as would have been permitted and appropriate according to 3.2c in the Council's *Procedure for Handling Complaints against Councillors and Co-opted Members*.

Furthermore, according to the *Procedure for Handling Complaints against Councillors and Co-opted Members*:

4.1b - The Council will use its best endeavours to determine a complaint within 3 months of receipt.... The process may include b) Informal resolution to the satisfaction of all parties.

There is no evidence that you in your position as Chief Monitoring, on behalf of the Council, used your best endeavours to resolve this matter informally which is a further breach in the process.

2. Fairness

Our client acted within her powers

In addition to issues around fairness raised above, we would like to highlight the fact that our client is essentially being penalised for doing something that was within her powers granted by the Council's Constitution. This is not disputed by the Report as it makes it clear in the following Paras:

4.8.1.8 - It is for the Leader of the Council to determine responsibility for Cabinet portfolios;

4.9.1.11 – Jeremy Chambers made the point in an email to Councillor Brett on 18 November, that the Leader was entitled to determine the make-up of Cabinet and the portfolio allocation.

Yet what you have failed to give consideration to is the fact that there was a series of text messages between you and our client in the period leading up to Cllr Brett's removal where our

client sought guidance on the process from you before she removed Cllr Brett. In these exchanges, you state as follows:

“As leader you have authority to remove and appoint Cabinet members as you see fit. You must give notice to me. The changes can take effect whenever you wish them to. There is no requirement to report the changes to Council...” and;

“...Protocol, not law would suggest that you inform the Cabinet member of your decision”.

We are therefore curious as to why you have not considered these in your findings, and the fact that our client sought guidance from you on the process which she then followed. Our client is now being penalised for having followed your guidance. Your letter to our client on 21 June suggests that you now believe your advice was incorrect and that she is not entitled to remove a Cabinet Member as she sees fit.

Your findings that our client had failed to treat Cllr Brett with respect by removing her prematurely is therefore fundamentally flawed. Cllr Caliskan took the decision to remove Cllr Brett from the Cabinet following what she deemed a serious political error on the part of Cllr Brett, and in line with your advice on removing and appointing Cabinet members. Whatever the process that could have led Cllr Caliskan to make that decision would always have caused Cllr Brett to react in the way she did in view of her personal differences with our client and therefore, she was never going to be pleased. In addition, there are absolutely no processes, procedures or protocols to be followed in removing a councillor, as such we are struggling to understand under what objective basis our client’s behavior is being adjudged against? She has followed the guidance that was given to her by you. There is no process or procedure in place which sets out what she is expected to do. The findings that she “acted in haste”, or that she has “bullied” Cllr Brett are wholly unreasonable, perverse and entirely subjective. The Report and your findings make a finding of bullying, which is a very serious allegation, yet they do so without providing any details as to what actual act/incident constituted bullying and the reasons why. Furthermore, the investigator’s report fails to state whether a process for removing Cllr Brett should have been followed. We can only assume that the investigator is acknowledging that there simply is no process that our client could have followed.

Point 4.9.1.13 - in the report describes that Cllr Brett felt bullied because she was temporarily removed from the Cabinet. However, the investigator does not give a rationale for the judgment for bullying. Cllr Brett stating that she felt bullied is not a reason for the investigator to conclude that Cllr Brett was bullied. The investigator is obliged to provide something more than just her subjective view. Indeed, it appears no guidance has been used in the investigator’s report to inform the opinion that the manner in removing Cllr Brett was an act of bullying by Cllr Caliskan. Therefore, in the absence of any guidance, the investigator’s judgment is simply a subjective, personal opinion and cannot be objectively scrutinised. Furthermore, it seems clear that her subjective personal opinion has been influenced, shaped and formed by Cllr Brett, Cllr Orhan, Cllr Anderson and Cllr Pite – all political opponents of Cllr Caliskan.

