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## **REPORT OF THE DEPUTY MONITORING OFFICER**

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### **HEARING UNDER THE LOCAL RESOLUTION PROTOCOL - PRELIMINARY MATTERS**

**This report and its appendices are Exempt from publication under paragraphs 12 and 13 of Schedule 12A to the Local Government Act 1972**

#### **Reason for this Report**

1. To enable the Hearings Panel (Sub-Committee) to consider a complaint referred to the Hearings Panel for determination under the Local Resolution Protocol, and to make preliminary determinations required in respect of the hearing of this matter.

#### **Background**

2. All elected Members have a statutory duty to comply with the Members' Code of Conduct (**Appendix A**).
3. The Council has adopted a Local Resolution Protocol for the resolution of low-level 'Member on Member' complaints (updated in November 2017), attached as **Appendix B**.
4. Under the Protocol, if a complaint is not resolved informally, the complainant may request the Monitoring Officer to refer their complaint to a Hearings Panel (sub-committee of the Standards and Ethics Committee) for determination.
5. The Standards and Ethics Committee has adopted a Local Resolution Hearings Procedure for hearings under the Local Resolution Protocol (updated in March 2016), attached as **Appendix C**.
6. The Monitoring Officer (MO) has referred a complaint to the Hearings Panel under the Local Resolution Protocol. The Monitoring Officer's report, attached as **Appendix D**, provides details of the complaint submitted and the Monitoring Officer's attempts to resolve it informally.

7. As the Monitoring Officer has been involved in attempts to informally resolve the complaint, she has asked the Deputy Monitoring Officer to advise the Hearings Panel in relation to the hearing.

## **Issues**

8. Following the referral to the Hearings Panel of the complaint set out in the Monitoring Officer's report, on 23<sup>rd</sup> June 2021, Cllr Molik was asked to confirm the details of her complaint (in accordance with the Local Resolution Procedure paragraph 3.1). Cllr Molik was asked to provide full details of any other incidents to which she had referred in her emails, including any evidence relied upon, if she wished to add these incidents to her complaint.
9. In correspondence during July and August 2021, Cllr Molik provided further information about two other incidents which she wished to add to her complaint, relating to responses given by Cllr Michael to questions she had asked during the full Council meetings in January 2021 and March 2018. On both occasions, Cllr Molik said that Cllr Michael's responses had been rude and abrupt.
10. The complaints which Cllr Molik has asked to be referred to the Hearings Panel for determination, as confirmed by Cllr Molik on 21<sup>st</sup> September 2021, are set out below.

### 11. Cllr Molik's Complaints

#### Complaint One

- 11.1 In email correspondence between Cllr Molik and Cllr Michael regarding green waste collections dated from 9<sup>th</sup> April 2021 to 12<sup>th</sup> April 2021, Cllr Molik says that Cllr Michael attacked her and became personal in his responses to the questions she asked him in order for her to respond to a resident.
- 11.2 Alleged breach of Code - Cllr Molik says that this conduct shows a lack of respect towards her and constitutes unacceptable bullying behaviour, in breach of paragraphs 4(b) and 4(c) of the Members Code of Conduct.

#### Complaint Two

- 11.3 At the full Council meeting in January 2021, in response to Cllr Molik's Question to Cllr Michael about waste collection (under Cabinet members' statements), Cllr Molik says that Cllr Michael rudely implied that she was unaware of a pandemic going on.
- 11.4 Alleged breach of Code - The Panel will be asked to consider whether this behaviour constitutes a breach of the Members' Code of Conduct duty to show respect and consideration for others (paragraph 4(b) of the Code).

#### Complaint Three

- 11.5 Cllr Molik wishes to include a previous example of similar behaviour, when Cllr

Michael responded to Cllr Molik's question raising residents' concerns about seagulls at the full Council meeting in March 2018. Cllr Molik says that Cllr Michael's response was very abrupt and rude; and she says his response to a Labour councillor on the same issue (Cllr Owen Jones' supplementary question about seagulls) was far more appropriate.

