

THE GREATER LONDON AUTHORITY'S
ETHICAL STANDARDS REGIME

MONITORING OFFICER DECISION NOTICE

GLA Case Reference: October 02/19

Decision

To take **no further action** on the complaint.

Complaint

Summary of the complaint:

1. As Monitoring Officer, I received a complaint from Emma Fenton, LGBT+ Network Co-Chair at the GLA, that alleges that Mr David Kurten AM had breached the Greater London Authority's Code of Conduct.
2. The allegations concern statements made by David Kurten AM on Twitter on 16 October 2019, 18 October 2019, 19 October 2019 and 24 October 2019 and his comments in a Breitbart article about City Hall. A copy of these tweets and the article are attached in Appendices 1 and 2.
3. Her complaint is as follows:

"AM Kurten has made public statements (via twitter, on which he identifies himself as a London Assembly Member) that are derogatory in nature."

"there are several [tweets] that are Transphobic in nature, refusing to acknowledge the existence of trans people."

The complainant also notes that *"the tone and nature of the language used [in these tweets] is reflected throughout Assembly Member Kurten's twitter feed and website."*

The complainant also states that *"In addition, I would like you to consider [a Breitbart article](#) about City Hall in which he is quoted, which is both misleading and inaccurate."*

4. The Complainant alleges that this behaviour constitutes a breach of the following paragraphs of the Code of Conduct (attached for reference):

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

3. — (2) *You must not -*

(b) bully, victimise or harass any person (including by harassment of a sexual nature);

3. — (4) (i) *In relation to sub-paragraph (2)(b) above: i. harassment is behaviour that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them¹;*

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

5. The Complainant also commented the alleged breaches are in the context of *“the wider trans community but also, in one tweet ... to a named trans individual.”* [The Complainant] *“notes this as the code of conduct explicitly references the Equalities Act 2019, which – at Part 2, Chapter 1, Section 4 – lists the protected characteristics, including gender reassignment.”* (To note that the correct reference is the Equality Act 2010).
6. The Complainant considers that Mr Kurten's behaviour and language bring the GLA and – by extension – the Mayor and London Assembly, into disrepute. The Complainant states that:

“The GLA and LGBT+ Network have worked incredibly hard on LGBT+ and especially trans-inclusion over the last 18 months and AM Kurten's tweets and articles serve to undermine these efforts and exclude and isolate trans people from the GLA – both as potential members of staff, but also as Londoners”.

Procedure

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

¹ As defined by the Equalities Act 2010.

² <https://www.london.gov.uk/sites/default/files/guidance-on-making-complaint-about-gla-members-conduct.pdf>

Informal resolution

9. I decided that the Complaint was not suitable for informal resolution under stage 2 of the complaints process having taken into account:
 - the Code of Conduct of the Greater London Authority (“the Code”);
 - the Complaints Guidance;
 - the email of complaint dated 25 October 2019;
 - the email from Mr Kurten responding to the complaint dated 7 November 2019; and
 - legal advice.
10. The Complainant suggested that this matter could be resolved by way of a public apology, but Mr Kurten stated in response that he has *“not done anything wrong and will not be making an apology.”* As such I have decided that informal resolution is not appropriate, and I carried out an initial assessment of the Complaint (in accordance with Stage 3 of the Complaints Guidance).

Initial assessment of the complaint

11. I have conducted an initial assessment of the complaint, taking into account relevant guidance and advice. I have also taken into account relevant criteria and factors that, over the course of time, the GLA’s Standards Committee had previously taken into account when assessing complaints.
12. In undertaking the initial assessment of the complaint, firstly I decide whether the Code of Conduct applies to Mr Kurten’s conduct alleged in the complaint as the Code applies to members acting in their capacity as a member of the Authority. Paragraph 2 (1) of the Code states that:

“you must comply with this Code whenever you act in your capacity as a member of the Authority”
13. The Code does **not** state that a person who is a Member acts in that capacity in **all circumstances**. This is also true of the Localism Act 2011 on which the Code is based.
14. There is no rule or guidance within the Localism Act 2011 to clarify when a Member is acting in their ‘official capacity’. The Government’s Department for Communities and Local Government in England published an illustrative text that councils could, if they choose, use

as a basis for their new local code of conduct. This simply refers to “*acting in your capacity as a member*”³.

