

**THE GREATER LONDON AUTHORITY'S  
ETHICAL STANDARDS REGIME**

**MONITORING OFFICER DECISION NOTICE:  
FINDING OF NO FAILURE**

**GLA Case Reference: January 01/18**

**Decision**

The Monitoring Officer finds that Mr Devenish AM has not failed to comply with the GLA's Code of Conduct. This is a finding of no failure.

**Complaint**

On 26 January 2018 the Monitoring Officer received a complaint about Tony Devenish AM. This complaint alleged that Mr Devenish breached the Authority's Code of Conduct. The allegation concerns his behaviour on 19 January 2018. It is alleged Mr Devenish swore about a member of staff. The specific complaint is as follows:

*"I greatly object to the expression "stupid bitch" and I should be grateful if you would take this email as my formal complaint against Cllr Devenish."*

The Complainant alleges that this behaviour constitutes a breach of paragraph 3(1) of the Code of Conduct for GLA members

3. — (1) *You must treat others with respect.*

**Procedure**

The approved procedure under which complaints are to be considered is as follows:

*Initial assessment of your complaint*

The Monitoring Officer will conduct an initial assessment of all complaints on a case-by-case basis and, in doing this, will also take into account relevant guidance and advice (and may seek the views of an Independent Person appointed by the GLA for such purposes).

The Monitoring Officer will also take into account any relevant criteria and factors that, over the course of time, the GLA's Standards Committee had previously taken into account when assessing complaints.

In light of the absence of formal sanctions available to the Monitoring Officer to apply in the event of a formal breach of the Code, the Greater London Authority expects this complaints process to be proportionate to the issues raised and the expected outcomes.

The Monitoring Officer will therefore take into account the wider public interest and the cost to the public purse of undertaking any investigation into alleged breaches of the Code. Complaints are, therefore, only likely to be taken forward for investigation where the allegations are objectively and reasonably considered to be serious matters.

Whilst every complaint will be judged on its particular merits, it is possible that, for example, a complaint by one Member of the Authority against another that only alleges a lack of due respect will not be considered to be a matter where an investigation would be appropriate nor in the wider public interest.

Similarly, a suggestion that an elected Member who has exercised his or her right to voice a legitimate opinion has brought their office and/or the Authority into disrepute by so doing is likely not to be taken forward for further consideration. As an additional example, the failure of an elected Member to respond to correspondence or to choose to terminate correspondence with an individual would also be unlikely in and of itself to be investigated.

After conducting an initial assessment of your complaint, the Monitoring Officer will do one of the following:

- (a) decide that no action should be taken on your complaint (and inform you of this decision and the related reasons); or
- (b) pass your complaint to the Monitoring Officer of a different authority, if she considers that that is a more appropriate way of dealing with your complaint; or
- (c) decide that she is minded to investigate your complaint, subject to representations of the member you have complained about (the member may seek the views of an independent person appointed by the GLA for such purposes); or
- (d) decide to investigate your complaint (and inform you of this decision and the related reasons).

#### *Considering what information should be provided after initial assessment*

After the Monitoring Officer has assessed your complaint, she will then decide whether a written summary of your complaint should be provided to the Member complained about and whether your identity should be provided to that Member (if this has not already happened). When taking these decisions, the Monitoring Officer must consider whether providing these or any details would be against the public interest or would undermine a person's ability to investigate your complaint (as this may become necessary at a later stage).

#### *How are you told about the Monitoring Officer's decision?*

The Monitoring Officer will write to you and the Member you are complaining about following the initial assessment to inform them of the outcome. A decision not to investigate a complaint (along with summary details of the complaint) will then be published on the GLA's website.

## *Investigation and Decisions*

Where the Monitoring Officer decides that a complaint should be investigated further, she may ask you, the Member you are complaining about and other relevant people to provide her with detailed information or explanations, possibly by way of an interview.

In conducting the investigation and determining the complaint, the Monitoring Officer will seek and take into account the views of at least one independent person appointed by the GLA for such purposes. The Member you are complaining about may also seek the views of the independent person in relation to your complaint.

Information obtained in doing the investigation will only be released to individuals or organisations where this will enable your complaint to be dealt with properly.

In addition to taking into account the views of the independent person, the Monitoring Officer will, when seeking to reach a finding on the complaint, take into account relevant guidance, professional advice and relevant criteria and factors that, over the course of time, the GLA's Standards Committee had previously taken into account when taking decisions on complaints.

The role of the independent person(s), in law, is:

- a) To give views, which must be taken into account, to the Monitoring Officer before he/she makes a decision on an allegation that he/she has decided to investigate;
- b) To give views, if requested by the Monitoring Officer, on any other allegation that has been received; and
- c) To give views to any member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation.

The independent person must, within a reasonable timescale (not usually more than 21 days), provide the Monitoring Officer with views in writing, to describe in particular what they would see as an appropriate outcome to the matter under consideration, taking into account all of the related information and circumstances.

*What happens when your complaint is investigated and the investigation is completed?*

Once the investigation is completed, the Monitoring Officer will:

- i) find that the Member you have complained about has failed to comply with the GLA's Code of Conduct ("a finding of failure"); OR
- ii) find that the Member you have complained about has not failed to comply with the GLA's Code of Conduct ("a finding of no failure"); and
- iii) prepare a written summary report of the investigation which contains a statement of what their finding is; and
- iv) send a copy of the report to you and the Member you are complaining about as soon as is reasonably possible after making the decision; and
- v) publish the summary report (those elements that are not private and confidential) and finding on the GLA's web site.

