

**THE GREATER LONDON AUTHORITY
ETHICAL STANDARDS REGIME**

MONITORING OFFICER DECISION NOTICE

GLA Case Reference: October 02/18

Decision

That there **has not been a breach** by Sadiq Khan, Mayor of London, of paragraph 3 (2) (d) of the Code of Conduct.

That there **has not been a breach** by Sadiq Khan, Mayor of London, of paragraph 5 of the Code of Conduct.

That there **has not been a breach** by Sadiq Khan, Mayor of London, of paragraph 6 (b) (i) of the Code of Conduct.

That there **has been a breach** by Sadiq Khan, Mayor of London of paragraph 6 (b) (ii) and 6 (c) of the Code of Conduct.

Complaint

1. On 18 October 2018 I received a complaint (“the Complaint”) from Mr Gareth Bacon AM, Leader GLA Conservatives (“the Complainant”). The Complaint alleged that the Mayor of London, Sadiq Khan, had breached the Authority’s Code of Conduct for GLA Members (“the Code”). The Complaint concerns a statement on Brexit issues released on 18 October 2018 (“the Statement”). The full text of the Statement is contained in appendix A. The full Complaint reads as follows:

“This morning (18 October 2018), the Mayor issued, using GLA resources, a formal statement on Brexit issues. The text of this statement is set out below. It includes the phrases:

- a) *“The summit was supposed to be the final chance to agree a Brexit deal” – this statement is simply factually incorrect.*
- b) *“... due to the appalling incompetence and infighting of Theresa May’s Government...” – this statement is clearly not language that is factual, objective, balanced, impartial, it is explicitly party political in content and tone, and it is ‘ultra vires’ as it is language that does not in any way engage the responsibilities of the office of the Mayor of London.*
- c) *“After two chaotic years, the Prime Minister can’t even agree a Brexit position within her own party, let alone with the EU” – this statement is not factual, objective, balanced, impartial, it is explicitly party political in content and tone,*

and it is 'ultra vires' as it is language that does not in any way engage the responsibilities of the office of the Mayor of London.

- d) *"The options on the table are now limited to Theresa May's proposed bad deal for Britain or no deal at all – both of which would be disastrous for London's economy and would limit opportunities for the next generation" – this is not factual, objective, balanced, impartial, it is explicitly party political in content and tone;*
- e) *"The ongoing chaos, infighting and ineptitude shows exactly why it's so crucial that the British public get the opportunity to have their say on the final deal..." – this is not factual, objective, balanced, impartial, it is explicitly party political in content and tone.*

In March 2016, the GLA's statutory officers issued guidance relating to the EU referendum, which stated that it was permissible for the Mayor of London (and others) to speak publicly on such matters, using GLA resources – but with the caveat that this was allowed "so long as such activity is directly relevant to their powers and functions is factual, neutral and politically impartial."

The GLA's Use of Resources policy, issued by statutory officers and referring to the Code of Recommended Practice on Local Authority Publicity, states:

37. All GLA publicity should:

- be lawful;*
- be cost effective;*
- be objective;*
- be even-handed;*
- be appropriate;*
- have regard to equality and diversity;*
- be issued with care during periods of heightened sensitivity.*

38. The GLA's comments or responses to central government or other public bodies' proposals and policies should be objective, balanced, informative and objective. They must not be a prejudiced, unreasoned or political attack on the policies, proposals or those putting them forward.

The Mayor's statement this morning is not lawful, he has no remit to speak as Mayor on international negotiations in a way that does not engage in any way the responsibilities of the office of the Mayor of London; nor can the statement in any way whatsoever be said, by any reasonable standard, to be objective or balanced.

It is also, by any reasonable standard, a prejudiced, unreasoned, political attack on the policies and proposals of the UK Government."

2. The Complainant alleges that the Mayor has breached paragraphs 3(2), 5 and 6(b) (i), (ii) and (c) of the Code (the Code can be found in full online [here](#)¹):
- 3. (2) You must not—(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority;
 - 5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
 - 6. You—...
- (b) must, when using or authorising the use by others of the resources of your authority— (i) act in accordance with your authority's reasonable requirements; (ii) ensure that such resources are not used improperly for political purposes (including party political purposes);*
- (c) must have regard to any Local Authority Code of Publicity made under the Local Government Act 1986.*

Procedure

3. The approved procedure under which complaints are to be considered about GLA Member's conduct is set out in the Guidance on Making a Complaint About a GLA Member's Conduct ("the Complaints Guidance") which can be found online here².
4. I have considered the Complaint in accordance with the Complaints Guidance.

