

Case Reference: BHC-006219

Subject Member: Councillor Dawn Barnett

Complainant: Councillor Phelim MacCafferty

This report represents the final findings of an investigation carried out under regulation 14 of The Standards Committee (England) Regulations 2008 by Brian Foley, Standards and Complaints Manager, on behalf of the Monitoring Officer for Brighton and Hove City Council into an allegation concerning Councillor Dawn Barnett, and will be presented to a Hearing Panel of the Standards Committee.

DATE: 16 November 2011

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1.0 **Executive Summary**

- 1.1 Councillor MacCafferty complained that Councillor Barnett has acted in a discriminatory way towards a community within the city and has incited aggravated trespass.
- 1.2 The complaint refers mainly to newspaper articles describing the action of Councillor Barnett.
- 1.3 The investigation found that Councillor Barnett tried to direct travellers to move from Greenleas Park and Benfield Valley to Queens Park, Brunswick Lawns and the Level by handing out leaflets to the travellers.
- 1.4 She states that she directed them to Green wards because she believed community relations would have been better served if the travellers were staying on land in Green wards. She also stated that she was worried for the safety of the travellers' children.
- 1.5 Councillor Barnett made an unequivocal statement that she would always take similar action to direct travellers to other locations in green wards within the city at the earliest possible opportunity.
- 1.6 Councillor Barnett's actions and views were featured in articles in the Argus on 10 June and 28 June. Her comments were also reported in the same paper on 07 July, 27 July and 28 July 2010.
- 1.7 The finding of the investigation was that Councillor Barnett had not breached paragraph 3 of the code of conduct for Members (you must treat others with respect.)
- 1.8 Furthermore the investigation concluded that Councillor Barnett's statements and action could not be considered to have caused the Local Authority to be in breach of its duties under the Equality Act 2010. Therefore there has been no breach of paragraph 3(2)(a) of the code of conduct for members (you must not do anything which may cause your authority to breach any of the equality enactments.)
- 1.9 However, the arguments as to whether Councillor Barnett had breached paragraph 5 (you must not conduct yourself in a manner that could reasonably be regarded as bringing your office or authority into disrepute) are very finely balanced. The conclusion of the investigation, although marginal, is that Councillor Barnett has breached paragraph 5 of the members Code of Conduct.
- 1.10 The following report sets out the evidence gathered, the findings of fact and the reasoning whether there have been failures to comply with the code.

2.0 **Councillor Barnett's official details**

2.1 Councillor Barnett was re-elected to the Hangleton and Knoll ward and took up office on 09 May 2011.

2.2 Councillor Barnett serves on the following committees:

- Community Safety Forum
- Council
- Health Overview & Scrutiny Committee

2.3 Councillor Barnett has been appointed to the following outside body:

- Brighton and Hove in Bloom

3.0 **Relevant legislation**

3.1 The council has adopted a Code of Conduct for members, in accordance with section 51 of the Local Government Act 2000.

3.2 This investigation is carried out under regulation 14 of The Standards Committee (England) Regulations 2008.

3.3 Disclosure of information of parts of the report and of the documents in the schedule of evidence may be an offence under section 63 of the Local Government Act 2000.

4.0 **Background to the complaint and Decision of Standards Assessment Panel**

4.1 A complaint was received from Councillor MacCafferty by email on 05 July 2011 about alleged inappropriate behaviour by Councillor Barnett. (Appendix 1).

4.2 Councillor MacCafferty based his assertion on articles published in The Argus dated 10 June 2011, 28 June 2011, and 07 July 2011 plus an email to Councillor West dated 27 June 2011.

4.3 Councillor MacCafferty alleged that Councillor Barnett had acted in a discriminatory manner towards a community within the City.

4.4 Councillor MacCafferty said Councillor Barnett used the issue of race to make blunt inflammatory points at a time when what he described as: "tensions between Gypsy, Roma and Traveller (GRT) community and that of the 'fixed' community as mounting within the City".

4.5 Councillor MacCafferty said that Councillor Barnett had incited aggravated trespass in green spaces throughout the city.

4.6 In support of his complaint Councillor MacCafferty said BHCC have a

duty under the Equality Act 2010 to eliminate discrimination and this would require all Councillors to have due regard to the meaning of the Public Sector Equality Duty the relevant parts of which state:

- (1) A public authority must, in the exercise of its functions have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

4.7 An Assessment Panel of the Standards Committee Standards Committee decided that if proven the allegation may amount to a breach of the Code of Conduct on the following grounds and referred the matter to the Monitoring Officer for investigation. The Monitoring Officer instructed the Standards and Complaints Manager to proceed with the investigation on his behalf.

Paragraph 3(1): You must treat others with respect.

Paragraph 3(2)(a): You must not do anything which may cause your authority to breach any of the equality enactments.

Paragraph 5: You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

4.8 In considering the complaint the panel members could understand the frustration Councillor Barnett might have been expressing on a personal level, and on behalf of her constituents, regarding the behaviour of members of the Gypsy, Roma and Traveller community who were occupying council land in her ward. They were careful to note that this was a matter reported in the local press and that it was important to understand how accurately the article reflected what Councillor Barnett had actually said to the reporters.

