

<b>Subject:</b>	<b>Hearing of an allegation that a Councillor has failed to comply with the Code of Conduct for Members – Case BHC-015722</b>		
<b>Date of Meeting:</b>	<b>06 October 2014</b>		
<b>Report of:</b>	<b>The Monitoring Officer</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Brian Foley</b>	<b>Tel: 29-3109</b>
	<b>Email:</b>	<b>Brian.foley@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

## **1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The Standards Hearing Panel is asked to determine the allegation that Councillor Ben Duncan has failed to comply with the Council's Code of Conduct for Members

## **2. RECOMMENDATIONS:**

- 2.1 That the Standards Hearing Panel finds there has been a breach of:
- Paragraph 3(1): You must treat others with respect.
- 2.2 That the Standards Hearing Panel finds there has been a breach of:
- Paragraph 5: You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
- 2.3 That should the Standards Hearing Panel find that a breach of the Code of Conduct did occur, the Panel determines what sanctions, if any, are applicable.

## **3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 On 01 July 2014 Mr Sunny Choudhury in his capacity as President of the Brighton District Bangladeshi Shomity wrote to Caroline Lucas MP with a copy to Councillor Jason Kitcat and Penny Thompson, Chief Executive of Brighton & Hove City Council to complain about a tweet posted by Councillor Duncan on 16 June 2014.
- 3.2 The tweet said "*Blasphemous 7yo wants 'Islam book' to press flowers in (it's big and heavy). Should I stone her to death when I get home from work?*"
- 3.3 Mr Choudhury explained that as a Muslim he found the comments deeply distasteful and hurtful to himself and other Muslims.

- 3.4 He stated that comments such as this are not befitting of a Brighton and Hove City Councillor and do more to divide our community than bring people together.
- 3.5 In response to the complaint Councillor Duncan removed the tweet and closed his twitter account.
- 3.6 He has explained that he didn't intend to offend or upset anyone, even less to "divide communities and create hate and unrest".
- 3.7 Councillor Duncan explained that he did "not believe, and never has believed that Islam is a violent religion". He said his tweet was "aimed at a small minority of extreme adherents of Islam who practise violence in the name of their religious beliefs".
- 3.8 The facts of the complaint are not in question.
- 3.9 The report in Appendix 2 describes how the Investigating Officer has on a balance of probabilities reached the conclusion that there has been a breach of paragraph 3(1) of the Code of Conduct for Members: 'You must treat others with respect', and a breach of paragraph 5: 'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.
- 3.10 It will be for the Hearing Panel of the Standards Committee to reach their findings in respect of the information presented: and, should they find that a breach of the Code of Conduct for Members did occur, to determine what sanctions, if any are applicable.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 A full consideration of the complaint is set out in the Investigation Report (Appendix 2).

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 None

#### **6. CONCLUSION**

- 6.1 The reasons for the recommendations are set out in the Investigation Report.

#### **7. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 7.1 None

*Finance Officer Consulted: James Hengeveld*

*Date: 26/09/2014*

Legal Implications:

- 7.2 The legislative framework under which the allegation has been investigated and referred to the Standards Panel for determination is Part 1, Chapter 7 of the Localism Act 2011. Section 28(6) of the Act requires local authorities to put in place arrangements under which allegations of member misconduct can be investigated, and decisions on allegations made. Arrangements applicable to Brighton & Hove City Council for these procedures have been agreed by the Audit & Standards Committee and applied for the investigation and preparation for the hearing arrangements which are the subject of this report.

*Lawyer Consulted:*

*Oliver Dixon*

*Date: 26/09/2014*

Equalities Implications:

- 7.3 None

Sustainability Implications:

- 7.4 None

Any Other Significant Implications:

- 7.5 None

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. Other Implications Paragraphs
2. Standards Committee Final Report – Investigation into a complaint about Councillor Duncan’s tweet saying “Blasphemous 7yo wants ‘Islam book’ to press flowers in (it’s big and heavy). Should I stone her to death when I get home from work?”.

