

**MINUTES OF THE MEETING OF THE COUNCILLOR CONDUCT COMMITTEE
HELD ON WEDNESDAY, 4 SEPTEMBER 2019**

COUNCILLORS

PRESENT Glynis Vince and Elaine Hayward and Tolga Aramaz
Christine Chamberlain and Sarah Jewell (Independent
Persons)

ABSENT Ergin Erbil and Christine Hamilton

OFFICERS: Jeremy Chambers (Director of Law and Governance) and
Jayne Middleton-Albooye (Head of Legal Services) Penelope
Williams (Secretary)

Also Attending: Frances Woodhead (Independent Investigator), Councillors
and members of the public.

**1
WELCOME AND APOLOGIES**

The Chair welcomed everyone to the meeting.

Apologies for absence were received from Councillor Christine Hamilton and
Councillor Ergin Erbil.

**2
SUBSTITUTIONS**

Councillor Tolga Aramaz stood in as substitute for Councillor Ergin Erbil who
was unable to attend the meeting as he had been a witness in the
investigation.

**3
DECLARATION OF INTERESTS**

There were no declarations of interest.

**4
APPEAL HEARING**

The Committee received the report of the Monitoring Officer (Report No: 86)
with details of the appeal against a monitoring officer decision on a breach of
the Councillor Code of Conduct by Councillor Caliskan, Leader of the Council.

Jayne Middleton Albooye (Deputy Monitoring Officer) set out the process for
an appeal:

- Presentation of the Monitoring Officer's Investigation report including
any representations, the view of the independent person and with an
opportunity for the committee to ask questions.

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- Consideration of the evidence by the committee.
- Agreement of the outcome and if there was confirmation that a breach of the code had occurred consider what sanctions should be imposed.

1. Presentation of the Monitoring Officer's Investigation Report

1.1 Jeremy Chambers, Monitoring Officer highlighted the following:

1.1.1 A complaint had been received from Councillor Brett on the 11 January 2019 alleging that Councillor Caliskan undermined her in front of officers and members, wrote to her and behaved in an intimidating manner and made it very difficult for Councillor Brett to perform her role as Cabinet Member for Public Health.

1.1.2 Councillor Brett alleged that Councillor Caliskan breached a number of the expectations of the Members Code of Conduct, as follows: -

- a. paragraph 8.8 (respect for others),
- b. paragraph 11 (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 members or officers generally into disrepute),
- c. paragraph 12.1 (treat others with respect and courtesy), and
- d. paragraph 12.2(b) (not bully any person).

1.1.3 The Monitoring Officer considered the complaint in accordance with Council procedures, was satisfied that it fell within the remit of the Code of Conduct and merited investigation. He said that he was and remained completely satisfied that the issue of Cllr Caliskan's conduct was a matter that could be properly considered under the Code of Conduct.

1.1.4 In accordance with the Council's Constitution, the Monitoring Officer sought the views of one of the two Independent Persons appointed to deal with member conduct. For this complaint Sarah Jewell was consulted. On 15th January 2019 Sarah Jewell agreed that the complaint should be referred for further investigation.

1.1.5 The Council's Constitution allowed him to carry out the investigation himself as Monitoring Officer or, as in this case, appoint another person to carry out the investigation in his name. On 22nd January 2019 he appointed Frances Woodhead of Eversheds Sutherland (International) LLP as Investigating Officer to carry out an investigation in to the complaint. Frances Woodhead was an experienced and well-respected public-sector lawyer used to dealing with complaints under the Code of Conduct.

1.2 Frances Woodhead presented her report, highlighting the following:

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- 1.2.1 She had considered a number of documents included with the complaint and had interviewed Councillor Brett, Councillor Caliskan (the Leader), Councillor Anderson (the Deputy Leader at the time), Councillor Orhan, Councillor Erbil (the Whip), Councillor Pite and Jeremy Chambers (Monitoring Officer).
- 1.2.2 The complaint raised a number of issues which she summarised as Councillor Caliskan repeatedly undermining Councillor Brett in front of officers and elected members and behaving in an intimidating manner, making it difficult for Councillor Brett to perform her role as a Cabinet Member.
- 1.2.3 She considered whether the complaint fell within the remit of the Code of Conduct and concluded that it did for the following reasons:-
- The general principles of the Code were engaged about integrity, good leadership and treating others with respect.
 - The specific expectations in the Council Code of Conduct were referred to in the complaint, for example that others should be treated with respect and not bullied.
 - The case of Harvey v Ledbury Town Council and the provisions in the Localism Act 2011 require the Council to investigate allegations which fall within the Code of Conduct and allege a failure to comply with the Code. Other alternative procedures should not be followed instead.
 - The Leader's alleged actions related to the Council's administrative and governance functions.
 - The complaint raised serious issues which were not vexatious or trivial.
- 1.2.4 The detail of the evidence she considered and her conclusions about each of the complaints were set out in detail in her report attached at Appendix A to the report. She concluded that some of the matters were about a breakdown in relationship or misunderstood communication, issues of party discipline or misunderstanding rather than a breach of the Code of Conduct. In the report she recognised the breakdown in trust between Councillor Caliskan and Councillor Brett and suggested that an apology and mediation would be a way forward. Further reasons were set out in her letter dated 28 June 2019 to Jeremy Chambers (page 38-40 of the agenda pack).
- 1.2.5 She had found that there was a breach of the Code of Conduct in respect of the action taken to remove Councillor Brett from her position as Cabinet Member. This was referred to in section 4.9 of her report. The decision was a finely balanced one and this was reflected in her findings that in respect of the allegations about general bullying she had not found a breach of the Code of Conduct. She had reached a