4.9 The panel noted that trespass is a civil wrong and that aggravated trespass is a criminal offence. However they were of the view that if it were proven that Councillor Barnett had encouraged members of the Gypsy, Roma and Traveller (GRT) community to trespass there could potentially have been a breach of the code of conduct.

4.10 The panel then considered whether Councillor Barnett's reported

actions and statements might have amounted to a failure in her duties under the equalities enactments; particularly the Public Sector Equality Duty of the Equality Act 2010. The Panel members made reference to the duty of a councillor to 'foster good relations' between people who share a protected characteristic and people who do not share it.

- 4.11 The Panel were of the view that, if proven, the statements and actions of Councillor Barnett could legitimise illegal actions against members of the GRT community by others. This could constitute a breach of the code of conduct. The panel therefore decided this issue should also be referred for investigation.

5.0 The Evidence Gathered

Evidence in support of the complaint as supplied by Councillor MacCafferty

- 5.1 Councillor MacCafferty states that he originally hoped that a complaint would not be necessary but believed there were a number of circumstances where Councillor Barnett had acted inappropriately. He said:

- She had been seen to act in a discriminatory fashion to a community in the City.
- That community had a protected characteristic, namely race.
- Councillor Barnett had incited aggravated trespass in green spaces throughout the City which is an offence under the Criminal Justice and Public Order Act 1994.
- That the incited trespass had been consciously directed at wards with Green councillors.
- Councillor Barnett was using the issue of race to make blunt, inflammatory political points at a time when tensions between the GRT community and the settled community are mounting within the City.

- 5.2 Councillor MacCafferty said that in relation to the coverage in the Argus on Friday 10 June 2011 Councillor Barnett said "the Greens say the travellers have got to live somewhere. So they can live where the Greens are."

- 5.3 Councillor MacCafferty stated that in the Argus dated Tuesday 28 June 2011 Councillor Barnett reportedly said "I am directing the travellers to Queens Park, Brunswick Lawns and this time to the Level. There must be 10 or 15 caravans in Greenleas...I do not give a monkeys about directing them elsewhere. They are practically in my back garden and I want them gone. If they cleared up their rubbish then I wouldn't mind but they don't. There is no respect. I've printed out spares of directions and every time they turn up in Hangleton I am going down there and hand them out."

- 5.4 Councillor MacCafferty said Councillor Barnett had flouted the 7th General Principle of Public Life namely “you should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race...”.
- 5.5 Councillor MacCafferty said Councillor Barnett was using increasingly alarmist language and her email to Councillor West would suggest the articles in the newspaper were not simply flippant remarks that had been misunderstood.
- 5.6 Councillor MacCafferty said there is guidance on the subject from the Local Authority’s Travellers Strategy 2001 and proposals from the Department for Communities and Local Government to “raise awareness amongst councillors of their leadership role in relation to traveller site provision”.

Summary of Councillor Barnett’s statements in newspaper articles

- 5.7 The following is a summary of articles in the Argus newspaper. (Appendix 2).
- 5.8 Copies of the direction notices handed out by Councillor Barnett are provided at Appendix 3.
- 5.9 On Friday 10/06/2011 the Argus reported that on Wednesday night about 20 caravans were parked up near Portslade Cricket Club. The article stated that at 8:30 a.m. the next morning Councillor Dawn Barnett was handing out directions to Queens Park. The report states Councillor Barnett also suggested the group could try Brunswick Lawns. Both are within Green wards.
- 5.10 In that same article Councillor Barnett is quoted as saying “the Greens say the travellers have got to live somewhere. So they can live where the Greens are.”
- 5.11 Councillor Barnett reportedly said “it is a fantastic cricket pitch. It’s well run and is chocablock with youngsters. The travellers being there will ruin it for them”.
- 5.12 Councillor Barnett said the travellers had “broken the lock to get in”. “She went there and was everybody’s friend”. She said she “told them all about Queens Park, they didn’t know about it”. She told them “it was just down the valley and had a play park and a pond”.
- 5.13 Councillor Barnett reportedly said she diverted the group because she was concerned for the safety of the traveller children as the cricket pitch was close to the main roads.
- 5.14 She is quoted as saying “the new Green administration is happy with them in the community”.