Informal Resolution

5. Having taken into account:
- the Code of Conduct of the Greater London Authority ("the Code");
 - the Complaints Guidance;
 - the GLA Use of Resources Guidance ("the Resources Guidance");
 - the Code of Recommended Practice on Local Authority Publicity ("the Publicity Code");
 - the letter of complaint dated 18 October 2018;

¹ <https://www.london.gov.uk/sites/default/files/18-04-04-code-of-coduct-appendices-final.pdf>

²

https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/Guidance%20on%20Making%20a%20Complaint%20about%20a%20GLA%20Member%27s%20Conduct.pdf

- the letter from the Mayor responding to the complaint dated 27 November 2018; and

having taken legal advice, I decided that the Complaint was not suitable for informal resolution under stage 2 of the complaints process.

6. Neither party suggested any viable means by which informal resolution could be achieved and taking into account the nature of the Complaint, I did not consider it to be capable of informal resolution as it required a view about whether – in approving and issuing the Statement - GLA resources have been used appropriately, whether proper regard had been had to the Publicity Code and also certain legal issues which did not lend themselves to being informally resolved in my view.
7. I therefore conducted an initial assessment of the Complaint (in accordance with Stage 3 of the Complaints Guidance) and decided to carry out an investigation (in accordance with Stage 4 of the Complaints Guidance).

Chronology of Investigation

8. The chronology of the investigation is set out below:

18 October	Complaint received from Mr Bacon AM
18 October	I confirmed receipt and requested further information from the Complainant in accordance with the Complaints Guidance
19 October	Complainant confirmed details of complaint in accordance with the Complaints Guidance
24 October	I provided additional information requested by the Complainant
26 October	The Complainant advised he was content for me to proceed to consider the Complaint in accordance with the Complaints Guidance
30 October	I wrote to Mayor of London to advise him of the Complaint.
27 November	Mayor of London wrote to me regarding informal resolution of the Complaint
3 December	I wrote to the Complainant and the Mayor of London regarding informal resolution of the Complaint
4 December	The Complainant wrote to me regarding informal resolution of the Complaint
10 December	Suzanne McCarthy selected as the Independent Person to consider the Complaint

14 January	I wrote to Mayor of London and to the Complainant to confirm that I had decided that the Complaint could not be resolved informally and that I had carried out an initial assessment under stage 3 of the Complaints Guidance and had decided that the Complaint warranted further investigation
16 January	Interview with witness undertaken
17 January	I advised Suzanne McCarthy, Independent Person, of the commencement of the investigation
18 January	Update provided to the Complainant on the investigation process and timescales
21 January	Interview with witness undertaken
23 January	Interview with witnesses undertaken
12 February	Confirmed next steps in process to Complainant
13 February	Interview with Mayor of London, Sadiq Khan, undertaken
15 February	Update provided to Suzanne McCarthy, Independent Person, on the status of the investigation
22 February	Further representations received from the Mayor of London
4 March	Further update to Suzanne McCarthy, Independent Person, on the status of the investigation
6 March	Suzanne McCarthy, Independent Person, provided views in writing as to an appropriate outcome to the matter
6 March	Decision made.

Factual Findings

9. Based on the evidence in the following documents:

- The letter of Complaint received on 18 October 2018
- The Statement issued on 18 October 2018
- The letter from the Mayor to the Monitoring Officer dated 26 November 2018
- The letter from the Mayor to the Monitoring Officer dated 22 February 2019
- The views of the Independent Person received on 6 March 2019

and interviews undertaken by me with the Senior Press Officer, the Head of Media, the Mayoral Director for Communications, the Mayor's Communications Advisor and the Mayor of London in January and February 2019 (as detailed above),

I make the following **findings of fact**:

- A draft of the Statement was prepared by a Senior Press Officer in the External Affairs Press Office on 17 October 2018.
- Officers from the Press Office in the External Affairs Unit and communications officers within the Mayor's Office discussed the broad content of the statement. The Statement was part of a three-month plan for communications regarding Brexit.
- The Mayor did not personally request the preparation of the statement, nor did he instruct his advisors to arrange for it to be prepared.
- The draft Statement was circulated for sign off to a 'media sign-off' GLA email group which included Mayoral Directors and their advisors, the GLA's Head of Media, Deputy Head of Media, Mayor's office staff and the Deputy Mayor for Business and his advisor. It was copied to the Head of Government Relations, press officers and GLA policy leads.
- A number of minor amendments were made to the draft Statement and the Mayor's private office advised that the Statement (as set out at Appendix A) was approved for release by the Mayor on 17 October, having been signed off personally by him;
- The Statement was published at 06:01 on 18 October.