15. However, a number of local authorities have expressly extended or clarified their codes of conduct. For example, the Welsh Model Code of Conduct⁴ clarifies that the code applies “*at all times and in any capacity*” in relation to conduct that could reasonably be regarded as bringing a member’s office into disrepute or involve criminal behaviour.⁵
16. Other councils, such as West Berkshire Council⁶, specifically state that their Code applies whenever they are “*acting, claiming to act or giving the impression they are acting in their capacity as a councillor*”. West Berkshire also has a supplemental Social Media Protocol⁷ whose purpose is to ensure councillors made use of social media effectively while avoiding any potential accusations that they may be in breach of the Code of Conduct.
17. The Livingstone Case⁸ establishes that conduct in a member's private capacity will only be covered by a relevant authority's code if they engage in an activity that has a link with the functions of the member's office.
18. I am aware that Mr Kurten is a Member of the London Assembly who was originally elected as a member of UKIP and is now a member of the ‘Brexit Alliance’ political group on the Assembly. He is a member of the Housing, Environment and Transport Committees and of the Fire, Resilience and Emergency Planning Committee. Seats on Assembly committees are automatically apportioned by law to political groups in accordance with their overall proportion of Assembly seats. Otherwise Mr Kurten holds no official Assembly appointments or positions.

Social media posts

19. Mr Kurten’s Twitter profile, which is public, indicates that he is an Assembly Member. His posts make very little mention of his London Assembly role. He has a personal Facebook account which is not public which is titled “David Kurten AM”. There is nothing that expressly links either to the **functions** of his office or role as an Assembly Member.

³ CLG illustrative text (11 April 2012) at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/240161/120906_1_illustrative_code_of_conduct_2_.pdf

⁴ Wales appears to operate a modified system through devolution to the Welsh Assembly that retains a model code which is based on that from the previous Local Government Act 2000 regime.

⁵ Para 2.1, 2008 Wales Model Code

⁶ <http://decisionmaking.westberks.gov.uk/documents/s67611/1.%20Code%20of%20Conduct.pdf>

⁷ See appendix K Social Media Protocol for Councillors, West Berks Code of Conduct

<https://info.westberks.gov.uk/CHttpHandler.ashx?id=38477&p=0>

⁸ Livingstone v Adjudication Panel for England [2006] EWHC 2533

20. The GLA Code **does not** include any express provision or clarification that it extends to all conduct in any circumstances. It does not include any guidance or standards on the use of social media. As such, having taking into account all of the circumstances, I have decided that, on balance, these social media posts **do not** fall within the scope of paragraph 2(1) of the Code as something done in Mr Kurten's official capacity as an Assembly Member.

Breitbart article

21. The article published by Breitbart includes a statement from Mr Kurten which clearly identifies Mr Kurten as an Assembly Member and by commenting on facilities within City Hall, it involves his functions as an Assembly Member. In this regard, the comment made by Mr Kurten in the Breitbart article is made in Mr Kurten's official capacity as an Assembly Member and does fall within the scope of paragraph 2(1) of the Code.
22. I must therefore consider whether the views expressed go beyond a view that is controversial, to the point where they fail to treat transgender people with respect by expressing opinions that are beyond the bounds of reasonable or civilised debate or employ gratuitously offensive and inflammatory language. Equally, controversial issues must be able to be raised in the public sphere, and politicians should have their right to form and hold opinions respected as is their right under human rights legislation which affords enhanced protection to political expression.
23. While I acknowledge that many in the LGBTQ+ community will not agree with Mr Kurten's stance, I am also conscious that there are differences of opinion on the matters discussed even within the LGBTQ+ community. On balance, I consider that Mr Kurten's statement is a matter of legitimate current debate.

