



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(Local Government Standards in England)**

CASE NO: LGS/2009/0483

ON APPLICATION FROM:

Ethical Standards Officer (ESO), Standards for England
Application reference No: SBE-03570-VKZMR
Dated: 15 December 2009

APPLICANT: Jonathan Wigmore ESO, Standards for England

RESPONDENT: Councillor Colin Willetts
of London Borough of Bromley

DATE OF HEARING: 8 & 9 April 2010

VENUE: Bickley Manor Hotel, Kent

DATE OF DECISION: 20 April 2010

BEFORE

**Judge: Sally Lister
Member: Trevor Jex
Member: Richard Boyd**

Attendances:

For the Applicant (ESO): Mr Mark Jones, Principal Lawyer, Standards for England
For the Respondent: Councillor Colin Willetts appeared in person

Subject matter:

Reference about possible failure to follow the Code of Conduct

Cases:

Sanders v Steven Kingston [2005] EWHC 1145 (Admin)

Livingstone v The Adjudication Panel for England [2006] EWHC 2533 (Admin)

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DECISION OF THE FIRST-TIER TRIBUNAL

The Respondent has been disqualified for a period of 12 months from 9 April 2010

REASONS FOR DECISION

1 Introduction

1.1 The Tribunal has determined a reference from an Ethical Standards Officer ("ESO") in relation to allegations that the Respondent, Councillor Colin Willetts had failed to comply with paragraphs 3(1), 3(2)(b) and 5 of the Code of Conduct of the London Borough of Bromley ("the Council").

2 Oral Submissions (procedural)

2.1 Mr Jones, the ESO's representative, sought to admit into evidence a statement from Mr Nigel Davies, the Council's Director of Environmental Services, who was unable to attend the hearing, and other documents. The Respondent did not consent to the application as the ESO had been aware that Mr Davies would not be able to attend the hearing for some time and, in the Respondent's opinion should have made the application earlier. The Respondent also stated that he had not had an opportunity to consider the statement or the additional documents.

2.2 After the Tribunal adjourned to give the Respondent and the Tribunal the opportunity to consider the statement and the documents, the Tribunal decided that as the documents merely confirmed or clarified the matters set out in the papers before it and that the Respondent was not prejudiced by their admission, it would admit the statement and documents into evidence. The appropriate weight would be given to the witness statement of Mr Davies who was not present at the Tribunal and therefore not able to give oral evidence or be cross-examined.

3 Findings

The Tribunal considered the documentation before it and the submissions of the parties. It also heard oral evidence from Mr Doug Patterson, the Council's Chief Executive and Mr Mark Bowen, the Council's Director of Legal, Democratic and Customer Services and the Council's Monitoring Officer. The Tribunal found and the Respondent agreed the following facts:

The Respondent's official details

3.1 The Respondent was first elected to office in 1990 and was last re-elected in May 2006. His current term of office expires in May 2010 and he advised the

Tribunal that it was his intention to stand as an independent councillor in his current ward, Cray Valley West, in the forthcoming election. The Respondent gave a written undertaking to observe the Code on 5 May 2006 but no written undertaking was sought when the Council adopted the new model Code in July 2007.

- 3.2 In addition to attending training in 2002 the Respondent was offered training on the Code provided by the Council's Monitoring Officer on 16 May 2006. Two additional Code of Conduct training sessions were offered in 2007. The Council has no record of the Respondent attending any of these sessions.

Relevant legislation and protocols

- 3.3 The Council has adopted the model Code of Conduct which included:

3.3.1 Paragraph 3:

“(1) You must treat others with respect

3.3.2 Paragraph 3:

(2) You must not...

(b) bully any person.”

3.3.3 Paragraph 5:

“You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.”

Facts in respect of the reference

- 3.4 Prior to the appointment of Mr Patterson as the Council's Chief Executive, serious concerns had been raised about the volume and tone of the Respondent's email contact with officers in the Council's Street Services Department. On the 5 April 2007, Mr David Bartlet, the Council's Chief Executive at that time, emailed the Respondent to express his concerns about this and commented in that email that this appeared to be a regular pattern of behaviour that had resulted in at least one member of staff being off work because of stress.
- 3.5 The Respondent subsequently met with Mr Bartlet and his group leader, Councillor Getgood resulting in the Respondent issuing an apology for his behaviour.
- 3.6 On 27 April 2007 the Council began operating a protocol that set out the type of street fault the Respondent was allowed to report and provided him with a single email address and telephone number in which to do so.
- 3.7 In August 2007 Mr Patterson replaced Mr Bartlett as the Council's Chief Executive.
- 3.8 Towards the end of 2007 Mr Bowen, corresponded with the Respondent about an escalation in his email correspondence with street services officers and the disparaging comments he made about officers at a council meeting.

Communication concerning Mr Patterson's email of the 8 July 2008.

3.9 On 7 December 2007 and 9 December 2007 the Respondent withdrew his apology in emails to Mr Bowen.

3.10 On 6 June 2008, the Respondent emailed Mr Patterson, Mr Bowen and Mr Davies, the Council's Director of Environmental Services to inform them that he had telephoned a member of staff within street services to make a complaint about street services. This was the member of staff who had been suffering from stress. After being told by Mr Davies that he must not repeat his "mistake" again, the Respondent emailed:

"Davies, not a mistakeI will be contacting her in future, that aside since the protocol for reporting street faults was given the elbow by [Councillor Smith] at his portfolio meeting. It will be normal service resumed (not that it ever changed)"

3.11 On 8 July 2008 Mr Patterson, in response to concerns expressed to him by council officers, emailed the Respondent to express his own disquiet at his behaviour toward staff. Mr Patterson informed the Respondent that staff had been told not to respond to his requests and that he would have to send all emails to a separate email account.

3.12 The Respondent ignored Mr Patterson's arrangements and continued to email officers directly rather than to a separate email account. Council officers carried on responding by telephone and email to the Respondent and continued to deal with all the matters raised by him, whether urgent or not.