- 11.6 Cllr Molik also wishes to make the Panel aware that her group leader at the time, Cllr Boyle, attempted to resolve this matter informally after the Council meeting. She says that her group leader told Cllr Michael that his behaviour was not appropriate toward female members of the Lib Dem group, to which Cllr Michael responded very abruptly and Cllr Sandrey was a witness to this.
- 11.7 Cllr Molik has been advised that the Local Resolution Procedure says that complaints should be made 'within three months of the substance of the complaint coming to the attention of the Member submitting the complaint' (Procedure paragraph 2.1). Cllr Molik has confirmed that she wishes to include the March 2018 incident in her complaint, on the basis that she thinks it shows a pattern of similar behaviour; and she has reported this within three months of becoming aware of this pattern of behaviour. Cllr Molik has been informed that the Hearings Panel will be asked to make a preliminary determination on whether or not it is appropriate to consider the March 2018 incident as part of the complaint – please see paragraphs 20 - 23 below
- 11.8 Alleged breach of Code – If the Panel determines to include Complaint Three, it will be asked to consider whether this behaviour constitutes a breach of the Members' Code of Conduct duty to show respect and consideration (paragraph 4(b) of the Code). The Panel may also wish to consider the Members' duty to 'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;' (paragraph 4(a) of the Members' Code of Conduct).

## 12. Evidence in support of the Complaints

Cllr Molik wishes to refer to the following evidence in support of her complaints:

### In relation to Complaint One

- 12.1 Cllr Molik has supplied copies of the email correspondence between herself and Cllr Michael regarding green waste collections, dated from 9<sup>th</sup> April 2021 to 12<sup>th</sup> April 2021, as evidence to support this complaint (**Appendix E**).

### In relation to Complaint Two

- 12.2 Cllr Molik wishes to refer the Panel to the webcast recording of the January 2021 Council meeting as evidence in relation to this complaint: [Agenda for Council on Thursday, 28th January, 2021, 4.30 pm : City of Cardiff Council \(moderngov.co.uk\)](https://www.moderngov.co.uk) Cllr Molik's question is at around 53 minutes; and Cllr Michael's response is at around 1 hour into the recording.

### In relation to Complaint Three

- 12.3 Cllr Molik wishes to refer the Panel to:

- (i) the minutes of the March 2018 Council meeting [Minutes Template \(moderngov.co.uk\)](#) – pages 319-320; and
- (ii) the webcast recording of the Council meeting, from approximately 3:31 to 3:36 of the recording (**Appendix F**).

### 13. Witnesses requested by Cllr Molik

Cllr Molik has requested that, in relation to Complaint Three (if the Hearings Panel determines to include it), Cllr Boyle and Cllr Sandrey are called as witnesses to give evidence about her group leader's attempts to informally resolve this complaint.

### 14. Cllr Michael's Response

- 14.1 On 6<sup>th</sup> October 2021, an email was sent to Cllr Michael, providing full details of the three complaints submitted by Cllr Molik (with links to and copies of all evidence submitted and a list of the complainant's requested witnesses) and asking for his response, to include the information required under the Local Resolution Procedure paragraph 3.2 (documentary evidence, witnesses etc). Cllr Michael was asked to provide his response, with the requested information by 21<sup>st</sup> October 2021.
- 14.2 Cllr Michael sent an email on 21<sup>st</sup> October 2021, saying that, following his discussion of the complaint with the Deputy Monitoring Officer, he required a few more days to submit his response.
- 14.3 On 25<sup>th</sup> October 2021, Cllr Michael emailed his response to the complaints – **Appendix G** to this report.
- 14.4 On 9<sup>th</sup> November 2021, Cllr Michael emailed a supplementary response to the complaints – **Appendix G1** to this report.

### 15. Evidence submitted by Cllr Michael in support of his Response

On 9<sup>th</sup> November 2021, Cllr Michael forwarded three chains of email correspondence between Cllr Molik and the Assistant Director for Waste Services, copied to Cllr Michael, dated from 05/03/2021 to 23/03/2021 (**Appendix H1-3**), which Cllr Michael says demonstrates that 'Coun Molik from the beginning wanted to spin the 4 day week collections as a failure.'

### 16. Witnesses requested by Cllr Michael

Cllr Michael has confirmed that he does not wish to call any witnesses.

### Arrangements for the Hearing

- 17. Following consultation with both parties, the hearing has been scheduled to be held on 12<sup>th</sup> January 2022. In accordance with the meeting arrangements currently in place for the local authority (under the Local Government and Elections (Wales) Act 2021), the hearing is to be held remotely.

18. Standards Hearings are held in public, unless the Panel is satisfied it is appropriate to exclude the public for the discussion of exempt information (under the Local Government Act 1972, Schedule 12A). Personal information may be exempted under paragraphs 12 and 13 of the LGA 1972, Schedule 12A if the Panel is satisfied that the public interest in maintaining exemption outweighs any public interest in disclosure of the information. Both Councillors have been asked to indicate whether they wish to apply to the Panel for the public and press to be excluded from the hearing. Neither party has indicated that they wish to apply for the public to be excluded. Therefore, the hearing may proceed in public, but all parties will be advised of the need to take care not to unlawfully disclose any personal information about third parties when giving evidence or submitting representations to the Panel. In line with the Council's current arrangements for public access to meetings held remotely, the hearing will be recorded (except for any discussion of exempt information, and during the Panel's deliberation of its decisions) for subsequent broadcast on the Council's website.
19. Both Councillors have indicated that they do not intend to be represented or accompanied at the hearing; and do not have any other requirements in relation to the hearing.