- 5.15 The newspaper article includes a photograph with Councillor Barnett holding a copy of the directions she handed out.
- 5.16 In response to the complaint she said community relations would have been better served if the travellers moved to an area of the city represented by green party members.
- 5.17 In The Argus Tuesday 28 June 2011 it was reported that Councillor Barnett had visited travellers who had parked at Greenleas Park and suggested they move to The Level in Brighton instead.
- 5.18 The article said this was the second time Councillor Barnett had handed out directions to travellers in less than a month and again included a picture of Councillor Barnett holding the printed directions she was handing out.
- 5.19 Councillor Barnett is quoted as saying she was “fuming to discover caravans at the Hangleton recreation ground on Saturday morning”. She said she was “directing them to Queens Park, Brunswick Lawns and The Level”. Councillor Barnett is pictured with a second notice giving directions to those locations.
- 5.20 Councillor Barnett reportedly reacted immediately towards the travellers who had arrived at a park in her ward.
- 5.21 In this article Councillor Barnett was quoted as saying “there must be ten or fifteen caravans in Greenleas”. She said she did not “give a monkeys about directing them elsewhere”. “They are practically in my back garden and I want them gone”.

On this point Councillor Barnett commented to the investigating officer that “they threw dirty nappies, knickers, men’s pants and shoes in her back garden and broke fences.”

- 5.22 Councillor Barnett reportedly said “if they cleared up their rubbish I wouldn’t mind but they don’t. There is no respect”. “I’ve printed out spares of the directions and every time they turn up in Hangleton I am going to go down there and hand them out”.
- 5.23 This appears to be a very clear statement from Councillor Barnett about the way she will deal with all travellers who arrive in Hangleton regardless of how they conduct themselves.

Councillor Barnett told the investigating officer it was not true that she would treat all travellers in the same way.

- 5.24 On Thursday 07 July 2011 the Argus ran an article about Travellers. Alongside this item was an inset with a picture of Councillor Barnett. It was reported that Councillor Barnett has vowed to continue to direct

any travellers in her ward to Green areas of the city.

- 5.25 The article repeated that Councillor Barnett had printed off directions to The Level, Queens Park and Brunswick Lawns and that these have been distributed to travellers who were illegally parked on the Greenleas Recreation Ground and Victoria Park in Portslade.
- 5.26 In the Argus Wednesday 27 July 2011 it was reported that a group of about 30 caravans had moved onto Greenleas recreation ground on Friday 22 July 2011. The article said that after a weekend of complaints from residents BHCC was working on obtaining a possession order.
- 5.27 The report stated the group were camped only yards from Councillor Barnett's home. The article described Councillor Barnett as one of the most outspoken critics of travelling groups in the city.
- 5.28 The Argus quoted Councillor Barnett as saying "they have been a disruption all weekend". "How can they be allowed to stay when it is the start of school holidays? The caravans surround the park and stop anyone else from using it". She said "I understand they have a right" but asked "what about the rights of residents".
- 5.29 The report said residents had been complaining about litter being left in the park and about being kept awake by loud music. It was reported by the paper that there had been a fight involving about 30 people on Sunday morning.
- 5.30 In The Argus on Thursday 28 July 2011 there was an article describing how 50 people attended a public meeting in the car park at Greenleas Park to speak with the local MP.
- 5.31 Councillor Barnett attended and was reported as saying "I think they are just down here on a cheap holiday as if going to a caravan park". Councillor Barnett wanted the registration numbers of the vehicles to be taken to find out where the owners lived and to prove they are not travellers but are holiday makers.
- 5.32 It was reported that the Local Authority was seeking a possession order in the county court the following day.

Councillor Barnett's written response to the complaint and associated documents

- 5.33 Councillor Barnett's written response is provided at Appendix 4.
- 5.34 Councillor Barnett denied having failed to treat any member of the travelling community with respect. She commented that the travellers should not have moved onto the sites in her ward and this could be verified because the Council took action to remove them.

- 5.35 Councillor Barnett denied that she had acted without due regard to the public sector equality duty.
- 5.36 Councillor Barnett explained she had two main reasons for directing the unlawful traveller encampment away from Greenleas Park and Portslade Cricket Club.
- 5.37 Firstly she had genuine concern for the safety of traveller children with the site being so close to the main road and the link road.
- 5.38 Secondly, given the strength of feeling that existed among a large number of residents about the state of unlawful encampments she said she genuinely felt community relations would be better served if the travellers moved to an area of the city represented by Green Party members.
- 5.39 Councillor Barnett believed Green Party members had made it very clear that unlawful encampments should not be moved on unless there were suitable official alternatives.
- 5.40 Councillor Barnett argued that ward councillors are there to reflect public opinion and she said she assumed there was bound to be less community tension if the travellers moved to those wards represented by Green party members.
- 5.41 Councillor Barnett argued that the Administration must have used a similar reasoning when they decided to open up the 19 Acres site in Withdean Ward as a tolerated encampment. She said the Administration must have felt that if the travellers were on this site which is not in a residential area there would be less problem than if they had remained in Hangleton, for example.
- 5.42 Councillor Barnett denied that her conduct could reasonably be regarded as bringing her office or authority into disrepute. She did not accept the allegation that her actions might legitimise illegal actions against the GRT community by others.
- 5.43 Councillor Barnett said she was not aware of any such illegal actions taking place but if they did she would condemn them wholeheartedly.
- 5.44 Councillor Barnett seemed to have the support of many of her constituents. She supplied many letters supporting the action she had taken. Those people also commented on how helpful Councillor Barnett was as a ward councillor.
- 5.45 She is described as a person who is very industrious, does not shy away from her responsibilities and always expresses her opinions and beliefs.
- 5.46 One person said she felt indebted to Councillor Barnett for the work

she has done to protect her and completely admired all the work she did.