3.13 On 21 August 2008 Mr Patterson emailed the Respondent to arrange a meeting that included Mr Davies, to review the arrangements between the Respondent and the Environmental Services Department. The Respondent emailed Mr Patterson and challenged his email of 8 July 2008, referring to Mr Patterson's concerns as figments of his imagination. The Respondent also asked Mr Patterson to name the officers that had complained about his conduct.

3.14 On 2 September 2008 Mr Patterson emailed the Respondent to confirm that he intended to maintain the arrangements set out in his email of 8 July 2008 for a further two months and would arrange a review after this period. Mr Patterson told the Respondent that the concerns raised in his email were not figments of his imagination but based on information provided to him by the Director and Acting Director of Environmental Services and by a number of staff.

3.15 On 2 September 2008, the Respondent emailed Mr Patterson:

"Thank you for your email. I'd be happy to meet in the first instance (with you only and Cllr Getgood and to tape record it to discuss your 'cock and balls' barm pot letter dated 8 July 2008 which is littered with inconsistencies and presumably out and out lies to discredit me as a member of this council."

3.16 At the Council meeting held on 8 September 2008, the Respondent asked:

"Will the Chief Executive be investigating i) my complaint that Councillor Carr did forcefully (in a threatening manner) request a traffic department officer to unlawfully install speed limiter repeater signs in Oak Road? ~

ii) my complaint that Councillor Carr deliberately lied to the Chamber on 17 March 2008 and 21 April 2008 in the context of item i)?"

- 3.17 The Respondent followed up his written question with a pre-prepared supplementary oral question:

"Clearly the Chief Executives credibility is well up the swanee and the lack of impartiality stems from his office. This begs the question is the Chief Executive a hypocrite and a liar?"

- 3.18 The Respondent resent his email of 2 September to Mr Patterson on the 8 September, 14 September, 21 September, 28 September, 4 October, 12 October, 18 October and 24 October 2008. He stated this was because he wanted the names of the officers who had complained about him.

- 3.19 On 27 October 2008 Mr Patterson emailed the Respondent and apologised for not replying to his email earlier. Mr Patterson said that he would speak to Councillor Getgood, about the matter of the review and rearrange their meeting. The Respondent emailed Mr Patterson stating:

"Dear Mr Patterson. On second thought I don't intend to waste two pounds ninety on the train to meet a liar. Sincerely, Colin Willetts."

- 3.20 The Respondent did not agree with the arrangements regarding his contact with council officers that Mr Patterson tried to impose on him and chose to ignore them.

- 3.21 Prior to the Council meeting held on 17 November 2008, the Respondent submitted a written question in advance to the meeting to the officers for submission on the Council agenda. The question stated:

"With regard to my oral question 8/9/08 and your subsequent reply "it is not appropriate as part of council business to include personal criticism of other members/officers in questions submitted", how does that pan out in "reality" having previously branded Councillor Smith and Councillor Carr as liars (minuted) and questioned the integrity of Chief Executive "This begs the question is the Chief Executive a hypocrite and a liar" (minuted 8/9/08) including taking into account the wide spread "criticism/condemnation" generated at full council following the Councillor Blazey / Mike Carpenter ~ Councillor Mellor / David Bartlett debacle? ~ ii) if it is not appropriate to criticise officers, how come that this does not apply in reverse, particularly as "anonymous" officers have criticised me in a "confidential" letter I received from the Chief Executive 8/7/08? Colin Willetts"

- 3.22 Mr Bowen, who had responsibility for vetting the questions put by members in advance of council meetings, had concerns about the Respondent's references to Councillor Smith and Councillor Carr being liars and his questioning the integrity of the Chief Executive by repeating his previous assertion, *"this begs the question is the Chief Executive a hypocrite and a liar?"*. Mr Bowen, following consultation with the Mayor, decided to reject the Respondent's question and he was advised accordingly.

- 3.23 At the Council meeting the Respondent asked the Leader about the recent appointment of Mr Davies to the position of Director of Environmental Services.

The Respondent's supplementary question was critical of the appointment and the Mayor ruled it out of order.

3.24 The Respondent then asked Councillor Smith:

"Do you agree with the sanctions against me contained in a confidential letter cc'd to you sent to me by the Chief Executive on 8 July 2008?"

3.25 Councillor Smith told the Respondent that he had no intention of debating this matter with him other than to say he found it a crying shame that one elected member out of 60 present chose to act in such a boorish and bullying fashion, over an extended period of time, to the extent that two Chief Executives had felt it necessary to intervene to prevent further staff harassment.

3.26 The Respondent responded to Councillor Smith with a pre-prepared supplementary question:

"The only officer complaints I have received, which the Chief Executive refuses to investigate, are about Cllr's Smith & Carr's ranting, raving & bullying tactics! Obviously Cllr Smith is not acquainted with the facts – since all officers still continue to either e mail or converse with me. I'd say that the letter is littered with 'inconsistencies and lies' and in this regard having called the Chief Executive a 'liar & a cheat' will he be resigning from his post?"

3.27 The Respondent was referring to the Chief Executive, Mr Patterson.

3.28 After the meeting the Respondent emailed Mr Patterson:

"Dear Mr Patterson, add a cheat to meet a liar. Colin Willetts".

3.29 The Respondent stated that he considered Mr Patterson to be a liar as he had failed to provide evidence to support, what he regarded as accusations, made in Mr Patterson's email of 8 July 2009.

Communication relating to Kier Street Cleaning.

3.30 On 17 March 2009 the Respondent emailed Mr Patterson to ask for the names of the officers who had provided Councillor Smith with the answer he had given to a question that the Respondent had put to him about Kier Street Cleansing at the previous council meeting.

3.31 On 24 March 2009 Mr Patterson informed the Respondent that senior officers would have provided Councillor Smith with the factual information. The Respondent asked Mr Patterson to name the officers and asked him whether he personally backed up their information. Mr Patterson responded that he did not see the need to spend any further time on the matter.

