

## STANDARDS SUB-COMMITTEE DECISION NOTICE

<b>Name of the Authority</b>	London Borough of Barnet
<b>Date and time of the hearing</b>	10 September 2009
<b>Date of report</b>	24 September 2009
<b>Case Reference</b>	003
<b>Subject Member</b>	Councillor Brian Coleman represented by Mr Stephen Hocking (Solicitor)
<b>Complainant</b>	Mr Roger Tichborne
<b>Chairman</b>	Mr Stephen Ross
<b>Committee members</b>	Rabbi Dr Jeremy Collick, Councillor Agnes Slocombe
<b>Monitoring Officer</b>	Mr Jeff Lustig, Director of Corporate Governance
<b>Clerk to the hearing</b>	Ms Chidi Agada, Senior Democratic Services Officer
<b>Local investigator (external)</b>	Ms Melanie Carter (Solicitor)
<b>Relevant section of the Code of Conduct</b>	Paragraph 3(1): You must treat others with respect

### Summary of complaint

Mr Tichborne complained to the Council on 6 March 2009 alleging that Councillor Coleman's e-mail response to him, sent on 5 March 2009, was "*insulting, rude and potentially libellous*". He also alleged that "*it is aggravated by the fact he copied in other councillors and used council equipment to defame and besmirch [Mr Tichborne's] reputation.*"

He alleged that Councillor Coleman failed to comply with paragraphs 3(1) and 5 of the Members Code of Conduct.

The investigation report did not find a breach of paragraph 5 and the Sub-Committee accepted this finding at its Consideration meeting on 16 July 2009.

### Summary of the evidence considered and representations made

The Sub-Committee received the investigator's report, written representations submitted on Councillor Coleman's behalf by his solicitor with reference to details of decided cases from the Adjudication Panel for England, domestic civil courts and the European Court of Human Rights.

The investigator and Councillor Coleman's solicitor each made oral presentations to the Sub-Committee as to whether the facts amounted to a breach of the Code, whether a sanction was appropriate and what that sanction should be.

### Findings of fact and reasons

The parties indicated that the findings of fact as detailed in the Investigator's report were agreed and the Sub-Committee accepted the findings of fact. Therefore, no separate finding of fact was necessary.

### Finding as to whether or not the member failed to follow the Code of Conduct and reasons

The Sub-Committee took into account all of the submissions made by the independent investigator and Councillor Coleman's solicitor, both written and oral, including those relating to Article 10 of the European Convention on Human Rights. After very careful consideration of those matters, the Sub-Committee unanimously concluded that the e-mail sent by Councillor Brian Coleman to Mr Roger Tichborne on 5 March 2009 amounted to a breach of paragraph 3 (1) of the London Borough of Barnet Members' Code of Conduct.

The reasons for this decision being:

1. The Sub-Committee were of the view that Councillor Brian Coleman was acting in his capacity as a Councillor when sending the e-mail to Mr Tichborne on 5 March 2009. The e-mail was sent using his Council e-mail facility and was in response to an e-mail sent to him as a Councillor and headed "Open Letter to the Conservative Group on Barnet Council". Councillor Coleman's e-mail response to Mr Tichborne was copied to other Councillors. Accordingly, the view of the Sub-Committee was that Councillor Coleman's behaviour came within the remit of the London Borough of Barnet Members' Code of Conduct.
2. The Sub-Committee decided that, on their ordinary meaning, the words used by Councillor Brian Coleman in the e-mail sent to Mr Roger Tichborne on 5 March 2009 amounted to a failure to treat the recipient of that e-mail with respect.
3. The Sub-Committee accepted that Councillor Coleman had been the subject of sustained personal abuse over a considerable period of time by Mr Tichborne in his blogs. Nevertheless, the blogs predominantly related to Councillor Coleman's role in public life, even if many were offensive in tone and content. Furthermore, the e-mail from Mr Tichborne to which Councillor Coleman responded had been polite, balanced and not provocative. Unfortunately, Councillor Coleman chose to reply precipitously and intemperately with a personal attack on Mr Tichborne. His comments were disrespectful to Mr Tichborne.
4. The Sub-Committee did not consider the Livingstone case to be of direct significance to its decision because, in that case, the Member had not been acting in his official capacity.
5. It was the Sub-Committee's view that Councillor Coleman's e-mail went significantly beyond what was necessary to exercise the right of political expression, or even to defend himself against what he perceived to be a sustained and unjustified campaign of personal abuse. His e-mail was a personal attack on Mr Tichborne.
6. Accordingly, the Sub-Committee accepted the view of Ms Carter, the independent investigator, rather than that of Mr Hocking, Councillor Coleman's legal representative, concerning Article 10 of the European Convention on Human Rights. The Sub-Committee accepted that Article 10 was engaged; that a finding that Councillor Coleman was in breach of the Members' Code of Conduct would be an interference with his right to freedom of speech; that Article 10 provides that freedom of speech is not absolute; that Councillor Coleman had overstepped the normal limits of expression for an elected Member; that the interference with Councillor Coleman's freedom of speech was, in the circumstances of this case, proportionate and necessary in a democratic society and that the application of the Code and a finding of breach by Councillor Coleman fell within the limitations provided for by Article 10(2).
7. For the above reasons, the Sub-Committee found Councillor Brian Coleman to be in breach of Paragraph 3(1) of the London Borough of Barnet Members' Code of Conduct in that he had failed to treat Mr Roger Tichborne with respect.