- 5.47 Another person said Councillor Barnett gives selflessly of her time and energy and we owe her a great debt of thanks.
- 5.48 Someone said Councillor Barnett works tirelessly to engage with the community of residents. They added that Councillor Barnett was relaying the thoughts of all residents regarding the influx each year and several times a year of travellers to Greenleas Park.
- 5.49 There were many positive references supplied by residents living in the ward represented by Councillor Barnett.

Summary of interview with Councillor Barnett

- 5.50 The Investigating Officer met with Councillor Barnett on 22 August 2011 and the notes of that interview were agreed on 24 August 2011.
- 5.51 Councillor Barnett's interview notes are provided at Appendix 5.
- 5.52 Councillor Barnett wanted to stress that she had absolutely nothing against Travellers or Gypsies. She said Gypsies are people who look after and protect the countryside and are very clean people. She said there had been some New Age Travellers staying in the area the year before. Councillor Barnett described how she was very welcoming to them and visited them every day.
- 5.53 However, Councillor Barnett felt strongly that the people who camped in Greenleas Park on this occasion were simply 'holiday makers' who were not prepared to pay to stay on an official campsite.
- 5.54 Councillor Barnett believed this to be true because one of them asked a resident whose house backed onto the park if they could plug their generator into her power supplies. During that conversation the traveller reportedly said they all had homes in Ireland, and that their children go to school and to church there.
- 5.55 Councillor Barnett's view was that the people camping in Greenleas were not genuine travellers.
- 5.56 Councillor Barnett said that on the morning the travellers arrived she drove her car around to the entrance of the park and blocked it with her car. There were already in the region of 15 vehicles on the site at that time.
- 5.57 The Police arrived and they told Councillor Barnett that she should move her car because it was causing an obstruction. They told her they were not prepared to move the travellers on because at that stage

there was no anti-social behaviour being caused. Later more vehicles arrived.

- 5.58 Councillor Barnett said that three men came up to her and said “you’re the MP and you said we would be welcome here”. Councillor Barnett explained that she was not Caroline Lucas.
- 5.59 Councillor Barnett said she talked with a woman who promised that they would keep the park clean and they would be quiet. Councillor Barnett asked if instead of camping all around the park they would move to one corner. She said they didn’t.
- 5.60 Councillor Barnett said that prior to this group of travellers arriving there had been another group with 25 caravans who had smashed the locks and driven onto the local cricket pitches. Councillor Barnett had asked those people not to stay there because the pitches were in constant use by young people in the area who were either playing or practicing for organised cricket and football matches. Councillor Barnett said that group of travellers did not, however, leave the site.
- 5.61 One of Councillor Barnett’s main concerns was that the unauthorised encampment in the amenity parks meant that local people could not organise their upcoming fetes and that various projects could not run. Also the young people were prevented from playing games in the parks.
- 5.62 Councillor Barnett was asked if she had contacted any officers about getting the travellers moved on. She said she had emailed Councillor West asking what he defined as Anti-Social Behaviour. She had no reply and asked the question again at Council on 21 July 2011. She said she only received a vague response. She said she emailed him again during w/c 15 August but at the time of the interview had still not had a response.
- 5.63 Councillor Barnett was not satisfied with the responses she has from the Police, from the administration or from officers. Councillor Barnett thought the Police were exceptionally tolerant of the travellers.
- 5.64 Councillor Barnett said she called the Argus very soon after the travellers had arrived. She said it was common for local councillors to get in touch with the Argus whenever gypsies or travellers arrive.
- 5.65 Councillor Barnett was asked if the quotes in the Argus were accurate and if they had accurately reported her view. Councillor Barnett said it was an accurate representation.
- 5.66 Councillor Barnett was asked if she thought the articles might influence people to think worse of the travellers, or to take matters into their own hands.