3.32 On 24 March 2009 the Respondent emailed Mr Patterson:

"Dear Mr Patterson, I certainly see the need to investigate this matter since Cllr Smith lied(I assume unwittingly) in his written reply 16/3/09 to my question 1(i) Kier Street Cleansing, do I then assume that this lie was passed on unwittingly by your senior officers in the 1st inst to Cllr Smith via Kier?. This is a formal complaint & request it is dealt with in the proper manner."

3.33 On 30 March 2009 the Respondent emailed Mr Patterson:

"Dear Mr Patterson, since you have failed to investigate this matter thoroughly I can only rightly assume that you are now conspiring to cover up this lie on behalf of your senior officers (Nigel Davies/Paul Symonds?) & Kier Cleansing Services, have you any comments? C. Willetts."

3.34 On 12 April 2009 the Respondent emailed Mr Bowen:

"Dear Mr Bowen, I wish to make a formal complaint against Mr Patterson for conspiring to lie re Kier Cleansing Services, also could you furnish me with the names of the senior officers who provided this 'so called' factual information to Mr Patterson. Colin Willetts."

3.35 At the Council meeting held on 27 April 2009, the Respondent put a question to Councillor Smith relating to grass edging that he said had been carried out by the Kier Street Cleansing staff. When Councillor Smith told Councillor Willetts that they had not been grass edging he responded with a pre-prepared supplementary question:

"That's not the case. I was present at the site at the time – there was a Kier supervisor and two members of staff carrying out grass edging not only in Hawking Walk but in Selwyn Place and I've got pictures I can show the portfolio holder. Since the Chief Executive and senior officers conspired to lie on this issue can you investigate why the director of legal has failed to investigate my formal complaint against him?"

3.36 On 28 April 2009 the Respondent emailed Mr Bowen:

"Dear Mr Bowen, with regard to my first oral question and subsequent reply (FC [full Council] 27/4/09) 'Having being on site at the aforementioned time whilst the Kier supervisor, Mr Northridge and two members of his staff were edging in Hawkins Walk and Selwyn Place and since the Chief Executive and senior officers conspire to lie on this issue, can you explain why the director of legal has failed to investigate my formal complaint against him?' can you clarify if this was recorded since the Mayor did not rule this question out of order?. Clearly, Cllr Colin Smith lied to the chamber in a written answer 16/3/09 and again verbally 27/4/09 and I ask again what are the name/s of the senior officer/s who furnished the lie to Cllr Smith / Chief Executive?"

3.37 Twenty minutes after sending his email to Mr Bowen, the Respondent sent him a second email, copying in Mr Patterson, two senior officers of the Council and members of the conservative group:

"Dear Mr Bowen. Mr Patterson, senior officer/s (along with Cllr Smith) should be apologising for lying at FC [full Council] 16/3/09 & 27/4/09 re Kier (Grass edging). C.Willetts."

3.38 On 30 April 2009 Mr Bowen emailed the Respondent stating that:

"...in these circumstances Mr Patterson clearly did not consider it appropriate as head of paid service to disclose details of more junior officers who had been involved. I would agree with his approach had

dealt with the matter. It is inappropriate for you to make continual references to officers lying or conspiring to cover matters up."

3.39 On 30 April 2009 the Respondent emailed Mr Bowen:

"Dear Mr Bowen, it appears by your comment today via phone 4-47pm that you have investigated my formal complaint & will not be taking any further action. Since you have not requested me to produce the photographs (as mentioned at FC 27/4/09), nor taken a signed statement from Mr Northage (Keir area supervisor), nor taken a statement from me regarding Kier grass edging in Hawkinge Walk & Selwyn Place, clearly, you are incompetent & not fit to be in public office & I would certainly label you as a key conspirator along with Doug Patterson, Cllr Smith & Nigel Davies?. Besides these photographs I can also provide resident witness statements that Mr Northage & two of his staff were carrying out grass edging duties. I still await the answer to my question' who carried out grass edging duties in Midfield Way & St Pauls Wood Hill? Having given Cllr Smith/Doug Patterson a chance to 'come clean' on at least two occasions(which they failed to do so) I am perfectly entitled to call them both liars to this conspiracy & will continue to do so well into the future. I'm sure that if I wasn't 'telling the truth' on this issue either Doug Patterson/Cllr Smith would sue me for libel/slander but since their both 'liars' I really don't see that happening!. Colin Willetts."

Communication relating to fly tipping

3.40 On 26 June 2009, the Respondent sent the following email to Mr Patterson, Mr Bowen, Mr Davies and Mr Symonds, the Council's Assistant Director of Environment and Leisure:

"RE: PSYM resi complaint Mrs Neve - Cotmandene car park flytip / 1 haverstock crt cotmandene cres. Liven up Bowen, more dumped bags in car park resident awaits response! Cwilletts"

3.41 Mr Bowen responded to the Respondent, copying in the aforementioned officers:

"Dear Cllr Willetts. Thank you for your email. As have advised before it is for departments to prioritise and deal accordingly with service requests. Regards. Mark"

3.42 The Respondent responded to Mr Bowen, copying in those officers included the original circulation. He also copied in Mrs Iris Neve and Mr Ray Dorey, both of whom are residents of the area where the fly tipping had occurred. In his email the Respondent stated:

"Your supposed to be the legal bod on what is illegally flytipped rubbish & a continued "daily" eyesore for adjacent residents so pull yr finger out & get it sorted! for yr info, borough briefing 24/6/09 page 34 newssshopper states "we have' reduced the amount of flytipping" - not over here you aint!, cwilletts"

3.43 On 28 June, 2008, Mrs Neve wrote the following email to the Respondent and copied it to Mr Dorey:

"Another weekend over and there's even more bags have been dumped in the car park and no one has been to take it away, so now been there for days. I am attaching 3 pictures of car park dumping ground and 2 of the recycle bins so you can see what an eyesore it is..."