**Documents in Members’ Rooms**

1. None

**Background Documents**

1. None

Other Implications Paragraphs:

Crime & Disorder Implications:

- 1.1 None

Risk and Opportunity Management Implications:

- 1.2 None

Public Health Implications:

- 1.3 None

Corporate / Citywide Implications:

- 1.4 It is essential that comments of the type reported are not allowed to undermine the council's corporate values and priorities.

## **FINAL REPORT**

**Case References:       BHC-015722**

**Date of incident:       16 June 2014**

**Subject Member:       Councillor Ben Duncan**

**Complainant:           Mr S Choudhury, President of the Brighton  
District Bangladeshi Shomity**

This Report represents the findings of an investigation carried out under the Brighton & Hove City Council arrangements for dealing with allegations of breaches of the Members' Code of Conduct under the Localism Act 2011.

The investigation has been carried out by Brian Foley, Standards and Complaints Manager, on behalf of the Monitoring Officer for Brighton & Hove City Council into an allegation concerning Councillor Ben Duncan and is to be presented to a Hearing Panel of the Audit and Standards Committee.

**DATE: 24 September 2014**

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## **1.0 Executive Summary**

- 1.1 On 01 July 2014 Mr Sunny Choudhury in his capacity as President of the Brighton District Bangladeshi Shomity wrote to Caroline Lucas MP with a copy to Councillor Jason Kitcat and Penny Thompson, Chief Executive of Brighton & Hove City Council to complain about a tweet posted by Councillor Duncan on 16 June 2014.
- 1.2 The tweet said *“Blasphemous 7yo wants ‘Islam book’ to press flowers in (it’s big and heavy). Should I stone her to death when I get home from work?”*
- 1.3 Mr Choudhury explained that as a Muslim he found the comments deeply distasteful and hurtful to himself and other Muslims.
- 1.4 He stated that comments such as this are not befitting of a Brighton and Hove City Councillor and do more to divide our community than bring people together.
- 1.5 In response to the complaint Councillor Duncan removed the tweet and closed his twitter account.
- 1.6 He has explained that he didn't intend to offend or upset anyone, even less to 'divide communities and create hate and unrest'.
- 1.7 Councillor Duncan explained that he did “not believe, and never has believed that Islam is a violent religion”. He said his tweet was aimed at a small minority of extreme adherents of Islam who practise violence in the name of their religious beliefs.
- 1.8 The facts of the complaint are not in question.
- 1.9 The following report describes how the Investigating Officer has reached the conclusion that there has been a breach of paragraph 3(1) of the Code of Conduct for Members: ‘You must treat others with respect’, and a breach of paragraph 5: ‘You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute’.

## **2.0 Relevant legislation and the paragraphs of the Code of Conduct which may apply**

- 2.1 The council has adopted a Code of Conduct for members, in accordance with the Localism Act 2011.
- 2.2 This investigation is carried out under Brighton & Hove City Council arrangements for dealing with allegations of breaches of the Code of Conduct for Members.
- 2.3 On 01 July 2014 Mr Sunny Choudhury, President of Brighton District Bangladeshi Shomity, wrote to Caroline Lucas MP to complain about a tweet that had been written by Councillor Ben Duncan on 16 June 2014. Mr Choudhury copied Penny Thompson, the Chief Executive of Brighton & Hove City Council, into that letter because he felt it was important she was aware of the issue.
- 2.4 In accordance with the local arrangements, the complaint was passed to the Monitoring Officer for Brighton & Hove City Council for consideration. After taking due regard of the views of an Independent Person, the Monitoring Officer held that, if proven, the allegation against Councillor Duncan could potentially amount to a breach of the Members' Code of Conduct in force at the time the alleged misconduct took place.
- 2.5 The Monitoring Officer decided the complaints should be investigated and instructed the Council's Standards and Complaints Manager to carry out that investigation.
- 2.6 The paragraphs of the code of conduct which are engaged by the allegation are:  
  
Paragraph 3(1): You must treat others with respect.  
  