#### **Sanctions imposed, if any and reasons**

The Sub-Committee carefully considered the representations made by Councillor Coleman's legal representative on the issue of sanctions. Their unanimous conclusion was to concur with Councillor Coleman's legal representative that this was a case where their finding of a breach of paragraph 3(1) of the London Borough of Barnet Members' Code of Conduct was sufficient and therefore they did not propose to apply any additional sanction.

The reasons for not applying any sanction are:

1. The Sub-Committee agreed with the independent investigator, Ms Carter, that the contents of Councillor Coleman's e-mail were not at "the serious end of disrespect".

2. Whilst the Sub-Committee did not accept that Councillor Coleman's actions were justified, it recognised that he had been subjected to a sustained level of reprehensible and provocative personal attacks and abuse by Mr Tichborne in his blogs over a period of several months and that, whilst higher standards are expected of Members in their dealings with the public, the Sub-Committee also recognised, but did not condone, that Councillor Coleman's e-mail to Mr Tichborne was a response in kind to what had been said about him in the blogs.
3. For these reasons, the Sub-Committee were of the view that the finding of breach of the Members' Code of Conduct itself was sufficient to indicate the Sub-Committee's disapproval, and the standard of behaviour expected, without the need for sanction.

**Right to appeal**

Councillor Coleman may apply, in writing, to the President of the Adjudication Panel for England for permission to appeal against the Sub-Committee's decision within 21 days of this notice. In the written application he must:

- outline the reasons for the appeal;
- indicate whether he wishes the appeal to be carried out in writing or in person

A form is available from the Adjudication Panel's website ([www.adjudicationpanel.tribunals.gov.uk](http://www.adjudicationpanel.tribunals.gov.uk)) to aid the subject Member in seeking permission to appeal, or, a copy can be obtained by contacting the office of the Adjudication Panel for England on 0113 389 6086.

**Recommendation to the Council of the London Borough of Barnet**

When issuing its decision on the day of the hearing, the Sub-Committee advised that:

"The Sub-Committee is proposing to offer to the Council advice of a general nature relevant to the circumstances of this case.

Details of that advice will be made public at the same time as the decision notice is published."

The Sub-Committee's advice to the Council and to Members of the Council is that the London Borough of Barnet Members' Code of Conduct rightly sets high standards of behaviour on the part of Councillors when dealing with others. That requirement extends to the sending of e-mails and other communications. Particular care needs to be taken with e-mails because of the speed with which they can be prepared, sent and distributed widely. If a Member is intending to send an e-mail which may contain material that could be construed as personally offensive and/or containing intemperate language, we would counsel the Member against sending that e-mail. Should the Member still be intent on sending the e-mail, we would advise that s/he first consult a senior colleague, or, the Monitoring Officer, or, other appropriate professional officers and allow a period of time, of probably not less than 24 hours, to fully consider, amongst other matters, the consequences of sending that e-mail. This advice applies generally, but particularly in circumstances where the Member believes that they are being subjected to what they consider to be unreasonable and personally directed comment of an abusive nature, whether conducted over a period of time, or, as an isolated incident.