- 3.44 The Respondent forwarded this email to Mr Bowen, Mr Patterson, Mr Symonds, Mr Davies and Mr Dorey on the same day:

"Bowen, Mrs Neve awaits reply, I repeat get the flytipping removed immediately!, cwilletts"

- 3.45 On 29 June 2009 Mr Bowen sent the following reply to the Respondent, copying to all the above recipients with the exception of Mrs Neve and Mr Dorey:

"Dear Cllr Willetts. Thank you for your e-mails. I would refer to my previous response, and would stress as I have previously that the budget and responsibility in these areas is held by Environmental Services. Regrettably I do not consider it productive to correspond with you further on this and similar service related matters. Regards. Mark Bowen"

- 3.46 The Respondent responded on the same day to Mr Bowen, the three other council officers, Mrs Neve and Mr Dorey as follows:

"Bowen, your job is to see to it that residents receive a reply to their complaints, so get onto symonds to reply to Mrs Neve's two outstanding emails!. Cwilletts"

- 3.47 On 30 June 2009, Mrs Neve wrote the following email to the Respondent, copying in Mr Dorey:

"Note Mark Bowen's reply Colin. Who is supposed to take responsibility for our complaint about fly-tipping. Even got prints to show how bad it is and still the rubbish is there with even more bags added since I took the photos. The first bags were dumped there this time a few hours after the recycling lorry had left on the Sunday 21 June. Perhaps these bods should take the trouble to come down here to Cotmandene and see what's going on. They may have a better idea then that we are not making these complaints lightly. We think some sort of meeting would be in order about how this end of Cotmandene is being neglected. Iris Pam & 38-40 Cotmandene Cres."

- 3.48 The Respondent forwarded the email to Mr Bowen, Mr Patterson, Mr Symonds, Mr Davies and Mrs Neve with the following covering email:

"Bowen, Mrs Neve awaits reply! Cwilletts"

- 3.49 On 2 July 2009 the Respondent wrote the following to Mr Bowen, Mr Patterson, Mr Symonds, Mr Davies and Mrs Neve. He also copied in the ESO's investigator:

"Bowen, Mrs Neve, awaits a reply as below inc reference to a site meeting, she also reports a further 15 bags of dumped bags in the carpark, cwilletts"

- 3.50 All emails sent by the Respondent were sent using his 'councillor' email address provided to him by the Council. The Council also provided the Respondent with

a broadband internet line, router and PC for use as a member of the Council. The equipment and broadband line were used by the Respondent when sending the above emails to the officers and local residents.

4 Whether the material facts disclose a failure to comply with the Code of Conduct.

4.1 Submissions by the Respondent

4.1.1 The Respondent denied in oral evidence that he bullied anyone and felt that he wasn't being treated with respect by officers. He felt he raised legitimate concerns about street cleaning, repairs and maintenance which he had received from some local residents in his ward and that as their representative he had a right to raise them and for those concerns to be dealt with.

4.2 Submissions by ESO

4.2.1 Given the allegations under investigation and on the basis of the facts as found then a number of matters need to be determined in order for the ESO to reach a finding:

- whether during the incidents described above Councillor Willetts was acting in his official capacity for the purposes of the Code i.e. conducting the business of the Council or acting, claiming to act or giving the impression that he was acting as a representative of the Council;
- if so, whether the Respondent's comments are offered any protection under the Human Rights Act;
- whether in what he did, the Respondent failed to treat others with respect and / or
- whether his conduct could be regarded as bullying and / or
- was such as could reasonably be regarded as bringing his office or the Council into disrepute.

Official Capacity

4.2.2 The Code, in defining the scope of its operation, uses ordinary descriptive English words. Their application is inevitably fact sensitive and so whether or not a member is acting in their official capacity calls for informed judgment with reference to the facts of a given case.

4.2.3 When the Respondent attended the Council meetings where his conduct became subject to allegations (on 8 September 2008, 17 November 2008 and 27 April 2009) he did so in his official capacity. At all of the meetings the Respondent was able to submit written questions in advance of the meeting and / or submit oral questions during the meeting because of his status as an elected member of the Council.

4.2.4 All of the correspondence the ESO has seen to and from the Respondent has been via his council email address. The Respondent has stated that on occasion he considered himself to be emailing officers using his

council email address in his private capacity. It is the ESO's view, however, that the mode of the Respondent's email communications is not determinative of his capacity in this case. He cannot divest himself of his member status when he makes allegations about council officers' propriety and performance, or representations on behalf of constituents concerning council business.

- 4.2.5 The ESO is therefore satisfied that the Respondent was acting in his official capacity in relation to all of his conduct material to this investigation.

Failure to treat with respect

- 4.2.6 Failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another. The circumstances in which the behaviour occurred are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.

- 4.2.7 In considering whether the Respondent breached paragraph 3(1) of the Code the ESO must have regard to Article 10 of the European Convention on Human Rights which provides:

"(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...."

"(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...the protection of the reputation or rights of others ..."

- 4.2.8 The right to freedom of expression may only be interfered with where there are convincing and compelling reasons. The ESO must therefore decide whether a finding of a breach of the Code found in this case would represent a reasonable impairment to the Respondent's right to freedom of expression given the legislative objective of the Code.

- 4.2.9 The ESO has carried out a factual investigation in order to determine whether the Respondent's comments related to matters within his legitimate concerns as a councillor (political or quasi-political comment which would benefit from a high level of protection), or whether they were no more than an expression of personal anger and personal abuse. In the latter case, the high degree of protection set out in case law is not engaged.

- 4.2.10 The Respondent has on a number of occasions, both in emails and at council meetings, referred to Mr Patterson as a liar, a cheat and a hypocrite. The Respondent also questioned whether Mr Patterson was intending to resign as a result of his accusations. In the ESO's opinion these comments have no political element and are purely personal remarks questioning the competence and integrity of a senior officer.

Therefore the higher degree of protection accorded to political expression was not engaged.