In cases where the Monitoring Officer upholds your complaint, she has no legal powers to apply formal sanctions other than to provide an opinion on the conduct of the GLA Member concerned as compared to the standards of the Code of Conduct.

There is no appeal against the Monitoring Officer's decision on a complaint following any such investigation as that decision is final. You may be able to complain to the Local Government Ombudsman (PO Box 4771, Coventry CV4 0EH; Telephone: 0300 061 0614; Fax: 024 7682 0001; <https://www.lgo.org.uk/contact-us>).

The Monitoring Officer will produce regular reports for the Mayor and London Assembly, containing such summary information as can properly be provided in respect of the discharge of his/her functions under the Authority's ethical standards regime.

### **Applying the procedure to this complaint**

The Monitoring Officer has considered this matter in accordance with the Greater London Authority's approved complaints-handling procedures as outlined above.

Given the particular context and tone of the complaint, the Monitoring Officer decided that this issue was not capable of effective resolution through informal means. Mr Devenish was advised of this and he declined to make any representations on this point.

Noting the nature of this complaint, the Monitoring Officer also notified Mr Devenish of her intention to proceed on the basis that the name and personal details of the complainant would not be disclosed at any stage during this process and would be withheld from publication in any final Decision Notice. Mr Devenish did not make any representations on this point.

The Monitoring Officer conducted a formal initial assessment of the complaint (in accordance with Stage 3 of the complaint procedures) and decided to carry out an investigation (in accordance with Stage 4 of the complaint procedures).

### **Investigation**

In this case, the following actions were taken:

26 January	Complaint received
30 January	Complainant confirmed details of complaint in accordance with the complaints policy in the Code of Conduct
6 February	Monitoring Officer wrote formally to Tony Devenish AM to advise him of the complaint.
6 February	Monitoring Officer advised the Independent Persons of the complaint
14 February	Suzanne McCarthy selected as the Independent Person to consider the complaint alongside the Monitoring Officer

7 March	Interview with witness undertaken by the Monitoring Officer Two further witness statements were provided in writing
9 March	Interview with witness undertaken by the Monitoring Officer
9 March	Interview with complainant undertaken by the Monitoring Officer
12 March	Interview with Tony Devenish AM undertaken by the Monitoring Officer
16 March	Review of information obtained on the substance of the complaint with the Independent Person

## Reasons for Decision

The Monitoring Officer carefully considered the following:

- The written complaint and oral witness statement provided by the Complainant
- The oral statement provided by Mr Devenish
- The oral and written witness statements provided by four witnesses
- The relevant paragraph of the GLA's Code of Conduct for Members

In accordance with section 28(7) of the Localism Act 2011, the Monitoring Officer has consulted one of the independent persons appointed by the Greater London Authority for the purposes of section 28. Her comments have been taken into account.

Having considered the above, the Monitoring Officer has decided that Mr Devenish AM has **not** failed to comply with the GLA's Code of Conduct with regard to the specific complaint made against him. This is a **finding of no failure**.

I was unable to conclude that Mr Devenish had used the words alleged because other than the Complainant, none of the four witnesses heard Mr Devenish swear as alleged in the complaint. In addition, Mr Devenish denies the allegation. As I am unable to conclude that he used the alleged words, I have decided that there is no breach of the GLA's Code of Conduct.

However, during the investigation of the complaint, the witnesses and the complainant referred to the style of Mr Devenish's behaviour at the time of the incident and considered it unacceptable. Mr Devenish also confirmed that at the time he did raise his voice and that with hindsight it was too loud. Mr Devenish subsequently apologised to a member of staff in this regard.

The GLA's Code of Conduct, the Member-Officer Protocol and the Code of Ethics and Standards for Staff require Members and Officers to behave in an appropriate way towards each other to ensure that they work together effectively and efficiently to conduct the business of the GLA. The Monitoring Officer will therefore provide a copy of this notice to the Executive Director, Assembly Secretariat, and the Head of the Assembly Conservative group to remind both Members and staff of the standards of behaviour expected as set out in the Code of Conduct, the Member-Officer Protocol and the Code of Ethics and Standards for Staff.

### **Confidentiality and publication**

The Complainant has confirmed that a summary of the complaint could be provided to Mr Devenish AM and could be made available on the Authority's web site. In taking into account the principles of natural justice and public interest as well as the general requirement to be transparent and the previous commitments in that regard given by the Authority and Monitoring Officer (upon the establishment of the current Standards regime), the GLA's Monitoring Officer has decided that these details should be provided to Mr Devenish AM as part of this process and should also be published but without disclosing the Complainant's name or personal details (given the nature of the issues at hand).

This Decision Notice has been sent to the Complainant and Mr Devenish AM on Friday 11 May 2018.

### **Right to appeal**

There is no right to appeal to the GLA against this decision.

Signed:

A handwritten signature in blue ink, appearing to read 'E Strain'.

Emma Strain, GLA Monitoring Officer

11 May 2018