Discussion

Alleged breach of paragraphs 3 and 5 of the Code

10. I find no evidence that the Mayor, in approving the draft Statement for publication, had conducted himself in a matter which could reasonably be regarded as bringing his office into disrepute or had done anything which compromises, or is likely to compromise, the impartiality of those who work for the GLA. I find those aspects of the Complaint not proven.

11. The Complaint also alleged that the Statement is unlawful. That is a matter that only the Courts can determine but I consider it to be legitimate for the Mayor to hold – and communicate – a policy in relation to the potential implications of Brexit

on London and its economic and social development and that is something which in principle does engage the statutory responsibilities of the Mayor.

Alleged breach of paragraph 6 of the Code

12. The Complainant has alleged that the Statement:

- I. Is not factual, objective, balanced and impartial;
- II. Is explicitly party political in content and tone; and
- III. Is ultra vires as it is language that does not engage the responsibilities of the office of the Mayor of London;
- IV. is a “prejudiced, unreasoned, political attack on the policies and proposals of UK Government”,

and it is therefore alleged that the Mayor is in breach of the following requirements in the Code for Members:

- when using or authorising the use by others of GLA resources to (i) act in accordance with the GLA’s reasonable requirements; (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- to have regard to the Publicity Code.

13. The Mayor, in his letter dated 27 November 2018, states:

- I. that he was voicing a legitimate opinion and that the position set out in the Statement was not designed to affect public support for a political party in conflict with the prohibition in section 2 of the Local Government Act 1986 as he was arguing against the official policy of both parties on Brexit and that the divisions within both main political parties means that this cannot be said to be a party political issue;
- II. that even if i) above is not accepted, the reference in the Statement to the Prime Minister was balanced by the Mayor’s positive comment regarding David Davis and that the Statement was issued three and a half years before the next General Election and will not be in the minds of voters at that time. Accordingly, the Mayor stated it cannot be reasonably held that this was a party political statement;

- III. that the provisions of the Publicity Code are not relevant to the Statement and that in any event the Statement did not breach the Publicity Code;
- IV. that the reference in the Resources Guidance to publicity needing to be *lawful* has a specific meaning (see Part 3 of the Communications Act 2003; section 125 of the Political Parties, Elections and Referendums Act 2000; Regulation 5 of the Local Authorities (Conduct of Referendums) (England) Regulations 2007; Regulation 15 of the Local Authorities (Referendums, Petitions and Directions) England Regulations 2000; and that the Statement does not breach any of these requirements;
- V. That he has properly exercised his powers in the GLA Act 1999 in that, as Mayor, he has statutory responsibility to take part in the national debate to help secure the best outcome for the people of London in light of the major impact that Brexit will have on the economic and social development of Greater London and that he has wide discretion when determining how best to do this;
- VI. That the Statement, read properly as a whole, does engage the responsibilities of the office of Mayor which is an inherently political role and that given the nature of that role it is reasonable for political language to be used; that Mayoral statements are not supposed to be bland; nor is there any requirement for them to be so;
- VII. That any use of GLA resources involved in the production of the statement would have been *de minimis*;
- VIII. That there have been no applicable breaches of the GLA's policies and guidance and that his conduct in reviewing and approving the draft Statement has been entirely legal.

The Mayor's position is that, for the above reasons, there has been no breach of the Resources Guidance or Publicity Code or the Code of Conduct.

I also carefully took into account the detailed further comments in the Mayor's letter dated 22 February 2019.

To the extent that I do not specifically mention in this decision notice evidence or representations which have been raised in correspondence, or otherwise considered as part of my investigation as referred to above, I have taken these matters into account but they do not change the decision reached.