- 4.2.11 The Respondent emailed Mr Bowen about fly tipping as a result of complaints expressed to him by local residents and therefore related to matters that were within his legitimate concerns as a councillor (allegation 3). To that extent the ESO considers that they do benefit from a certain level of protection. However, in his emails the Respondent was simply instructing Mr Bowen to take certain actions and the intemperate manner in which he did so resulted in his conduct amounting to personal abuse rather than political expression.
- 4.2.12 There can be no doubt that the restraints upon the Respondent relating to the Code are prescribed by law (in that the Code has the force of law under the Local Government Act 2000). The legitimate aim which the interference in this case pursues is the "protection of the reputation or rights of others" within the meaning of Article 10(2). The aim underpinning the Code is the maintenance of ethics and high standards of conduct of those in public life.
- 4.2.13 The Respondent clearly felt that his conduct towards officers in street services did not warrant the comments made by Mr Patterson in his email of 8 July 2008. The Respondent's reply to Mr Patterson's email and his subsequent failure to, in the Respondent's opinion, provide sufficient justification for it, was to describe it in an email of 2 September 2008 as a 'cock and balls barm pot letter... littered with inconsistencies and presumably out and out lies to discredit me as a member of this council.'
- 4.2.14 It is the ESO's view that the Respondent could have addressed his concerns about Mr Patterson's email in a more temperate manner. However, these comments, made as they were in a direct email to Mr Patterson, are not on their own sufficient to amount to disrespectful behaviour.
- 4.2.15 On 8 September 2008 at a full Council meeting the Respondent stated 'the Chief Executives credibility is well up the swanee and the lack of impartiality stems from his office. This begs the question is the Chief Executive a hypocrite and a liar?'. On 27 October 2008 the Respondent emailed Mr Patterson to say that he was not coming to meet 'a liar'. On 17 November 2008 the Respondent stated; 'I'd say that the letter is littered with "inconsistencies and lies" and in this regard having called the Chief Executive a 'liar & a cheat' will he be resigning from his post?' On 27 April 2009 the Respondent said that the Chief Executive and senior officers had conspired to lie on a matter related to a street cleaning matter.
- 4.2.16 The ESO considers that the Respondent's comments at the three council meetings and in his email to Mr Patterson on 27 October 2008 were both rude and offensive. It is the ESO's view that the Respondent was clearly referring to Mr Patterson when he referred to the Chief Executive and he indeed has acknowledged that he intended that to be the case. By calling Mr Patterson a cheat and a liar the Respondent publicly attacked the personal integrity, honesty and credibility of the Chief Executive of the Council.

- 4.2.17 Mr Patterson is an employee of the Council and is entitled to be treated with respect. Only in exceptional circumstances would the ESO consider it acceptable for councillors at public meetings to use the platform available to them to call a senior officer a liar and ask whether they would consider resigning due to lack of credibility. There is nothing the ESO has seen in this case that could justify such actions. Officers do not have the same platform on which to respond to accusations by members, and are not entitled to join in with the political debate and robust banter which members should expect. While councillors must be able, in appropriate circumstances, to challenge the conduct of officers it must be done within a framework that is respectful of the employer / employee relationship.
- 4.2.18 When considering whether the Respondent's conduct was disrespectful the ESO thinks it is relevant that he had prepared his comments prior to making them at the various council meetings. The ESO notes that the Respondent is of the view that his medication may contribute to the way he conducts himself. It is in the ESO's view that even if he had furnished medical certification to support this assertion, the fact that his comments had been prepared before the meeting, shows that his conduct was not carried out in the heat of the moment. In choosing to use emotive words like 'hypocrite', 'cheat' and 'liar' and by questioning whether Mr Patterson should resign because his personal credibility was under question the ESO considers that the Respondent was being deliberately inflammatory rather than seeking a response to reasonable questions.
- 4.2.19 The Respondent is of the view that Mr Patterson is a hypocrite, cheat and a liar because he had failed to respond adequately to various concerns that had been raised with him. While it is the ESO's view that it is not the truth of Mr Patterson's comments which is at issue, but whether the Respondent treated him with respect, having looked at the evidence provided, the ESO sees little justification for the Respondent's position. In all these instances the Respondent could and should have raised his concerns in a more appropriate, temperate manner.
- 4.2.20 The ESO considers that the Respondent failed to comply with paragraph 3(1) of the Code in that he did not treat Mr Patterson with respect on 8 September 2008, 27 October 2008, 17 November 2008 and 27 April, 2009.
- 4.2.21 The Respondent's email to Mark Bowen on 26 June 2009 related to a concern that had been referred to the Respondent by a local resident and which he says he had been pursuing for a number of years. It is the ESO's view that members should be able to express in robust terms concerns that they have about any aspect of the running of the Council to senior officers. Furthermore, they should have the freedom to make the person in that position 'sit-up' and take notice. The Respondent is entitled to let officers know if he is unhappy with the service he and his constituents are getting. The ESO also understands that robust language can sometimes be appropriate to ensure that matters are dealt with properly and that the Code is not intended to stifle the expressions of passion and frustration that often accompany discussion about the efficient running of a council.

- 4.2.22 The Respondent's email of 26 June 2009 included the comment 'Liven up Bowen' in reference to his getting the fly tipping problems resolved. Mr Bowen's response to the Respondent was polite and in the ESO's view it was perfectly reasonable for him to comment that it is for a department to prioritise and deal accordingly with service requests. The Respondent's further responses ignored Mr Bowen's position and continued to press him to resolve the matter himself.
- 4.2.23 When considering whether the Respondent's emails were disrespectful the ESO recognises the Respondent's frustration and accepts that he has a duty to represent the concerns of his local community. However this does not excuse him from his responsibilities to treat others with respect. Councillors are required to set standards and not descend to the standard which they perceive others may have fallen.
- 4.2.24 The ESO thinks that the content of the Respondent's emails to Mr Bowen was dismissive and hectoring. The Respondent's use of phrases like 'pull yr finger out & get it sorted!' and 'Bowen, Mrs Neve awaits reply, I repeat get the fly tipping removed immediately!' were deliberately worded to humiliate Mr Bowen. The ESO is also concerned about the form of the Respondent's address to Mr Bowen ('Bowen' and 'Liven up Bowen') which the ESO thinks was, in the context of his relationship with Mr Bowen, inappropriate and unnecessarily rude. The Respondent could have raised his concerns in a more acceptable manner.
- 4.2.25 The Respondent's decision to copy in members of the public compounded the denigratory nature of his communications. Although the Respondent clearly wanted to get the complaints resolved, his comment that Council's failure to deal with the problem more effectively had left him looking unprofessional and incompetent could suggest that he also wanted to restore his own reputation at Mr Bowen's expense.
- 4.2.26 The Respondent's history of making complaints to street services had led the Council to take the unusual step of creating a specific protocol for him in order to assist in managing his complaints. The fact that he chose to ignore this by emailing Mr Bowen directly, together with the content and distribution of his emails, leads me to consider that the Respondent failed to comply with paragraph 3(1) of the Code in that he did not treat Mr Bowen with respect in this matter.