If the basis for the investigation was the “manner” in which our client dealt with Cllr Brett, then this raises the issue of the identity and substance of the apparent “complaint(s)” made against her, which both your letter, and the Report have failed to deal with. Our client denies that she

was abusive or acted in bullying manner as alleged or at all and has witness evidence which would show that she has never demonstrated just behaviour, and in fact they would say Cllr Brett and those supporting her have tried to bully our client to this effect.

Witnesses

All the witnesses that were interviewed as part of the “investigation” process belong to the same clique who have been attempting to oust our client from her role since she commenced it in May 2018, however, this was not factored in at all. The investigator did not explore in any detail whether there was any further evidence or leads that she needed to follow. It is the duty of the Chief Monitoring Officer to ensure broader context is taken into consideration to ensure that the process is not being misused for political purposes. Had others been interviewed the investigation may have been more balanced. Our client has submitted statements as evidence as part of her appeal from 4 Councillors.

In addition, there are a number of references in the Report which makes clear that the investigator ought to have interviewed more people, but she had failed to do so. Had she done so; she would likely have found that Cllr. Brett was causing difficulties within the Cabinet, for example at Para 4.8.1.6 states:

“Councillor Caliskan said that other Cabinet members had also raised concerns with her that Councillor Brett drifted into their portfolios. She also said Council Officers raised concerns with her because it made their job difficult”.

Despite knowing this, both the investigator and you have failed to meet with and interview these other councillors and officers as part of the investigation. Similarly, at Para 4.8.1.6 of the Report, it refers to Cllr. Keazor being frustrated with Cllr Brett, however, no attempt was made to interview Cllr. Keazor as part of the investigation.

The Report states at Para: 4.10.1.4: *“I have listened carefully to the councillors I have spoke to and on balance I have concluded that Cllr Caliskan should have behaved differently towards Cllr Brett.”* This is an outrageous statement to make and conclusion to come to given that excluding our client and Cllr Brett, three out of the four Councillors interviewed have openly and publicly political attacked our client since she was elected leader. It is clear therefore that the only Councillors interviewed are those who have and continue to be public political opponents of our client from the moment she declared her candidate for Leadership. Some of the witnesses interviewed have themselves made separate complaints against Cllr Caliskan. Their credibility has not been called into question at all or the fact that they themselves have an axe to grind.

Further, at the point of being interviewed, our client was not provided with copies of the witness interviews. It is one of the basic requirements of the rules of natural justice that the accused is given all the evidence against them so as to provide them with an opportunity to respond. In employment terms, the ACAS Codes of Practice make clear that all documents, including statements taken must be given to the accused and not withheld before any disciplinary action is taken. However, this was not followed in our client’s case and amounts to a fundamental flaw in the process.

Our Client's complaints

Our client's complaint's against Cllr Brett have not properly been considered at all, if it was, then the investigator would have sought evidence from our client and interviewed witnesses accordingly, which she has not done. Had the investigator interviewed other Councillors, she would have heard evidence and gained understand of the crucial broad context which is articulated in the supporting statements our client has submitted as part of her appeal. Your findings are equally defective in this regard.

You have previously instructed our client that she needs to put in a formal complaint for it to be considered. This is wholly unsatisfactory given that as part of this complaint from Cllr Brett, the context provided by our client should have been considered and a formal complaint was therefore unnecessary. This indicates that your attitude is that Council arrangements/processes should be used for internal political disputes that occur between any two Councillors from the same political group. Our client fundamentally disagreed with this, not least because it is not in the spirit of the Localism Act 2011.

The Report and letter from you state: *"I have not found any evidence that the complaints of Councillor Brett are politically motivated or vexatious"*. The independent investigator never requested any such evidence, nor did they interview councilors that would have provided vital evidence. Further, it is clear from the Report that Cllr Brett's behavior has also been called into question as noted in the following:

- Para 4.8.1.6 – it is accepted that Cllr. Brett was creating confusion and that this frustration was reflected in an email from Cllr Keazor;
- Para 4.8.1.9 – it is accepted that there were understandable frustrations for our client and other councillors concerning Cllr Brett;
- Para 4.10.1.1 – that there were upset on both sides regarding their responsibilities;
- Para 4.10.1.4 – that Cllr Brett at times behaved inappropriately by recording meetings and in the use of her social media.