Paragraph 5: You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

## **3.0 Summary of the complaint**

- 3.1 Mr Choudhury reported that Councillor Duncan's tweet on 16 June 2014 read:  
  
*"Blasphemous 7yo wants 'Islam book' to press flowers in (it's big and heavy). Should I stone her to death when I get home from work?"*
- 3.2 Mr Choudhury explained that as a Muslim and one of the founding members of the Brighton Muslim Community Centre he found the comments deeply distasteful and hurtful to himself and other Muslims.
- 3.3 He stated that comments such as this are not befitting of a Brighton & Hove City Councillor and do more to divide our community than bring people together. He explained that the local Muslim community is hurt and angry that such profane language was used by the Green Party Councillor Ben Duncan.



- 3.4 Mr Choudhury described how he believed that Councillor Duncan's Tweet reinforces the false notion that Islam is a violent religion when love and prosperity are at the centre of its teachings. He stated that there are over 1600 million Muslims worldwide.
- 3.5 Mr Choudhury felt that an elected public representative making such a derogatory tweet was totally unacceptable. He states that the Qur'an is a divine book and that no one has the right to insult it.
- 3.6 Mr Choudhury made the point that nowhere in Islam does it say that if a flower is pressed in to an Islamic book, that, that person should be stoned to death.
- 3.7 Mr Choudhury was asking for the resignation of Ben Duncan from his position as a councillor on Brighton & Hove City Council.
- 3.8 The Investigating Officer met with Mr Choudhury and a friend of his.
- 3.9 Mr Choudhury said that he had been made aware of the tweet during Ifftar where friends and family from the Muslim community were gathered to break their fast. Mr Choudhury said that 34 people signed a petition requesting that action should be taken against Councillor Duncan.
- 3.10 The petition said:
- We the undersigned local Muslim, are deeply hurt and concern that the distasteful comment posted on twitter on 16th of June 2014. Such offensive comment will divide communities, and create hate and unrest. Such irresponsible person should not be in public office.*
- 3.11 Mr Choudhury and his friend were emphatic that there was no reference within the Qur'an that a child could be stoned. Mr Choudhury's friend was horrified that Councillor Duncan should infer that this would be the case. He said that members of the community were deeply hurt and very angry by the implications of what Councillor Duncan had tweeted.
- 3.12 Mr Choudhury also explained that in Islam a child is seen as a flower, therefore to press a flower between the pages of the Qur'an gives rise to the suggestion that Islam wishes to suppress children and make life unbearable for them. He said this was deeply hurtful.
- 3.13 Mr Choudhury emphasised how dangerous the tweet was in that it gave a wrong impression of the Muslim community and was potentially very damaging for community relations.
- 3.14 He explained that this came at a time when he and influential members of the BME and Muslim Community were discussing with Senior Officers in the Council, the Police and Home Office ways of reducing the likelihood of young Muslim men going to Syria to fight.

#### 4.0 Councillor Duncan's response to the complaints

4.1 Councillor Duncan was notified of the complaint on 7 July 2014 and following the meeting between Mr Choudhury and his friend with the Investigating Officer details of the complaint were sent to Councillor Duncan on the 22 July 2014.

4.2 On 18 August 2104 the Investigating Officer received Councillor Duncan's response to the complaint raised by Mr Choudhury.

4.3 Councillor Duncan said he wanted to make it clear that he felt most of the substance of the complaint was based on a misunderstanding of the tweet in question. But he stated:

*"nonetheless, I certainly didn't intend to offend or upset anyone, even less to 'divide communities and create hate and unrest'."*

4.4 Councillor Duncan confirmed that he had deleted the 'tweet' in question, and the whole account on which it was posted.