Bullying

- 4.2.27 Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour, which attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.
- 4.2.28 Paragraph 3 of the Code was not intended to prevent a member from expressing disagreement with the views of an officer or employee of the Council, or of the manner in which a particular matter has been dealt with. It is inevitable that in the everyday running of a council, members will have disagreements with senior officers.
- 4.2.29 While isolated incidents of a minor nature are unlikely to be considered as bullying under paragraph 3(2)(b) of the Code, regular and repeated behaviour directed toward a person, even if each incident on its own did

not amount to bullying, should be viewed through the eyes of a notional reasonable member of the public to decide whether the cumulative conduct amounted to bullying.

- 4.2.30 The Respondent's behaviour toward Mr Patterson appears to have deteriorated following Mr Patterson's email of 8 July 2008. Although the reasons behind Mr Patterson's email do not form a direct part of this investigation the ESO cannot ignore the information that he has been provided in relation to these matters. Since receiving the email the Respondent has on a number of occasions referred to Mr Patterson as a liar, cheat and hypocrite, both at open council meetings and in private emails. For the reasons detailed above the ESO considers that the Respondent's conduct with regard to these matters was disrespectful toward Mr Patterson and displayed some of traits that Mr Patterson had expressed concern about in his email.
- 4.2.31 While the ESO recognises that Mr Patterson is a senior officer and therefore expected to be more robust in his dealings with members, by publicly questioning his integrity and whether or not he should resign as a result, the Respondent's behaviour amounted to humiliating behaviour that was intended to undermine the Chief Executive. The ESO thinks it relevant that one of these occurrences, at the meeting on 27 April 2009, occurred after the original allegations had been referred to the ESO for investigations and so the Respondent would have been well aware how Mr Patterson viewed such conduct.
- 4.2.32 The ESO therefore concludes that the Respondent failed to comply with paragraph 3(2)(b) of the Code. In reaching this conclusion the ESO also bears in mind the pattern of the Respondent's behaviour revealed in this investigation where he persists in hectoring individual officers despite extensive formal and informal attempts over several years to provide him with an acceptable way to air his constituents' concerns.

Disrepute

- 4.2.33 Paragraph 5 of the Code provides that members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.
- 4.2.34 In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a member's behaviour in office will bring that member's office into disrepute if the conduct could reasonably be regarded as either:
- reducing the public's confidence in that member being able to fulfil their role; or
 - adversely affecting the reputation of members generally, in being able to fulfil their role
- 4.2.35 In the ESO's view, the threshold for a failure to comply with paragraph 5 of the Code in the case of expressions of view has to be set at a level that allows for the passion and fervour that often accompanies political debate and for appropriate and robust criticism of the performance of a council function. This is entirely consistent with the objective of maintaining proper standards in public life.

4.2.36 For the reasons given above the Respondent went beyond what the ESO would consider to be acceptable forms of expression, instead choosing to question the integrity and credibility of the Council's Chief Executive at full council meetings at which councillors, council officers and members of the public were present. By making such a claim without justification he brought his own office into disrepute.

4.3 **Tribunal decision**

4.4 Four matters need to be determined on the basis of the facts as found:

4.4.1 Whether the Respondent was acting in his official capacity for the purposes of the Code i.e. conducting the business of the Council or acting , claiming to act or give the impression that he was acting as a representative of the Council:

4.4.2 If so, whether his communication with officers of the Council and comments at council meetings:

4.4.2.1 failed to treat others with respect and/or

4.4.2.2 was conduct which amounted to bullying and/or

4.4.2.3 was such as could reasonably be regarded as bringing his office or authority into disrepute.

4.4.3 The Tribunal, in considering whether the Respondent was acting in his official capacity, considered the particular facts of this case.

4.4.4 All emails sent by the Respondent to council officers and local residents were sent using his council email address which had been provided to him by the Council. The Council had also provided him with the broadband internet line, router and PC for use as a member of the Council and by which the emails were sent. In addition, the emails stated that they were sent "from Willets, Colin, Cllr [Councillor]."

4.4.5 Further, the Respondent made some of his derogatory comments concerning council officers, in particular those concerning the Chief Executive, at council meetings held on the 8 September 2008 and the 17 November 2008, which he attended in his capacity as a councillor.

4.4.6 The Tribunal therefore held that the Respondent was acting in his official capacity when the conduct, which was the subject of the reference, took place.

Failure to treat others with respect, conduct amounting to bullying and disrepute

4.4.7 The Tribunal accepted that a failure to treat others with respect occurred when unfair, unreasonable or demeaning behaviour is directed by one person against another and also accepted that the circumstances in which the behaviour occurred was relevant in assessing whether the behaviour was disrespectful. The circumstances included the place where the behaviour took place, who observed the behaviour and the character and relationship of the people involved.

- 4.4.8 The Tribunal also accepted that bullying was characterised as offensive, intimidating, malicious, insulting or humiliating behaviour, which attempted to undermine an individual or a group of individuals, was detrimental to their confidence and capability and may adversely affect their health.
- 4.4.9 Further the Tribunal accepted that the term "disrepute" given its ordinary meaning is understood to be "a lack of good reputation or respectability". Therefore anything which could be regarded by an objective observer as diminishing the member's office or their authority, or which harms or could harm the reputation of an authority, will bring that office or authority into disrepute.
- 4.4.10 In considering whether the Respondent breached paragraphs 3(1), 3(2)(b) and 5 of the Code, the Tribunal had regard to Article 10 of the European Convention on Human Rights which provides:

"(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by a public authority and regardless of frontiers.."