- 5.67 Councillor Barnett said people were frightened and were highly unlikely to take these people on. Councillor Barnett was confident that none of the things she was quoted as saying which appeared in the paper would have incited violence or hatred against travellers.
- 5.68 Councillor Barnett said she had only said what people themselves were thinking. She said she is not being racist, she was commenting on the specific behaviour of the particular group of people who were occupying Greenleas Park.
- 5.69 Councillor Barnett was extremely upset and angry for local residents. The park had been left in a horrid state and one of the pathways had been blocked off and used as a toilet. The residents who lived adjacent to the park were affected by violent conduct, threatening and intimidating behaviour, constant noise, loud music and cars tearing up the grassed areas. She said the police were called daily and there was a large fight between about 20 or 30 travellers at 1:30 a.m. on a Sunday morning.
- 5.70 Councillor Barnett said residents are fed up with the taxpayer having to spend thousands each year clearing up the mess they leave and residents are not able to let their children use the park.
- 5.71 Councillor Barnett said that Gypsies and Travellers should not be allowed to stay in public parks. She strongly suggested that Horsdean should be extended to accommodate more travellers. However, she understood there may be problems in doing so because some groups of travellers will not tolerate others. Councillor Barnett thinks there is a need for more official sites along the coast including at Brighton and Hove.
- 5.72 Councillor Barnett said she asked the travellers to move from Greenleas as soon as they had arrived. Councillor Barnett admits she suggested they should go to Queens Park and Brunswick lawns. She also suggested the Level as an option.
- 5.73 Councillor Barnett said the Level was probably not very safe for the young children because of the amount of traffic nearby. However, Councillor Barnett thought Queens Park would be very good as there were no organised games there. But there were toilets, swings and a fenced-off duck pond.
- 5.74 Councillor Barnett said there was no point sending them to Horsdean as it was already full.
- 5.75 Councillor Barnett was asked if she had considered that by suggesting they move to another park this would simply double the cost of clearing up that the council would incur. Councillor Barnett said that at the time she gave out the notices there was no mess. The travellers had only

just arrived.

- 5.76 Councillor Barnett said she was concerned for the safety of their children because the very busy link road is nearby.
- 5.77 Councillor Barnett accepted that she should not have given them directions to land they could camp on other than an official site. She said she would destroy the remaining direction notices she had.

Chronology of unauthorised encampments in Hangleton

- 5.78 The Investigator checked with the Travellers Liaison Team what encampments there had been in June and July 2011 in the Hangleton and Knoll ward and how the groups had been moved on.
- 5.79 There are three methods for removing people who are occupying land without authority. Council officers will have daily liaison with the Police to decide the most appropriate way of removing unauthorised occupants.
- 5.80 Section 61 of the Criminal Justice and Public Order Act 1994 gives powers to the senior police officer present to direct the occupiers to leave the land and remove their vehicles and property. Those powers may be applied where any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or where those persons have between them six or more vehicles on the land. It will be a criminal offence to return within 3 months.
- 5.81 Section 62a of the Act gives the Police powers to instruct the person(s) to leave the land but will direct them to an official site where there are available pitches or will direct them to leave the City.
- 5.82 The Council can apply to the County Court for a Possession Order and if successful the eviction will be carried out by bailiffs.
- 5.83 On 08 June 2011 the Portslade Cricket Club at Benfield Valley was occupied by travellers. A Section 61 Order was issued. The people camped on the site were requested to leave on 09 June 2011 and did so on that day.

Councillor Barnett told the investigating officer that the travellers then went to Victoria Park and ruined it for the cricket teams playing there.
- 5.84 On 17 July 2011 at Greenleas Park there were 11 trailers. A Section 62a Order was issued. The travellers were instructed to move to Horsdean or to leave the City. It is not certain where they went but they left Greenleas Park on 18 July 2011.

Councillor Barnett said this group of travellers went to 19 Acres.

5.85 On 22 July 2011 at Greenleas Park there were initially 30 trailers, this increased to 36, and then to 40. A Possession Order was sought and eviction was scheduled to take place on 02.08.2011. The travellers left the park on 01.08.2011.

Forms of trespass

5.86 In modern law the word trespass is used most commonly to describe the intentional and wrongful invasion of another's real property. An action for trespass can be maintained by the owner or anyone else who has a lawful right to occupy the real property.

5.87 Every unlawful entry onto another's property is trespass, even if no harm is done to the property. A person who enters property with permission but stays after he has been told to leave also commits a trespass.

5.88 The action of trespass exists to prevent breaches of the peace by protecting the quiet possession of real property.

5.89 The offence of aggravated trespass is committed when a person trespasses on land when a lawful activity is taking place on that land or land nearby and he or she does anything intending to intimidate, obstruct or disrupt that activity.

The Equality Act 2010

5.90 An extract from the Equality Act 2010 is provided at Appendix 6.

5.91 Section 149(1) of the Equality Act sets out the public sector equality duty, which requires public bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and people who do not share it.

5.92 In this context 'having due regard' means consciously thinking about the public sector equality duty as part of the process of decision-making. This means that consideration of equality issues must influence the decisions reached by public bodies – such as in how they act as employers; how they develop, evaluate and review policy; how they design, deliver and evaluate services, and how they commission and procure from others.