Councillor Duncan explained his position that he did  
*"not believe, and never have, that Islam is a violent religion."*

4.5 He said his off-the-cuff comments related more to the small minority of extreme adherents of Islam who do practise violence in the name of their religious beliefs; he gave as examples *"the government of Saudi Arabia, or the leaders of IS currently the subject of appalling military action in Iraq."*

4.6 Councillor Duncan said he agreed that the Qur'an is a holy book, and he said he was referring to an entirely different book: 'Islam: Art and Architecture'.

4.7 Furthermore he said he also agreed with Mr Choudhary *[as written]* that nowhere in the Qur'an does it proscribe *[as written]* stoning as an appropriate punishment for flower pressing. He said that at no stage had he sought to imply otherwise.

4.8 Councillor Duncan said

*"I was referring to an actual incident in which an actual child pressed actual flowers in an actual book."*

4.9 He further stated that he accepts that if it was capable of misunderstanding by Mr Choudhary *[as written]* it was probably capable of being misunderstood by others, so he had now removed it from the public record.

## **5.0 Reasoning as to whether there have been failures to comply with the Code of Conduct**

### **5.1 The paragraphs of the Code of Conduct which relate to this complaint:**

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

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

### **5.2 Paragraph 3(1) A Member must treat others with respect**

The principle we have operated within the Council with regard to determining whether an action or statement may be considered disrespectful (reflecting previous Standards Board guidance) is that in general a negatively expressed statement about a line of argument will not be considered disrespectful even if it is forcefully expressed. However, a statement made about a person delivered with the same force might be deemed to be disrespectful if it passes a certain threshold.

What that threshold is or should be is a matter that has not been precisely defined and is therefore open to interpretation.

Set out below are arguments that may help reach a conclusion on whether the comment within the tweet was disrespectful.

#### Arguments against Councillor Duncan having failed to treat others with respect

5.3 Councillor Duncan said his tweet was an off the cuff remark aimed at extreme adherents of Islam who practise violence in the name of their religious beliefs.

5.4 Councillor Duncan said he certainly didn't intend to offend or upset anyone, even less to 'divide communities and create hate and unrest'.

5.5 Councillor Duncan said he did "not believe, and never have, that Islam is a violent religion".

5.6 Councillor Duncan says he was not referring to the Qur'an in his tweet but a book called 'Islam: Art and Architecture'. However, that was not clear at the time the tweet was posted.

#### Arguments for Councillor Duncan having failed to treat others with respect

5.7 In this complaint there is no dispute about the accuracy or authenticity of the tweet written on 16 June 2014 by Councillor Duncan.

5.8 The comment made by Councillor Duncan was placed in the public domain.

5.9 A significant number of people from the Muslim Community have stated that they found the statement deeply offensive and disturbing.

- 5.10 Their petition stated that the tweet could cause division among communities and create hate and unrest.
- 5.11 Mr Choudhury explained that offence was caused by the proposition that any member of Muslim Community would press a flower into the Holy Book.
- 5.12 Further offence was caused by the statement that a father would consider stoning his daughter.
- 5.13 The petitioners said that such an irresponsible person should not be in public office.

Balance of arguments for and against:

- 5.14 On balance the Investigating Officer has come to the conclusion that the tweet was offensive, it was disrespectful and there has been a breach of the Code of Conduct paragraph 3(1) 'A Member must treat others with respect'.

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

- 5.16 In deciding if Councillor Duncan has conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute the investigation has to distinguish between conduct causing damage to his reputation as an individual and that which reaches the threshold sufficient to damage his reputation as a member.

Arguments against Councillor Duncan having brought his office into disrepute:

- 5.17 Councillor Duncan is entitled to his views and to express them as he wishes; Article 10 of the Human Rights Act gives Councillor Duncan the right to freedom of expression.
- 5.18 Councillor Duncan said he certainly didn't intend to offend or upset anyone, even less to "divide communities and create hate and unrest".
- 5.19 Councillor Duncan has explained that his tweet was misunderstood.
- 5.20 Councillor Duncan has removed the offensive tweet and closed his twitter account.