#### Preliminary Issues for Determination by the Panel

##### Preliminary Issue One

20. As noted in paragraphs 10.5-10.7 above, Complaint Three relates to exchanges at the full Council meeting in March 2018; and Cllr Molik has been advised that the Local Resolution Procedure (paragraph 2.1) says that complaints should be made 'within three months of the substance of the complaint coming to the attention of the Member submitting the complaint'.
21. Cllr Molik has confirmed that she wishes to include the March 2018 incident in her complaint, on the basis that she thinks it shows a pattern of similar behaviour; and she has reported this within three months of becoming aware of this pattern of behaviour.
22. Cllr Michael has been given the opportunity to make representations on the inclusion of Complaint Three. Cllr Michael's has submitted his representations (by email dated 09/11/2021) saying that he strongly objects to the inclusion of Complaint Three, because 'it is years out of date and a case of Coun Molik attempting to engineer a complaint where one does not exist.' Within Cllr Michael's supplementary response (**Appendix G1**), he confirms his objection as follows: 'I object to Coun Molik try to bring up something that happened in 2018. Its simply not appropriate to try to construct a different narrative in a way that Coun Molik wishes. The regulations state that if Coun Molik believed there was a complaint she had three months to complain,she did not. It is not acceptable for Coun Molik to engineer evidence where it does not exist and it shows a complete lack of respect.'
23. The Hearings Panel will need to make a preliminary determination on whether or not it is appropriate for the Panel to allow evidence in relation to Complaint Three to be considered during the hearing; and whether or not it is appropriate

for the Panel to make a separate finding in relation to whether this conduct amounts to a breach of the Code.

### Preliminary Issue Two

24. The Panel will note that the only witnesses requested are Cllr Boyle and Cllr Sandrey, who Cllr Molik wishes to call in relation to Complaint Three. Having regard to the Panel's determination in relation to the inclusion of Complaint Three (reference paragraphs 20 - 23 above), the Panel is invited to consider whether hearing from these witnesses will assist the Panel in its deliberations; and to make a preliminary determination on this matter accordingly.

### **Legal Implications**

25. Under the Local Government Act 2000, the Members' Code of Conduct sets out the duties with which elected Members must comply. The Public Services Ombudsman for Wales may investigate complaints that a Member has breached the Code of Conduct. The Ombudsman encourages Councils to adopt local resolution processes to resolve relatively low level Member on Member complaints.
26. The Local Resolution Protocol (**Appendix B**) sets out Cardiff's arrangements for local resolution of Member complaints.
27. The procedure to followed by the Hearings Panel in this matter is set out the Local Resolution Hearings Procedure, appended as **Appendix C**.

### **Financial Implications**

28. There are no direct financial implications arising from this report.

### **RECOMMENDATION**

The Committee is recommended to:

- (1) Note the contents of this report and the appendices;
- (2) Make determinations in respect of the following preliminary matters:
  - (a) Whether to allow evidence in relation to Complaint Three to be considered during the hearing; and whether it is appropriate for the Panel to make a separate finding in relation to whether this conduct amounts to a breach of the Code of Conduct; and
  - (b) Whether to call Cllr Boyle and or Cllr Sandrey to give evidence in relation to Complaint Three; and

- (3) Instruct the Deputy Monitoring Officer to notify the parties of the Panel's determinations under recommendation (2) above and proceed to make the necessary arrangements for the hearing.

James Williams  
Operational Manager, Litigation & Deputy Monitoring Officer  
9<sup>th</sup> December 2021

## **APPENDICES**

- A - Members Code of Conduct
- B - Local Resolution Protocol
- C - Local Resolution Hearings Procedure
- D - Monitoring Officer's report on informal resolution attempts
  
- E - Email correspondence between Cllr Molik and Cllr Michael regarding Green Waste Collections (*redacted to remove third party personal data*)
- F - Clip from the webcast recording of the March 2018 Council meeting
  
- G - Cllr Michael's Response to the Complaints
- G1 - Cllr Michael's Supplementary Response to the Complaints
- H1-3 - Emails between Assistant Director, Waste Services and Cllr Molik (*redacted to remove third party personal data*)