- 5.93 Having due regard to the need to advance equality of opportunity involves considering the need to:
- remove or minimise disadvantages suffered by people due to their protected characteristics;
 - meet the needs of people with protected characteristics; and
 - encourage people with protected characteristics to participate in public life or in other activities where their participation is low.
- 5.94 Fostering good relations involves tackling prejudice and promoting understanding between people who share a protected characteristic and others.
- 5.95 Section 149(2) states that a person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

6.0 Summary of the findings of facts

- 6.1 This section of the report describes the conclusions arising from the evidence recorded in the previous section.
- 6.2 Councillor Barnett prompted the articles in the newspaper which portrayed her as one of the most outspoken critics of travellers groups in the city. Councillor Barnett has accepted that the articles in the Argus have accurately quoted her.
- 6.3 Councillor Barnett is clearly very concerned that the rights of members of the settled community living in the ward she represents were being affected by the actions of the travelling community.
- 6.4 For example she states that people would not be able to plan for fetes or involve themselves in organised games and that local children would be unable to play in the park. Besides having their access to local amenities reduced Councillor Barnett believed local taxpayers would bear the cost of clearing up after the travellers had left.
- 6.5 Setting the matter in perspective, there were two unauthorised encampments, one at Benfield Valley and one at Greenleas Park that were each moved on within 24 hours. The effect on local residents would have been minimal in these instances.
- Councillor Barnett disagrees with this view however. She says the effects were not minimal.
- 6.6 A third unauthorised encampment at Greenleas Park starting on 22 July lasted for 10 days. The Argus article appeared on 27 July 2011 and included brief descriptions of anti-social behaviour caused by the

travellers.

- 6.7 It is highly likely that local residents were affected by the behaviour of the travellers during this period.
- 6.8 The first two Argus articles featuring Councillor Barnett handing out direction notices. Those notices were given out immediately the travellers arrived.
- 6.9 Councillor Barnett argued that she wanted to move the travellers on because the area was unsafe for their children and because their needs would be better served in wards represented by Green councillors.
- 6.10 When the travellers first arrived Councillor Barnett asked some of them to keep the park clean and to use only a section of the park so that local people could also use it.
- 6.11 So there may have been some attempt to foster good relations on this occasion.
- 6.12 However, in the newspaper articles Councillor Barnett was very clear that she did not want any travellers to stay in her ward. She handed out notices directing travellers to open spaces in wards represented by Green councillors as soon as they arrived. This was before any mess had been created or before any anti-social behaviour had taken place.
- 6.13 Councillor Barnett publicly vowed that she would always do this. (see para 5.22 from the Argus 28 June). She later retracted that statement when speaking to the investigating officer and said she would destroy the remaining printed notices.
- 6.14 Councillor Barnett had however made a very clear public statement about the way she will deal with travellers regardless of how they conduct themselves. It is a blanket approach that describes the way she intended to react to all travellers regardless of their behaviour.
- 6.15 Such action indicates a level of intolerance toward travellers per se rather than in reaction to specific behaviours.
- 6.16 Councillor Barnett understood that the Green administration had said unauthorised encampments should not be moved on unless there were suitable alternatives (para 5.39) so it is not entirely clear why Councillor Barnett attempted to direct travellers to the locations in her leaflets.
- 6.17 On a wider perspective Councillor Barnett firmly believes there should be more official campsites along the south coast and in Brighton. She thinks Horsdean could be extended. She did not think travellers should be allowed to stay in public parks. It is then questionable why she directed the travellers to Queens Park and The Level.

- 6.18 Councillor Barnett stated that she thought travellers would be better tolerated in Green wards than in Hangleton and Knoll. This adds support to the view that in general Councillor Barnett gave the impression of being intolerant of travellers, particularly if they intend staying in her ward.
- 6.19 In a later Argus report (28 July 2011) Councillor Barnett describes the travellers as people on a cheap holiday.
- 6.20 During her interview with the investigating officer it became clear how she had gained that view but it does appear that Councillor Barnett was prepared to overlook or disregard the travellers' cultural heritage.
- 6.21 However, despite her outspoken comments Councillor Barnett was resolute that she would not condone illegal action against the travellers. She said she did not want to incite violence or racial hatred.
- 6.22 The issue of travellers visiting and camping in the city is deeply sensitive and opinions are divided about what should or can be done. Councillor Barnett has made a number of highly publicised provocative remarks about travellers.
- 6.23 Turning now to the allegations that Councillor Barnett incited trespass.
- Councillor Barnett commented to the investigating officer that she thought the Greens had incited trespass at 19 Acres.
- 6.24 Councillor Barnett admits that she directed travellers to camp at unauthorised locations within the city and accepted during her interview that she should not have done so.
- 6.25 Councillor Barnett was not in a position to give the travellers permission to camp at Elm Grove, Queens Park or Brunswick Lawns. It is unknown whether the travellers thought she had the authority to direct them to these locations but it would seem unlikely.
- 6.26 Had the travellers camped at any of the locations Councillor Barnett directed them to they would undoubtedly have been trespassing. An option available to her, would have been to have referred the matter to the Traveller Liaison Team who work with the Police and to have suggested the travellers move to Horsdean or the tolerated encampment at 19 Acres provided spaces were available.
- 6.27 A conclusion of the investigation is that there is clear evidence to support the allegation that Councillor Barnett has encouraged trespass by issuing directions that encouraged the travellers to camp at unauthorised locations throughout the city.
- 6.28 With regard to the allegation that Councillor Barnett incited aggravated

trespass.