Arguments for Councillor Duncan having brought his office into disrepute:

- 5.21 The complaint received about the tweet clearly stated that members of the Muslim Community were offended.
- 5.22 Mr Choudhury expressed a fear that the tweet could cause division, unrest and create hatred towards members of the Muslim Community.
- 5.23 Mr Choudhury explained that the tweet was dangerous in that it gave a very wrong impression of the Muslim Community and it was potentially very damaging

for community relations. He explained that this came at a time when he and influential members of the BME and Muslim Communities were discussing with Senior Officers in the Council, the Police and Home Office ways of reducing the likelihood of young Muslim men going to Syria to fight.

- 5.24 The complaint about Councillor Duncan went further than complaining about his conduct. It was focused on the impact Councillor Duncan's words could have on community relations at a very difficult time.
- 5.25 Mr Choudhury said it was therefore not appropriate for Councillor Duncan to remain in public office and his letter to Caroline Lucas MP called for him to resign his position as a councillor on Brighton and Hove City Council.
- 5.26 The letter was also copied to Natalie Bennett the Leader of the Green Party, and Jason Kitkat the Leader of Brighton and Hove City Council.
- 5.27 34 members of the local Muslim Community signed a petition stating that the petition could divide communities and could cause hatred and unrest.
- 5.28 Councillor Duncan, recognised on reflection the damage his off the cuff remark had done.
- 5.29 The tweet had been in the public domain for two weeks before it was removed.
- 5.30 A person's right to freedom of expression under Article 10 of the Convention is qualified. The exercise of the right may be subject to certain formalities, conditions, or restrictions as are necessary – among other things – for the protection of the rights and reputation of others. This, in part, explains why Members are subject to the requirement under their Code of Conduct to show respect for others.

Balance of arguments for and against:

- 5.31 The Investigating Officer has considered the arguments for and against a finding of a breach of paragraph 5 of the Code (bringing the Council or your office into disrepute.)
- 5.32 Whilst Councillor Duncan is entitled to his own views and to express his views as he wishes he has in the process of doing so caused offence to members of the Muslim Community and possibly others.
- 5.33 Furthermore it has been stated that Councillor Duncan has risked undermining the work of Community Leaders in finding ways to reduce the likelihood of young Muslim men going to fight in other countries.
- 5.34 The Investigating Officer is of the view that the tweet by Councillor Duncan has brought his office into disrepute.
- 5.35 Consequently the view of the Investigating Officer is that there has been a breach of the Code of Conduct in respect of paragraph 5 'You must not conduct yourself

in a manner which could reasonably be regarded as bringing your office or authority into disrepute’.

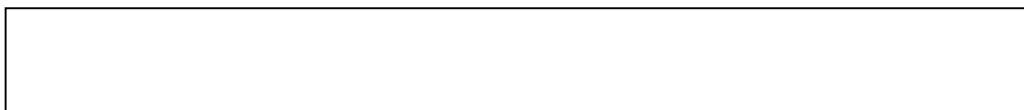
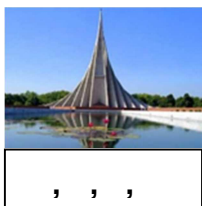
## **6.0 Findings**

- 6.1 The Investigating Officer’s view is that there has been a breach of the Code of Conduct in respect of paragraph 3(1): ‘a member must treat others with respect’ for the reasons set out above.
- 6.2 The Investigating Officer’s view is that there has been a breach of the Code of Conduct in respect of paragraph 5: ‘you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute’ for the reasons set out above.

## **APPENDIX 1 Councillor Duncan’s Tweet**

“Blasphemous 7yo wants ‘Islam book’ to press flowers in (it’s big and heavy). Should I stone her to death when I get home from work?”