"(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of ...the protection of the reputation or the rights of others,...."

- 4.4.11 Section 1 of the Human Rights Act 1998 identifies the rights under the European Convention of Human Rights which have effect for the purposes of that Act. They include Articles 6 and 10 of the ECHR. Section 3(1) of the 1998 Act provides that so far as it is possible to do so.....subordinate legislation must be read and given effect in a way which is compatible with the convention rights.
- 4.4.12 The Tribunal recognised that freedom of expression was one of the most fundamentally important rights in a democratic society which may only be interfered with where there are convincing and compelling reasons within Article 10(2) justifying that interference.
- 4.4.13 In the case of Sanders v Steven Kingston [2005] EWHC 1145 (Admin), Mr Justice Wilkie considered whether on the facts of that case, a finding of a breach of the Code of Conduct and/or imposition of a sanction would violate Article 10. In that case it was held that, in principle, Article 10 was engaged, that the finding of breach of itself and the imposition of a sanction was prima facie a breach of Article 10 but that the restriction of the right to freedom of expression was, on the facts, one which was justified by reason of the requirements of Article 10(2). In his judgement he said:

".....The purpose of the legislation [Local Government Act 2000] was to encourage and impose certain minimum standards of behaviour in respect of local government.....I have concluded that the words and writing of the appellant amounted to no more than expressions of personal anger and personal abuse and did not constitute political expression which attracts the higher level of"

protection. In those circumstances, in my judgement the finding by the Case Tribunal that the appellant had breached the code of conduct and its notification of that finding to his local authority constituted an interference with freedom of expression but one which was lawful pursuant to Article 10(2)....."

4.4.14 In the case of Livingstone v The Adjudication Panel for England [2006] EWHC 2533(Admin) Mr justice Collins stated:

"The burden is on [the Adjudication Panel for England] to justify interference with freedom of speech. However offensive and undeserving of protection the appellant's outburst may have appeared to some, it is important that any individual knows that he can say what he likes, provided it is not unlawful, unless there are clear and satisfactory reasons within the terms of Article(2) to render him liable to sanction".

4.4.15 The Tribunal accepted that Article 10 was engaged in this particular case. Therefore the issue to be determined was whether a finding of a breach of the Code on the facts as found, would be justified under Article 10(2).

4.4.16 The Tribunal considered the nature of the words used in order to determine whether they constituted expression relating to matters within the legitimate concern of the member as a councillor (political or quasi political comment which benefit from a high level of protection), or whether they were no more than expressions of personal anger and personal abuse, in which case, the high degree of protection required was not engaged.

4.4.17 The Tribunal considered whether the restraints imposed by the Code, in order to protect the reputation and the rights of others represented no greater an impairment to the Respondent's right to freedom of expression than is necessary to accomplish the legislative objective of the Code which is to maintain and uphold standards of conduct in public life.

4.4.18 In the Tribunal's view the threshold for failing to comply with paragraphs 3(1), 3(2)(b) and 5 of the Code, in the case of expression of views, had to be set at a level that allowed for robust political debate relating to the efficient running of a council and which allowed for appropriate criticism of the performance of a council's function. This is consistent with the objective of maintaining proper standards in public life. However, this was to be balanced with the rights of others, including the right to protection of reputation.

4.4.19 In the Tribunal's view the words used by the Respondent against Mr Patterson and Mr Bowen, were not political comments or political opinions " liar, hypocrite cheat" to Mr Patterson. "...clearly you are in competent and not fit to be in public office...." to Mr Bowen., but were purely unsubstantiated personal remarks that amounted to no more than expressions of anger and personal abuse and did not, therefore attract the higher level of protection.

4.4.20 The Tribunal was satisfied that the Respondent, by referring to Mr Patterson as a liar, a cheat and a hypocrite, in emails, some of which

were copied to subordinate staff and at council meetings was disrespectful and sought to damage his reputation.

- 4.4.21 The Respondent had prepared much of what he said at council meetings before hand and the comments were therefore premeditated.
- 4.4.22 On 8 September 2008 at a full council meeting, the Respondent stated *"the Chief Executive's credibility is well up the swanee and the lack of impartiality stems from his office. This begs the question, is the Chief Executive a hypocrite and a liar?"*. Again, at a full council meeting on 17 November 2008 the Respondent, having prepared a note prior to the meeting of what he was going to say, stated, in referring to Mr Patterson's letter to him of the 8 July 2008, *"I'd say that the letter is littered with "inconsistencies and lies and in this regard having called the Chief Executive a liar and a cheat will he be resigning from his post"*. At the council meeting on 27 April 2009 *"!...Since the chief executive and senior officers conspired to lie on this issue can you investigate why the director of legal has failed to investigate my formal complaint against him?"*.
- 4.4.23 These comments, which questioned Mr Patterson's honesty, credibility and integrity, were made in a public arena where they would receive maximum publicity and where Mr Patterson's had no right of reply.
- 4.4.24 Whilst the Tribunal accepted that councillors should be able to challenge the conduct of officers, it was of the view that this was not an appropriate or measured way of doing so.
- 4.4.25 The Tribunal was also of the view that the Respondent treated Mr Bowen with disrespect by referring to him in emails in a derogatory way and questioned his professional abilities and integrity. For example in his email of the 30 April 2009 he stated to Mr Bowen, *" Clearly, you are incompetent & not fit to be in public office & I would certainly label you as a key conspirator along with Doug Patterson, Cllr Smith and Nigel Davies?"*. Again in his email of 26 June 2009, *"Liven up Bowen, more dumped bags in car park resident awaits response!"*), and on 28 June 2009 *" Bowen, Mrs Neve awaits reply, I repeat get the flytipping removed immediately!"*. The Respondent's communication with Mr Bowen was regularly copied to members of the public and other staff members which was demeaning and undermining.
- 4.4.26 The Respondent's conduct continued even while the ESO was investigating the complaint made against him.
- 4.4.27 The Tribunal also found that the Respondent's conduct breached paragraph 3(2) (b) of the Code in that the persistent and hectoring nature of some of the Respondent's communication and complete disregard for any attempts to channel the Respondent's enthusiasm into a less pestering style was ignored. The Tribunal noted that an email sent by the Respondent to Mr Patterson on 2 September 2008 was resent on eight separate occasions and that in response to the draft report of the ESO, the Respondent provided in excess of 100 emails between himself and street services officers sent between May 2007 and May 2009.
- 4.4.28 The Tribunal accepted that Mr Patterson, as Chief Executive and Mr Bowen as the Council's Monitoring Officer should be robust in their