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different conclusion about the way Councillor Brett's Cabinet responsibilities were removed.

- 1.2.6 In January 2019 the government's Committee on Standards in Public Life reported on its review of Local Government Ethical Standards. Frances Woodhead stated that the report made the point that whilst there will be robust political disagreement, the tone of engagement should be civil and constructive.
- 1.2.7 Frances Woodhead stated that she did not suggest that Councillor Caliskan was not entitled to remove Councillor Brett from her Cabinet role or notify Cabinet members she had done so but concluded that the way it was done and the timing was inappropriate. Her decision showed a lack of respect for Councillor Brett's decision to declare an interest and disregard for the apology she gave in an email on 16 November 2018.
- 1.2.8 Frances Woodhead also commented on some of the points made by Councillor Caliskan in her appeal. Councillor Caliskan's appeal complained that the process and investigation were flawed, that the Council's process was being used for political purposes, that she acted within the Constitution and guidance given by Jeremy Chambers, that no rationale or example was provided to justify bullying, that the investigation was biased because all the witnesses interviewed were opponents of Councillor Caliskan.
- 1.2.9 Frances Woodhead explained her findings that the communication of this decision as well as the wider publication to Jeremy Chambers and the subsequent confirmation on the website caused distress to Councillor Brett. Councillor Brett also received queries from the press about what had happened.
- 1.2.10 She concluded that it was a disproportionate action on the part of the Leader to temporarily remove Councillor Brett as a Cabinet Member because she had disclosed an interest in the North London Waste Project. In Frances Woodhead's experience, it was not unusual for ward councillors to declare interests and not vote on issues which were sensitive in their ward. Councillor Brett sought advice before doing so and the councillors she interviewed said her views were well known so it should not have been a surprise.
- 1.2.11 Frances Woodhead referred to the timeline of e-mails referred to at pages 26-28 of Councillor Caliskan's letter of 16 June (Appendix B to the report) which did not set out the text in full. In explaining her findings, Frances Woodhead set out the full timeline of these e-mails. Overall, the tone and timing of the emails, and the poor organisation of the meeting on Monday 19 November meant Councillor Brett was

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treated badly and this on balance amounted to intimidation and bullying. It was also noted that Councillor Brett had offered an apology.

1.2.12 Frances Woodhead concluded by saying in her report that this was finely balanced and she had also thought that Councillor Brett could have been better organised and had also misinterpreted some things which had happened in the past.

1.2.13 It was not the most extreme form of bullying and there were faults on both sides. She considered the general principles about high level of conduct which councillors were expected to follow and concluded that this was not good leadership.

1.3 Evidence given by Jeremy Chambers:

1.3.1 Following the investigation Jeremy Chambers determined:

- a. That Councillor Caliskan failed to treat Councillor Brett with respect in removing her from her role as Cabinet Member prematurely and prior to meeting with her to discuss the concerns Councillor Caliskan had about collective Cabinet decision making. This was contrary to principles in the Member Code of Conduct about treating others with respect (paragraphs 8 and 12)
- b. That the way the Leader made and communicated decisions about this, how arrangements for a meeting with Councillor Brett were made and the conduct of the meeting on 19 November 2018 amounted to bullying of Councillor Brett by the Leader of the Council, Councillor Caliskan. This behaviour was in breach of paragraph 12.2(b) of the Code of Conduct.

1.3.2 The Investigating Officer had recommended: -

- a. That an informal mediated meeting takes place between Councillor Brett and Councillor Caliskan with a view to facilitating understanding about improved effective and respectful communication, behavioural styles and the interplay between party discipline and a councillor's duty and right to declare an interest in an item of business.
- b. That Councillor Caliskan offers a written apology to Councillor Brett about removing her from Cabinet.
- c. That a confidential statement is issued by Councillor Caliskan to all Cabinet Members acknowledging that the decision to remove Councillor Brett from Cabinet was done with undue haste and in an inappropriate fashion which was contrary to the Code of Conduct for Members.