It smacks of double standards that when our client is found to cause Cllr Brett upset, a finding of misconduct is found for bullying and failing to treat others with respect but yet despite a clear finding being made that Cllr Brett caused our client upset as well (Para 4.10.1.1), no finding or action is taken against Cllr Brett. This is aggravated further by the fact that a finding has also been made about inappropriate behavior from Cllr Brett (4.10.1.4), yet no action is taken.

Cllr Brett's conduct not only required consideration under Code 12(1) (treating others with respect) and 12(2)(b) (bullying) of the Code of Conduct, but also under the following codes:

- Code 9 – *"You shall at all times conduct yourself in a manner which will maintain and strengthen the public's trust and confidence in the integrity of the Authority and never undertake any action which would bring the Authority, you or other members or officers generally, into disrepute"* – it is clear that Cllr Brett's briefings to the media and social media posts are in contravention of this;
- Code 12(2)(b) *"You shall observe the following rules when acting as a Member or co-opted Member of the Authority: You must not: Lobby, intimidate or attempt to lobby or*

intimidate any person who is or is likely to be: i) a complainant, (ii) a witness, or (iii) involved in the administration or determination of any investigation or proceedings” – again, it is clear that by briefing the media, and through her social medial postings, Cllr Brett had attempted to lobby people against our client;

It is unequivocally clear that our client’s complaints, the investigation into them and the findings made against Cllr Brett, have not been treated in the same way as those against our client which is inherently unfair. It should be noted however for the avoidance of doubt that our client does not seek any findings to be made against Cllr Brett for the above contraventions as she believes considers these matters to concern party political matters which fall outside the remit of Council’s Code of Conduct – the examples have been highlighted merely to demonstrate the inconsistent approach of the Council in dealing with our client.

In addition, even though the Report received is merely guidance, you have simply accepted it without question and without any consideration of you own, as is apparent from your letter. Your approach has been simply to rubber stamp the Report without fully considering the methodological robustness of the investigation and the Report. The investigator in this matter was unable to grasp the wider context of an enduring politically motivated campaign to defame our client’s character. Some of the main orchestrators of this campaign make up the majority of those interviewed. Knowing this, as Chief Monitoring Officer you have allowed these complaints to be handed to an independent investigator and for the investigation to be conducted in a bias manner. You have then gone onto agree with the content and recommendations without any considerations of the wider political context. You have allowed Council processes and Council resources to be used for political purposes.

3. Next Steps

Our client does not accept that she has breached the Code of Conduct as alleged, or at all. She will therefore not apologise. We suggest that you retract your findings with immediate effect. Our client has already been subjected to negative media coverage, causing serious damage to our client’s reputation. We urge on behalf of our client that you reflect on the inadequacies of the process and the investigation, in particularly the flaws and bias, and you withdraw your letter and recommendations.

For the avoidance of doubt, and as set out above, the allegations are completely without foundation and there is no credible evidence to support them. The assertions you have put forward are completely spurious. Your purported findings against our client are entirely misplaced and misconceived. The Report and your letter sent to our client on 21 May 2019 unjustifiably defames our client. It also damages the Council’s reputation that officers should act impartially and not allow council resources and processes to be used for political purposes. Further, the findings are tainted with discriminatory comments, for example, Cllr Anderson refers to our client as “immature” – this is clearly linked to her age.

The complaint against Cllr Caliskan should have never been accepted in the first instance. Having been handed over for investigation to an individual that has no knowledge of the political context of Enfield, the investigation was then conducted with serious flaws and bias. We therefore urge

you to retract the findings. We also urge you to discontinue using council resources for political purposes.

We look forward to hearing from you as a matter of urgency.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'Z' followed by a horizontal line.

Zillur Rahman

For and on behalf of
RAHMAN LOWE SOLICITORS

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