Use or authorising the use by others of GLA resources

14. I first considered whether or not, as alleged in the Complaint, the Mayor had used or authorised the use by others of GLA resources.
15. Based on the findings of fact above, I find that the Mayor had seen the Statement in draft, had made no changes to it, and had then given his approval for it to be published as drafted.
16. I accept the evidence from the Mayor that he did not ask for the statement to be drafted; that he did not personally request that any GLA resources were used in relation to the preparation of it; and that he had not asked for any changes to be made to the draft when it was presented to him for approval. I accept the Mayor's evidence that Statement was produced by officers and not at the Mayor's request.
17. I therefore find no evidence that the Mayor had given specific authority or instruction for the use by others of GLA resources to prepare the Statement.
18. Whilst I find no evidence of specific instruction or authority having been given by the Mayor to prepare the statement, I went on to consider whether he had implicitly authorised others to use GLA resources by giving his approval for the draft Statement to be published.
19. I find that officers would have taken the Mayor's approval of the draft Statement as implicit authority to use GLA resources to go ahead and publish it, even though I accept that the resources used in arranging for the Statement to be published would have been minimal.
20. Having found that paragraph 6 was engaged, I went on to consider paragraph 6 (b)(ii) of the Code of Conduct which requires the Mayor to ensure, when using or authorising the use by others of GLA resources, that such resources are not used improperly for political purposes (including party political purposes).
21. I find that, to the extent that GLA resources had been used in the preparation and publication of the Statement, they had not been used in accordance with the Resources Guidance and Publicity Code in this case for the following reasons.
22. The published statement contained the following words:

“.due to the appalling incompetence and infighting of Theresa May's government there is still a huge risk of no deal at all.”

“After two chaotic years, the Prime Minister can't even agree a Brexit position within her own party, let alone with the EU.”

23. The Resources Guidance (at paragraph 31) provides that GLA publicity must be “objective, informative and politically impartial”.
24. I accept that Brexit is a cross-party issue, and that the Mayor is entitled – in light of his broad statutory responsibilities for London – to have a publicly stated position about Brexit and the potential impact on London including its economy. Issuing publicity using GLA resources which has an inherently political background or context is acceptable – including taking a stance, and commenting, on Government policy as appropriate – provided it is done pursuant to the legitimate exercise of the GLA’s statutory responsibilities and any publicity is compliant with the Publicity Code.
25. I also accept that Mr Khan – as an individual – has far greater freedoms to speak publicly and issue publicity not using GLA resources – and not constrained by the Resources Guidance and Publicity Code. Mr Khan is entitled to express political views and opinions in his personal capacity and pursuant to his legitimate rights to freedom of expression.
26. However, I consider that GLA publicity – funded at public expense – which refers to appalling incompetence, infighting and chaos within Government is not, on any reasonable interpretation, objective and informative – and could reasonably and objectively be considered to affect (in a negative way) support for the Conservative Party or a Politician (the Prime Minister). I find the Statement to be otherwise compliant with the Resources Guidance and Publicity Code and the complaint in relation to other aspects of the Statement I therefore find not proven.
27. The Mayor in his letter dated 27 November 2018 stated that his reference to the Prime Minister in the Statement was balanced by his positive comment regarding David Davis MP. I note the reference in the Statement to the Mayor having held regular meetings with David Davis MP but I do not consider this to mean that the negative references to the Government and the Prime Minister were therefore sufficiently balanced to be consistent with the Resources Guidance or Publicity Code.
28. The Mayor also refers in his letter dated 27 November 2018 to the Statement having been issued three and a half years before the next General Election and therefore will not be in the minds of voters at that time. However, whilst proximity to a General Election may be a relevant factor when considering use of resources issues, it is not determinative and the Resources Guidance and Publicity Code apply at all times. Whether or not publicly funded publicity is objective and politically impartial is not determined solely on how close to an election it is published.
29. Based on the above, I find that GLA resources used in the preparation and publication of the Statement were not used in accordance with the Resources Guidance and that the Statement as a whole did not comply with the Publicity

Code. The Publicity Code, which the GLA has adopted, has general application to the content, style, distribution and cost of local authority publicity.