dealings with members, however by publicly questioning their integrity and, in the case of the Chief Executive, whether or not he should resign as a result, the Respondent's conduct amounted to behaviour which was intimidating, insulting and humiliating which attempted to undermine them.

- 4.4.29 The Tribunal was also of the view that the Respondent's persistent and pestering communication with some officers and complete disregard for the attempts to control his communication had the effect of bullying a more junior member of staff who found this conduct overwhelming and stressful. In an email sent to her line manager on 7 March 2007 the officer stated that she had had enough and in an email sent on the 16 June 2008 she stated "*... I really do not feel I can cope with a gradual drift back to [the Respondent's] persistent badgering of me via my mobile phone....*".
- 4.4.30 The Tribunal also found that by questioning the honesty and integrity of the Chief Executive, the Monitoring Officer, and by implication the Council, by copying derogatory emails sent to senior officers of the Council to members of the public and making personal attacks on officers at council meetings where officers had no right of reply and were effectively defenceless, were all matters that could reasonable be regarded by an objective observer as bringing the member's office and , in this case, authority into disrepute.

5 Submissions as to action to be taken

5.1 ESO's Submission

- 5.1.1 Representing constituents is obviously an important part of the Respondent's role and one that he is wholly committed to, having done so for nearly twenty years. The ESO, in reaching his findings has taken into account the Respondent's frustrations at what he considers to be a failure on the part of certain officers to action his complaints as he would like. However the ESO is concerned that despite his experience the Respondent fails to recognise that in performing his functions as a member, he has a duty to respect other people regardless of his personal view of them.
- 5.1.2 The Respondent has indicated that his behaviour might well be a side effect of his medication. However to date the Respondent has not yet provided evidence to show how his medication does actually affect his actions. Further when considering the extent this should mitigate his conduct the ESO thinks it relevant that the Respondent still does not recognise that his behaviour does on occasion fall below the required standard.
- 5.1.3 The Respondent, by his own admission, signed up to the Code of Conduct reluctantly. Since 2002 he has done little to acquaint himself with revisions to the Code, including the change to include bullying as behaviour to be avoided.
- 5.1.4 Aggravating factors concerning his conduct:
- The Respondent persists in his disrespectful communications with senior officers even as part of the preparations for this hearing and

appears to have no insight into the unacceptable nature of his behaviour.

5.1.5 Mitigating factors concerning his conduct:

- The member appears to honestly believe that he is justified in behaving the way he has.
- He appears to be genuinely concerned to deal with issues raised by his constituents.
- There is some suggestion that his actions may be affected by the long term effects of his medication.

5.2 **Respondent's submissions**

5.2.1 The Respondent apologised if his conduct had been construed as bullying. He said that he would change his behaviour. He stated that in recent months his email contact with officers of the Council had reduced. The Respondent stated that he intended to stand as an independent councillor in the election on 6 May 2010 and therefore he thought that if the Tribunal were minded to impose a sanction it should be one of censure.

5.3 **Tribunal decision**

5.3.1 The Tribunal regarded these breaches as very serious. In deciding the appropriate sanction, the Tribunal had taken into account the representations of the parties and the guidance issued by the Principal Judge of the Tribunal "Guidance on decisions to be made by a Case Tribunal where a Respondent has been found to have failed to comply with a Code of Conduct".

5.3.2 In mitigation, the Tribunal considered that the Respondent had been a hard working councillor but by focusing council officer's attention on issues that were the concern of only a few people in his ward, meant that other important council business were not given appropriate priority.

5.3.3 The Tribunal also took account of the Respondent's comments that his conduct may have been caused by the medication he was taking for epilepsy. However, the Respondent had not provided medical evidence of this.

5.3.4 Weighed against these factors, the Tribunal were also of the view that the Respondent had failed to recognise the impact of his conduct on others; had persisted with this conduct even while the ESO was investigating a complaint against him and had shown no contrition, withdrawing his previous apology for similar conduct.

5.3.5 The Tribunal took into account its responsibility to uphold and improve the standards of conduct expected of elected members and to foster public confidence in local democracy. The Tribunal's was also mindful of the fact that its decision should discourage other elected members from engaging in similar conduct.

- 5.3.6 Had it not been for the pending election in May, the Tribunal would have considered imposing a maximum period of suspension. However, in view of the election, the maximum period of suspension that it was possible to give in this case was only 4 weeks.
- 5.3.7 It was the Tribunal's view that this was a quite inadequate sanction, bearing in mind the seriousness and repeated nature of the breaches that were found.
- 5.3.8 In accordance with the Guidance, the Tribunal decided to impose a 12 month disqualification in order to ensure that the Respondent did not return to serve as a councillor for the London of Bromley any earlier than if a suspension was imposed.
- 5.3.9 The Tribunal took account of the possibility that the Respondent would not be able to seek re-election to his current ward for a possible 4 years, but felt that the alternative would have been a wholly inadequate sanction for breaches of this nature.
- 5.3.10 The decision of the Tribunal was unanimous.
- 5.3.11 Any request for the decision to be reviewed or for permission to appeal needs usually to be made to the First-tier Tribunal within 28 days of receipt of the Tribunal's reasoned decision. Such applications need to be in writing.

Sally Lister
Judge
20 April 2010