1.3.3 Jeremy Chambers explained that the Investigating Officer's recommendations had formed part of his decision in this matter as Monitoring Officer. On reaching his decision he also considered the

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following matters, which had been considered by the Investigating Officer: -

- The provisions in the Localism Act 2011 and the Code of Conduct for Enfield Council.
- Relevant caselaw where the Localism Act had been applied.
- The thoroughness of the Investigating Officer's investigation.

1.3.4 The Monitoring Officer's decision in this matter was appealed by Councillor Caliskan. Details of the grounds of appeal and the Monitoring Officer response were included in the documents before the committee. Jeremy Chambers drew the Committee's attention to the following matters: -

- a. There were grounds for judicial review. The appeal process was not exhausted and until the end of the appeal process, any application for judicial review would be premature. The Council's Code of Conduct was consistent with the Localism Act 2011 and fit for purpose.
- b. With regard to the councillor's right to seek the views of an independent person, Councillor Caliskan was entitled to seek the views of the independent person about the matter and she was advised of this by Jeremy Chambers in an email dated 4 February 2019. The Council had appointed 2 independent persons to preserve fairness and so that conflicts of interest could be avoided.
- c. He consulted with the independent person in accordance with Section 28(7)(b) of the Localism Act 2011.
- d. The concerns about a smear campaign and party-political dispute considered by the Investigating Officer, were also considered by the Monitoring Officer in making his findings.
- e. Regarding using dual processes, the Monitoring Officer said that he was obliged to deal with complaints where a breach of the Councillor Code of Conduct was alleged in accordance with the arrangements the Council had set up under the Localism Act 2011. He had no control over or involvement in any separate political or party disciplinary processes.
- f. The complaint of the Councillor raised a number of serious allegations about bullying and breach of the Councillor Code of Conduct. He had carefully considered whether this matter was suitable for informal resolution or no further action.
- g. Jeremy Chambers accepted that Councillor Caliskan was entitled to remove and appoint Cabinet Members and had previously advised Councillor Caliskan about that power. The conclusions that he and the Investigating Officer reached in this case were focussed on how that power was used and the behaviour of Councillor Caliskan at the time of her decision.
- h. Jeremy Chambers did not agree with the view that the complaints procedure had been used to settle an internal political dispute. He also refuted the suggestion that the

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investigation was biased or that he used Council processes and procedures to be used for political purposes.

1.4 Questions/Comments from Councillors:

- 1.4.1 In response to a query from Councillor Vince it was confirmed that the Council's Code of Conduct was fully in compliance with the Localism Act 2011. In response to a query from Councillor Hayward, on the allegation that she had only interviewed councillors favourable to Councillor Brett, Frances Woodhead confirmed that she had the choice of which councillors to interview but had felt that interviewing other councillors would only have been relevant if investigating the complaints which had not warranted further investigation. She had interviewed those councillors who had been present at the meeting with Councillor Brett and Councillor Caliskan.
- 1.4.2 Members agreed that the information was well documented and the chain of emails spoke for itself. Frances Woodhead confirmed that Jeremy Chambers was interviewed as part of the investigation. Councillor Aramaz observed that this was council matter not a party matter. Under the Strong Leader/Cabinet model, the Leader had responsibility to make Cabinet appointments. There was no concept of suspension. He felt that this was not in question. The concern was over the way the decision was taken.
- 1.4.3 In response to the question about Councillor Caliskan's additional submissions, the response given by Frances Woodhead that they should be considered, but that in her view they actually did not say anything new that had not already been taken into account.
- 1.4.4 The view was expressed that the Leader's arguments were incorrect as the Councillor Conduct Committee was the correct forum for dealing with complaints of this sort and it was the place to deal with complaints, even from members within the same party.
- 1.4.5 There was a view expressed that the integrity of both Jeremy Chambers and Frances Woodhead had been challenged and a question as to whether the appeal could be seen as disrespectful, but it was acknowledged that Councillor Caliskan had the right to appeal.
- 1.4.6 The investigation report was acknowledged as being very thorough.

1.5 View of Independent Person

Sarah Jewell, Independent Person confirmed that she was consulted on the complaint and had advised that this was a serious complaint which warranted investigation. She felt that the investigation report produced was fair and proportionate and the determination of the Monitoring Officer, Jeremy Chambers, was reasonable.

1.6 Representation from Councillor Caliskan

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Councillor Caliskan had been unable to attend the meeting but had requested that a statement that she had submitted in support of her appeal be read out which Jayne Middleton-Albooye (Deputy Monitoring Officer) did. The statement can be summarised as follows: an apology for non-attendance in person and a reiteration of some of her appeal points. She set out the difficulty she had faced as the first female BAME Leader of the London Borough of Enfield and her feeling that this has led to harassment and unconscious bias which in turn has meant that she faced criticism for taking a decision that other political group leaders have frequently taken in order to maintain the integrity of collective Cabinet decision making and political party discipline.