Reason for decision

24. I have considered whether or not the October 2019 tweets made by Mr Kurten fall within the Code of Conduct. I have decided, on balance, that they cannot be considered for the reasons set out above.
25. With regard to Mr Kurten's statement in the Breitbart article, I consider that Mr Kurten is exercising his right to voice a legitimate opinion, albeit not an opinion that all members of the public will be in agreement with. As stated in the Complaints procedure:

"In light of the absence of formal sanctions available to the Monitoring Officer to apply in the event of a formal breach of the Code, the Greater London Authority expects this complaints process to be proportionate to the issues raised and the expected outcomes. The Monitoring Officer will therefore take into account the wider public interest and the

cost to the public purse of undertaking any investigation into alleged breaches of the Code. Complaints are, therefore, only likely to be taken forward for investigation where the allegations are objectively and reasonably considered to be serious matters. Whilst every complaint will be judged on its particular merits, it is possible that, for example, a complaint by one Member of the Authority against another that only alleges a lack of due respect will not be considered to be a matter where an investigation would be appropriate nor in the wider public interest. Similarly, a suggestion that an elected Member who has exercised his or her right to voice a legitimate opinion has brought their office and/or the Authority into disrepute by so doing is likely not to be taken forward for further consideration...”.

26. I note that the Committee of Standards in Public Life (CSPL) published a report in January 2019 of its review of ethical standards in local government⁹. This noted that the current framework did not adequately cover the use of social media by members of provide guidance.
27. A review of the Committee’s report has been undertaken and its recommendations will be factored into the next review of the GLA’s Code of Conduct which is expected to commence in Summer 2020.
28. I have considered the impact on equality and have taken into account the potential negative impact of the material complained about on those sharing protected characteristics and how it might impact them negatively, when making this decision and in doing so have had due regard to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
29. I am mindful that having due regard for advancing equality involves:
 - Removing or minimising disadvantages suffered by people due to their protected characteristics.
 - Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
 - Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

⁹ Review of ethical standards in local government:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_C_O_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF

30. However, having taken this carefully into account, for the reasons set out above, I have decided to take **no further action** in this complaint.

Concluding remarks

31. This Decision Notice has been sent to the Complainant and Assembly Member Kurten on 13 December 2019 and is available on the Authority's website.

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

Signed:

A handwritten signature in blue ink that reads "Strain".

Emma Strain
GLA Monitoring Officer
13 December 2019

Appendix 1 – social media posts



David Kurten ✓
@davidkurten

Brexit Alliance London Assembly Member, UKIP member, Brexiteer 🇬🇧, writer, speaker, Christian 🇺🇸, social conservative 🇺🇸, pro-life, free speech activist.


📍 London
🌐 davidkurten.net
📅 Joined December 2012

Tweets **4,933** Following **690** Followers **21.8K** Likes **6,381**

Tweets Tweets & replies Media

David Kurten ✓ @davidkurten · 2h
It would not surprise me if the despicable undemocratic Remain Alliance attempts to hold the nation hostage in the EU until May 2022 when an election must finally be held.


Veterans for Britain @VeteransBritain
 The EU and its placemen in Westminster are now holding the UK to ransom. They've created a Hobson's Choice between endless delay or their ploy to remain....



David Kurten ✓
@davidkurten

Tweets **4,929** Following **690** Followers **21.8K** Likes **6,372**

enrichment.



SNP: Scotland Needs 'More Migration' to Replace 'Declining Populati...
SNP Westminster leader Iain Blackford backed Free Movement and said Scotland needs even more migrants, to replace its "declining population".
breitbart.com

🗨️ 30 🔄 38 ❤️ 86



David Kurten ✓ @davidkurten · 19h
It's easy to keep winning at women's sports - when you're a man.