## APPENDIX 2 Complaint from member of the public



Dear Ms Caroline Lucas

I am writing to you as the President of the Brighton District Bangladeshi Shomity (BDDBS) regarding the tweets of Councillor Ben Duncan, the Green Party Councillor for Queen's Park, on the 16<sup>th</sup> June 2014.

The Tweet said **"Blasphemous 7yo wants 'Islam book' to press flowers in (it's big and heavy). Should I stone her to death when I get home from work?"** As a Muslim and one of the founding members of the Brighton Muslim Community Centre I find these comments deeply distasteful and hurtful to me and other Muslims. Comments such as this are not befitting of a Brighton and Hove City Councillor and do more to divide our community than bring people together. The local Muslim community is hurt and angry that such profane language was used by the Green Party Councillor Ben Duncan.

Cllr Duncan's Tweet reinforces the false notion that Islam is a violent religion when love and prosperity are at the centre of its teachings. Islam is not a joke and there are over 1600 million Muslims worldwide.

An elected public representative making such a derogatory Tweet is totally unacceptable. The Quran is a divine book. No one has the right to insult. Nowhere in Islam does it say that if a flower is pressed in to an Islamic book, that, that person should be stone to death.

I am writing to you as the Green MP for Pavilion to call for the resignation of Ben Duncan from his position as a councillor on Brighton and Hove District City Council.

I am also copying this letter to Natalie Bennett the leader of the Green Party, Green Party Convenor and Leader of Brighton and Hove City Council Jason Kitkat and Penny Thompson Chief Executive of Brighton and Hove City Council so they are aware of the concerns in the Muslim community at Councillor Duncan's actions and Tweets.

**Will you reply to me as a matter of urgency, such an irresponsible person should not be a holder of public office, therefore I urge you to take immediate action, remove him from the Green Party whip and encourage to the honourable thing of resigning from his council position.**

Due to the seriousness of the issue I will be putting the letter into the public domain.

Yours sincerely Sunny Choudhury, President, BDDBS

01/07/2014

### **APPENDIX 3            Councillor Duncan's response to the complaint**

**From:** Ben Duncan [mailto:banja2002@hotmail.com]  
**Sent:** 17 August 2014 9:36 AM  
**To:** Ben Duncan; Brian Foley  
**Subject:** RE: Complaint from Mr Choudhury

Dear Brian

Thank you for forwarding the detail of the complaint against me from Sunny Choudhary, ref: BHC-015722. The complaint contains several points, which I will address in turn.

But first, I wish to make clear that I feel most of the substance of the complaint is based on a misunderstanding of the tweet in question: nonetheless, I certainly didn't intend to offend or upset anyone, even less to 'divide communities and create hate and unrest'. Lest either of these outcomes should come to fruition, I have deleted the 'tweet' in question – and indeed the whole account on which it was posted.

Let me be clear: I do not believe, and never have, that Islam is a violent religion. My off-the-cuff comments related more to the small minority of extreme adherents of Islam who do practise violence in the name of their religious beliefs: the government of Saudi Arabia for example, or the leaders of IS currently the subject of appalling military action in Iraq.

I agree that the Quran is a holy book, and was referring to an entirely different book: 'Islam: Art and Architecture'.

I also agree with Mr Choudhary that nowhere in the Quran does it proscribe stoning as an appropriate punishment for flower pressing. At no stage had I sought to imply otherwise.

When Mr Choudhary says the no-one would press a flower in the Quran my heart sinks: surely pressing flowers in a heavy book is an activity which should be encouraged? I wish my kids would press wild flowers with the gusto they show towards computer games. Perhaps I'm just a blasphemous Luddite?

Nonetheless it may be true: however I was referring to an an actual incident in which an actual child pressed actual flowers in an actual book.

But I accept that if it was capable of misunderstanding by the Mr Choudhary it was probably capable of being misunderstood by others, so I have now removed it from the public record.

I hope that helps.

Ben Duncan  
Cllr Ben Duncan

Independent Green, Queen's Park ward  
Brighton and Hove City Council



Deputy Chair, Licensing Committee