- 6.29 As a matter of principle Councillor Barnett had no intention of encouraging travellers to cause damage to Council land or to allow them to intimidate others or disrupt people going about their day to day activity.
- 6.30 Councillor Barnett argues that the problem with travellers is their failure to clear up their mess. Councillor Barnett appears to publicly apply this statement to all travellers. She considered this a problem and it was not behaviour she would encourage.
- 6.31 The investigation finds little evidence to suggest that Councillor Barnett may have incited aggravated trespass. It is recognised that aggravated trespass is a criminal offence and it would therefore be beyond the scope of a complaints investigation to determine if this has occurred.
- 6.32 With regard to findings relating to the Equality Act 2010.
- 6.33 The public sector equality duty, given effect by section 149(1) of the Equality Act, places particular requirements on the council.
- 6.34 Among those is the requirement to foster good relations which involves tackling prejudice and promoting understanding between people who share a protected characteristic and others who do not.
- 6.35 Section 149(2) of the Equality Act 2010 states that a person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- 6.36 Councillor Barnett was not performing the corporate role of a 'public authority' during the conduct complained of, but the question arises as to whether Councillor Barnett can be considered to have exercised a public function.
- 6.37 There is a considerable body of case law as to the type of business entities that are deemed to perform a public function but whether and in what circumstances an individual person can perform such a function remains open to argument.
- 6.38 The investigation concludes that it would be counter intuitive to suggest that an elected member does not perform a public function. Ward councillors, even backbench opposition councillors are democratically elected to represent the constituents within their ward.
- 6.39 On this interpretation, section 149(2) of the Equality Act 2010 does apply, making it a requirement of all ward councillors that they adhere to the public sector equality duty.

- 6.40 The investigation concludes that ward councillors do have a duty to foster good relations between people who share a protected characteristic and people who do not share it.
- 6.41 The investigation noted that Councillor Barnett has on one occasion tried to persuade travellers to take account of the settled community who use the park where they had set up their encampment.
- 6.42 However, that action is outweighed by the public statements made by Councillor Barnett in the local newspaper which were outspoken against the traveller community and which polarised public opinion.
- 6.43 Councillor Barnett made it very clear that she thought people living in Green wards would be more tolerant of travellers (than residents of Hangleton and Knoll). She thought community relations would be better served if the travellers moved to an area of the city represented by Green party members.
- 6.44 A finding of the investigation is that Councillor Barnett did not pay due regard to the requirement to foster good relations between people who share a protected characteristic and people who do not.

7.0 Reasoning as to whether there have been failures to comply with the Code of Conduct

7.1 The sections of the Code of Conduct which relate to this complaint are:

Paragraph 3(1): You must treat others with respect.

Paragraph 3(2)(a): You must not do anything which may cause your authority to breach any of the equality enactments.

Paragraph 5: You must not conduct yourself in a manner which could reasonably be regarded as bringing you office or authority into disrepute.

With regard to treating others with respect, paragraph 3(1):

- 7.2 In the guidance given by Standards for England it is stated that comments aimed at a person or their personal characteristics might be considered to be disrespectful.
- 7.3 However, an Adjudication Panel hearing decided that conduct directed against a general class or type of person, none of whom were present to witness it would not be a breach of this paragraph of the code.
- 7.4 The guidance suggests that depending on the circumstances another paragraph of the Code might be engaged. In this instance paragraphs 3(2)(a) and 5 have been applied.

- 7.5 It is not alleged that Councillor Barnett has made a disrespectful comment to any specific individual.
- 7.6 For this reason the finding of the investigation is that there has been no breach of paragraph 3 of the code of conduct.

With regard to the equality enactments, paragraph 3(2)(a):

- 7.7 This paragraph of the code states that a member must not do anything which may cause your authority to breach any of the equality enactments.
- 7.8 The emphasis in this paragraph is on causality and the question arises whether the member has done something which has caused the local authority (and not the member herself) to breach the equality enactments.
- 7.9 Councillor Barnett is a back bench member of the opposition. The statements she has made to the local newspaper about travellers and her actions towards travellers who stayed on land in Hangleton and Knoll have not changed or affected Council policy or practice in any way.
- 7.10 There has been nothing in the evidence to suggest that the local authority has breached the equality enactments.
- 7.11 Therefore Councillor Barnett cannot be considered to have caused **her authority** to breach any of the equality enactments.
- 7.12 Consequently there has been no breach of paragraph 3(2)(a) of the code of conduct.

With regard to bringing your office into disrepute, paragraph 5:

- 7.13 In deciding if Councillor Barnett has conducted herself in a manner which could reasonably be regarded as bringing her office or authority into disrepute the investigation has to distinguish between conduct causing damage to her reputation as an individual and that which reaches the threshold sufficient to damage her reputation as a member.
- 7.14 The Standards for England Case Review 2007 gives examples of situations that might tip that balance.
- 7.15 It suggests that where a member defies important and well established rules of authority for private gain that balance will be tipped in favour of disrepute to the office of member.
- 7.16 The arguments for and against whether Councillor Barnett has brought her office into disrepute are finely balanced.