Transgender cyclist accuses woman she beat of 'poor sportsmanship'
Rachel McKinnon slammed Dawn Orwick for her reaction after she won her second world title in Manchester
mirror.co.uk

🗨️ 40 🔄 132 ❤️ 403

2 9 15



David Kurten @davidkurten · Oct 21

Lie of the Day: "Boris's Treaty will get Brexit done."

It will not. It locks the UK into all EU directives, regulations & rulings for 3 more years, to get a fake-FTA requiring common standards in "state aid, competition, social and employment, environment, climate change & tax."

13 91 157



David Kurten @davidkurten · Oct 20

Should the UK have a treaty with the EU?

2% Remain in Lisbon Treaty

15% Accept Boris's Treaty

83% Leave with no new Treaty

1,264 votes · Final results

5 181 91



David Kurten @davidkurten · Oct 20

It is a good thing that Boris's Treaty was not passed yesterday. There is still the possibility of a clean-break Brexit on 31st October. Even if that doesn't happen, it is better to have an extension, an election & a full Brexit, than be locked into a Brexit-In-Name-Only Treaty.

17 112 280



David Kurten @davidkurten · Oct 19

It's National Period Day, and this year men with male vaginas can have periods too.

Mashable @mashable

We rarely talk in public about periods, but this is changing with Saturday's first-ever National Period Day. trib.al/uj96wac

29 15 81



Boris, this is Brexit in name only | The Spectator Australia

The Bow Group has been described by the veteran Eurosceptic Sir Bill Cash MP as "where Brexit began". It is true that his work and the work of fellow...
spectator.com.au

10 73 110



David Kurten @davidkurten · Oct 18

Commuters 5 : Extinction Rebellion 0



David Vance QC (not) @DVATW

That's the way to do it!

7 73 255



David Kurten @davidkurten · Oct 18

UK 2019: THOUGHTCRIME! Police chase citizens who think women are women and men are men, and try to lock them up for 'transphobia.'



Police response to 'transphobic' stickers branded 'extraordinary'

A police force has been accused of "incredible irresponsibility" for treating the display of transphobic stickers around Oxford as a "serious crime".
telegraph.co.uk

6 41 69



David Kurten ✓
@davidkurten

Tweets
4,929

Following
690

Followers
21.8K

Likes
6,372

A Re-heated Vassalage Treaty will be the Mother of All Betrayals

The week of 14 th – 19 th October will be one of the momentous weeks in British political history. Prime Minister Johnson will attend an ...
brugesgroup.com

9 47 88



David Kurten ✓ @davidkurten · Oct 16
Got my first Facebook ban!



You can't post or comment for 24 hours

This is because you previously posted something that didn't follow our Community Standards.



David Kurten AM

1 hr · 🌐

Apparently, today is 'International Pronoun Day'. In case you are in danger of using the wrong pronouns, here's a handy guide:

Male: he, him, his

Female: she, her, hers

Trans-woman: Does not exist. See male

Trans-man: Does not exist. See female

Other genders: Do not exist. See a doctor

220 654 2.4K

Appendix 2 – Breitbart article

EXCLUSIVE: Khan’s London City Hall Scraps Female Showers, Goes ‘Gender Neutral’

Sadiq Khan’s City Hall has replaced female toilets and shower rooms with “gender neutral” facilities, Breitbart London can reveal, prompting concerns the changes will be rolled out across the city and possibly put biological women at risk.

Sources inside the headquarters of the Greater London Authority (GLA) and the Mayor of London’s offices say the changes have been made in some of the staff areas on the upper floors.

Images passed to Breitbart London show new signs, which are claimed to have appeared this week, reading “Gender Neutral Toilets and Showers.” Some of the men’s toilets, with urinals, are still marked as for men.