The Leader pointed out that documents she had submitted as part of her appeal detailed why she thought the investigation itself to be problematic, including the choice of witnesses and lack of consideration of broader political context. She pointed out again that she had sought the advice of the Monitoring Officer and from political colleagues in Enfield and across London. She also stated that she thought Councillor Brett would understand the decision given that Councillor Brett had held a senior political position and that she would therefore understand the importance of collective decision making. Councillor Caliskan also pointed out that section 4 in the report noted that Councillor Brett sought legal advice from Jeremy Chambers who had informed her she was not required to declare an interest or leave the Cabinet meeting. She repeated her view that she believed there had been a politicisation of a Council process which had cost the Council time and money.

At this point in the meeting Jeremy Chambers, Frances Woodhead, Sarah Jewell, and all members of the press and public left the room while the committee considered all the information provided and made a decision as to whether or not to uphold the Monitoring Officer decision.

1. Consideration of Evidence by the Committee

The Committee reached their decision on a balance of probabilities. The Committee took into consideration the views of members and the independent persons, the appeal representations and supporting documents, the representations of the complainant, the report, and written and oral evidence of the Monitoring Officer and Investigating Officer, relevant law and case-law and the legal advice to the committee.

- In considering whether the Code had been engaged that the Council's Code of Conduct refers to matters raised in the complaint eg. treating others with respect and not bullying, the case of Harvey v Ledbury Town Council in support of the decision that the complaint was one which should have been considered under the Code of Conduct rather than under an alternative procedure, that the issues raised were

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serious which the Monitoring Officer could not dismiss as frivolous or vexatious, that the correct procedure had been followed by the Monitoring Officer, that Councillor Caliskan was acting in her capacity as Councillor in relation to the actions which amounted to a breach. As supported by case law, that it would not have been appropriate to use other processes as suggested by Councillor Caliskan in her appeal.

- The Committee also considered the evidence put forward that the complaint was politically motivated but found that the investigator and the Monitoring Officer had considered this and were satisfied that it was not politically motivated. They were satisfied that the Monitoring Officer had followed due process in investigating the complaint, and in making his decision.
- In relation to whether the Code of Conduct had been breached, the Committee recognised Councillor Caliskan's right to remove Councillor Brett from her Cabinet role and notify Cabinet members she had done so but they agreed with the decision that it was the way it was done and the timing that was inappropriate. They also took into consideration the fact that she had apologised and this apology was disregarded.
- Members further considered the sanctions which could be imposed and decided to use the recommendations in Frances Woodhead's report as a basis for the sanctions agreed.

At this point in the meeting Jeremy Chambers, Frances Woodhead, Sarah Jewell, and all members of the press and public returned to the meeting room.

AGREED:

1. Not to uphold the appeal.
2. To uphold the Monitoring Officer decision based on the investigation report that Councillor Caliskan had been in breach of the Councillor Code of Conduct in that she failed to treat Councillor Brett with respect in removing her from her role as Cabinet Member prematurely and prior to meeting with her to discuss the concerns about collective decision making. This was contrary to principles in the Councillor Code of Conduct about treating others with respect (paragraphs 8 and 12). They also agreed that Councillor Caliskan's behaviour in the way she made and communicated decisions about this matter was also in breach of paragraph 12.2 (b) of the Code of Conduct.
3. To impose the following sanctions:
 - a. That Councillor Caliskan agree to attend an informal mediated meeting, led by a professional mediator, with Councillor Brett with a view to facilitating understanding about improved effective and respectful communication, behavioural styles and the interplay between party discipline and a councillor's duty and right to declare an interest in an item of business. The meeting to take place as soon as could be arranged and not later than the end of October 2019.

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- b. That Councillor Caliskan offer a written apology to Councillor Brett about removing her from Cabinet. Such apology to be approved by the Deputy Monitoring Officer within 2 weeks of the receipt of this letter.
- c. That Councillor Caliskan make a statement to the 20 November 2019 full Council meeting acknowledging that the decision to remove Councillor Brett from Cabinet was done with undue haste and in an inappropriate fashion which was contrary to the Councillor Code of Conduct.
- d. If Councillor Caliskan did not agree to implement the sanctions listed above the Committee will place a statement/advert in the local press and on the Council website, publicising the Committee's recommendations.

5

MINUTES OF PREVIOUS MEETING

The minutes of the meeting held on 3 July 2019 were agreed as a correct record.

6

DATES OF FUTURE MEETINGS

NOTED the dates agreed for future meetings as follows:

- Wednesday 4 December 2019
- Tuesday 3 March 2020