Decision on alleged breach of paragraph 6

30. Having found that the Mayor had reviewed and approved the Statement, thereby giving officers implicit authority to go ahead and publish, using GLA resources, publicity which I find – in some respects - not to comply with the Resources Guidance and Publicity Code, I find that the Mayor had breached paragraph 6 (b)(ii) and 6 (c) of the Code by giving his approval for the GLA to publish the Statement and therefore find that aspect of the Complaint proven.
31. I find no evidence that the Mayor has otherwise failed to act in accordance with the Authority's reasonable requirements as alleged.
32. However, there had clearly been a breakdown in the internal clearance process for production and review of draft press releases within the GLA in this case. Usually any statement drafted by a press officer would first be cleared by either the Press Office's Head of Media or Deputy Head of Media *prior* to circulation for clearance. This did not happen in the case of the statement of 18 October. Appropriate steps should be taken to ensure that any material shared with the Mayor for approval has been checked as appropriate for compliance with the Resources Policy and Publicity Code before the Mayor is invited to comment on it.
33. Whilst the Mayor has to take ultimate responsibility for what is published in his name, he should expect to have the benefit of specific assurance that consideration has been given to the Use of Resources Guidance and the Publicity Code. It would be good practice for the process to include specific assurance to confirm that has been done as a matter of routine. In potentially controversial or difficult cases that may also need to include the taking of legal advice before text is provided to the Mayor.
34. I have provided a copy of this Notice to the Chief Officer of the Greater London Authority for consideration as to what further action, if any, may be deemed necessary within the Authority.
35. In accordance with section 28(7) of the Localism Act 2011, I have sought and take into account the views of one of the independent persons appointed by the Greater London Authority for the purposes of section 28. Her comments are attached at Appendix B.
36. This Decision Notice has been sent to the Complainant and the Mayor of London, Sadiq Khan on Friday 8 March 2019 and is available on the Authority's website.
37. There is no right to appeal to the GLA against this decision.

Signed:

A handwritten signature in blue ink that reads "Strain". The signature is written in a cursive style with a large, stylized 'S'.

Emma Strain, GLA Monitoring Officer

8 March 2019

Appendix A

Statement from the Mayor of London on the EU Summit

18 October 2018

The Mayor of London, Sadiq Khan, said: “This summit was supposed to be the final chance to agree a Brexit deal – but due to the appalling incompetence and infighting of Theresa May’s Government there is still a huge risk of no deal at all.

“After two chaotic years, the Prime Minister can’t even agree a Brexit position within her own party, let alone with the EU.

“The options on the table are now limited to Theresa May’s proposed bad deal for Britain or no deal at all – both of which would be disastrous for London’s economy and would limit opportunities for the next generation.

“I held regular meetings with former Brexit secretary David Davis and have reached out to his successor Dominic Raab to discuss London’s needs in the Brexit negotiations. Extremely disappointingly and despite being in the role for three months, he has so far failed to meet me.

“The ongoing chaos, infighting and ineptitude shows exactly why it’s so crucial that the British public get the opportunity to have their say on the final deal – which is what thousands of people will call for this weekend as they march through the streets of London.”

Appendix B: Statement from the Independent Person

I am one of the Independent Persons appointed by the Greater London Authority.

I was instructed by Emma Strain, the Greater London Authority's Monitoring Officer, on 10 December 2018 in respect of complaint brought by Gareth Bacon AM, Leader GLA Conservatives, against the Mayor of London, Sadiq Khan, on 18 October 2018.

I have been kept informed by the Monitoring Officer throughout her investigation of the complaint. I have received copies of the complaint, copies of the correspondence from the complainant and the Mayor and notes of the interviews conducted by the Monitoring Officer as part of her investigation.

I was also sent by David Bellamy, the Mayor's Chief of Staff, a copy of the Mayor's correspondence to the Monitoring Officer, which I had previously received from the Monitoring Officer.

The complaints process describes the role of the independent person.

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

- *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;*
- *To give views, if requested by the Monitoring Officer, on any other allegation that has been received; and*
- *To give views to any member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation.*

In this case I have only been asked to give views to the Monitoring Officer before she takes her decision on the complaint she has investigated.

Having considered all of the material, I have come to the independent conclusion that neither para 5 nor para 3(2) of the Code of Conduct was breached.

However, there has been, because some resources were used, notwithstanding that they were de minimis, a technical breach of para 6(b) by the Mayor in approving the statement produced by the press office.



Suzanne McCarthy
6 March 2019