Arguments against Councillor Barnett having brought her office into disrepute:

- 7.17 Under the Human Rights Act, Councillor Barnett is entitled to the right to freedom of expression. Article 10 of the European Convention on Human Rights, incorporated into English law by the Human Rights Act 1998, accords the right to freedom of expression, including freedom to hold opinions and to impart information and ideas without interference by public authority. However, the right is a qualified right and may be subject to conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of (amongst other things) public safety, the prevention of disorder or crime, and for the protection of the reputation or rights of others. She is a ward councillor and she has articulated the frustrations experienced by people she was democratically elected to represent in exercise of her rights, among others, under the Human Rights Act. The presumption under the Act is that people are entitled to express views, no matter how divergent they may be from the accepted norm, unless the circumstances are such that interference with that right is both necessary and proportionate. One point of view is that interference with that right by finding a breach of the code is not proportionate.
- 7.18 Councillor Barnett genuinely felt the incidence of unauthorised occupations of recreational spaces in her ward had reached an unacceptable level.
- 7.19 Councillor Barnett believed her actions were targeted not at travellers per se but at the effect of the behaviours of the people who camped at Greenleas Park and Benfield Valley without authority.
- 7.20 Councillor Barnett was concerned for the welfare of the traveller children in that they were camped so near to the busy main roads.
- 7.21 Councillor Barnett is a back bench councillor and was therefore not speaking on behalf of the decision making cabinet, the council, or any of its committees.
- 7.22 Councillor Barnett had a democratic mandate to represent the views of residents in the ward even if her method for doing so may not have been the best choice. She has supplied many supporting statements that indicate she works tirelessly and selflessly for her constituents.
- 7.23 Councillor Barnett has accepted that the approach she took was not right and recognises the need for designated traveller campsites. She said she will destroy remaining direction notices.
- 7.24 Councillor Barnett has made an unambiguous statement that she is not racist and she would not condone criminal behaviour against the travellers.

Arguments supporting the view that Councillor Barnett has brought her office into disrepute:

- 7.25 As a democratically elected representative Councillor Barnett carries out a public function and as such has a duty to foster good relations between people who share a protected characteristic and those who don't.
- 7.26 Councillor Barnett acted immediately when travellers arrived at open spaces in the ward she represents. It appears her mind was already made up about the course of action she would take and her actions could not have been dependent on the behaviour she observed.
- 7.27 There are well defined procedures for removing unauthorised occupants from Council land which Councillor Barnett did not try to use.
- 7.28 There is evidence to support the view that by directing travellers to occupy open spaces within the city Councillor Barnett did encourage them to commit the civil wrong of trespass.
- 7.29 Councillor Barnett has implied that people living in her ward are generally less tolerant of people with different ethnicity than people living in wards represented by Green councillors.

However, it is noted that Councillor Barnett said she did not say that.

- 7.30 Councillor Barnett's choice of language in statements to the press regarding a controversial high profile issue was highly provocative when arguably the matter should have been treated with sensitivity in terms of language and action.

It is noted that in response to this paragraph Councillor Barnett commented that the travellers had told local people they were on holiday. She therefore took the view they were holiday makers rather than travellers.

- 7.31 Councillor Barnett referred to the travellers as holiday makers. This denial of their heritage was potentially offensive.
- 7.32 Councillor Barnett said the travellers were practically in her back garden and she wanted them gone. Whilst this may have been a figure of speech it could give the impression that her actions were in part for personal gain.

It is noted that Councillor Barnett wished to clarify that the travellers were next to the back gardens of between 20 and 30 households.

Balance of arguments for and against:

- 7.33 There are a similar number of factors to take into consideration when reflecting on the arguments for and against a finding of a breach of the code.
- 7.34 The arguments for and against whether Councillor Barnett has breached paragraph 5 of the code of conduct are finely balanced and the decision is consequently very marginal.
- 7.35 Those arguments which fall in favour of Councillor Barnett having breached this paragraph of the code do appear weightier.
- 7.36 After taking account of all the factors the conclusion of this report is that Councillor Barnett's highly publicised actions and statements regarding the travelling community has gone beyond what was necessary to discharge her functions as a ward Councillor.
- 7.37 Given the overall local context, the delicate state of community relations, Councillor Barnett's choice of provocative ways and means to raise the issue and the likely impact of that approach on community relations, coupled with the apparent encouragement to commit a civil wrong it is difficult to escape the conclusion that, on the balance of probabilities, her actions have brought her office into disrepute.
- 7.38 For the reasons outlined above the finding of the investigation is that there has been a breach of paragraph 5 of the code of conduct.

8.0 Finding

- 8.1 The finding of this investigation is as set out in section 7 above
- 8.2 The conclusion of the investigation is that there has been no breach of:
- Paragraph 3 of the Code:
You must treat others with respect.
 - Paragraph 3(2)(a):
You must not do anything which may cause your authority to breach any of the equality enactments.
- 8.3 There has been a breach of:
- Paragraph 5 of the Code:
You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.