The shower rooms have always been available to both men and women, but the sign on the door previously showed a man and a woman. The female toilets were previously marked as for females.

Other female toilets on the upper floor were also briefly changed to “gender neutral” before being changed back to “female,” a source said.

Breitbart London spoke to UKIP London Assembly Member and Education spokesman David Kurten, who commented of the changes:

“I often have both male and female visitors coming to see me to discuss London issues. Female staff and visitors to London Assembly Members no longer have their own toilet facilities.

“A number of staff told me that they were uncomfortable with the change and are worried about men coming into the toilets while they were using them.

“Nobody would have even considered changing the signs on the toilet doors a few years ago, but now City Hall, under Sadiq Khan as mayor, is willing to risk harming women’s comfort and safety for the sake of a politically correct agenda which the vast majority of the population do not agree with.

“There have always been men’s and women’s toilets, and everybody is happy with it that way apart from a few vociferous activists.

“It is concerning that this may just be the start of a process where all the toilets on the Greater London Estate including at Underground stations, bus stations, police stations, and in the Olympic Park may be replaced by gender-neutral facilities, which may put women at risk.”

Labour mayor Mr Khan and City Hall have failed to respond to requests for comment from Breitbart London, and it is not clear at this time who authorised the changes.

However, on November 27th last year, Mr Khan “[outlined](#) important measures today... encourag[ing] increased provision of gender-neutral toilets.”

Sadiq Khan 
@SadiqKhan

Toilets are a vital public service. My draft [#LondonPlan](#) sets out plans to ensure all Londoners, including disabled people, older people & families with young children can travel around our city with dignity. [theguardian.com/uk-news/2017/n...](#)



London needs more gender-neutral public toilets, says mayor's p...
Sadiq Khan's planning blueprint will call for more public loos, and different types of toilets to cater to people's differing needs
[theguardian.com](#)

361 12:36 PM - Nov 28, 2017

A City hall [statement](#) said “gender-segregated” toilets could make the transgendered and “anyone whose gender expression doesn’t conform with traditional gender roles” to “feel uncomfortable or unwelcome”.

The mayor did not mention the concerns of many women’s and feminist groups, which claim women-only spaces are important for biological females to remain safe.

In September, it was revealed that the vast majority of reported sexual assaults at public swimming pools in the UK take place in mixed-gender changing and shower rooms.

Data [obtained](#) by *The Sunday Times* showed that mixed-gender facilities are significantly more dangerous for women and girls than single-sex facilities.

Just under 90 per cent of complaints regarding changing room sexual assaults, voyeurism, and harassment are about incidents in mixed-gender facilities and two-thirds of all sexual attacks at leisure centres and public swimming pools take place in mixed-gender changing rooms.

 **Breitbart London**
@BreitbartLondon 

Sadiq Khan Bringing 'Gender Neutral' Toilets to London to 'Reflect the Incredible Diversity of the City' breitbart.com/london/2017/11...



Sadiq Khan Bringing 'Gender Neutral' Toilets to London to 'Refle...
London's mayor is issuing guidance to developers calling for "gender neutral" toilets to "reflect the incredible diversity" of the capital.
breitbart.com

♡ 36 9:00 PM - Nov 29, 2017 

Responding to a question last month about possible changes, the mayor clearly stated his intention to scrap safer, separate toilets and showers.

He [said](#): “There has always been gender inclusive toilet provision in City Hall in the public area on 2nd floor, the Chamber on the 1st floor and in staff areas in the separate toilet/shower rooms.

“However, the signage was not helpful on reflecting that they were gender inclusive.

“We have replaced the signage on 1st and 2nd floors with the word ‘toilet’ and removed the male/female pictograms.

“Replacement signage has been ordered for the staff shower rooms with toilets on staff floors to read ‘gender neutral toilet and shower’ and male/female pictograms will also be removed.

“Unfortunately, it has not been possible to make all toilets gender neutral, due to the configuration and sanitaryware.”