

**THE GREATER LONDON AUTHORITY'S
ETHICAL STANDARDS REGIME**

DEPUTY MONITORING OFFICER

DECISION NOTICE:

NO FINDING OF FAILURE

GLA Case Reference: MAR- 04-12, 05-12 and 06-12

Decision

That there was no failure by Boris Johnson, Mayor of London, to comply with the Greater London Authority's Code of Conduct as was alleged in the complaints received.

Complaint

Below is a general and brief summary of the Complainants' complaints that were referred for investigation (see Decision Notices GLA Case Reference: Mar-04/12, 05-12 and 06-12 attached as Appendix 1).

The first complaint (the First Complaint) was received from Mr Len Duvall AM on 21 March 2012. The First complaint concerns the Mayor of London's Twitter account. The Complainant alleges that on 20 March 2012, the start of the formal pre-election period for the GLA elections on 3 May 2012, the Mayor of London's Twitter account was migrated to, and was therefore transformed into, the BackBoris2012 campaign Twitter account. The Complainant contends that the Mayor of London's Twitter account is maintained by GLA resources and belongs to the office of the Mayor of London, not to the current mayor, Boris Johnson. The Complainant alleges that the migration / transfer of that account breaches the Authority's Use of Resources and Pre-Election Guidance, and its Code of Conduct.

The Complainant states that on 20 March the Mayor of London's Twitter account was reverted to being used for official purposes only "to correct a misuse of City Hall resources," but contends that at 6.40pm a tweet was sent out from the official account "which mentioned Boris Johnson's political twitter account and which linked directly to it." The Complainant alleges that this is a further misuse of GLA resources and a further breach of the Code of Conduct.

The second complaint (the Second Complaint) was received from Mr Len Duvall AM on 22 March 2012. The Complainant alleges that Boris Johnson, the Mayor of London, has breached the GLA's Use of Resources and Pre-Election Guidance, and its Code of

Conduct, by having links to his political Facebook account from the GLA website. The Complainant alleges that *“the GLA website is peppered with links to his political Facebook site.”*

In addition, the Complainant alleges that, if Mr Johnson’s political Facebook account was formerly a non-political GLA maintained account that has been converted into an election campaign website, this is a further breach of the GLA’s Use of Resources and Pre-Election Guidance, and the Code of Conduct.

The third complaint (the Third Complaint) was received from Patrick Heneghan, then Ken Livingstone’s Campaign Director, on 23 March 2012. The Third complaint concerns the Mayor of London’s Twitter account. The Complainant alleges that on 20 March 2012, the start of the formal pre-election period for the GLA elections on 3 May 2012, the Mayor of London’s Twitter account was migrated to, and was therefore transformed into, the BackBoris2012 campaign Twitter account. The Complainant contends that the Mayor of London Twitter account is maintained by GLA resources and belongs to the office of the Mayor of London, not to the current mayor, Boris Johnson. The Complainant alleges that the account was taken over by the Conservative Party campaign to re-elect Boris Johnson and that as such, was an unauthorized and improper transfer of public resource to a political campaign.

On the 4 May 2012, the Authority’s Assessment Sub-Committee decided, unanimously, to refer the First, Second and Third Complaints (“the Complaints”) to the GLA’s Monitoring Officer for investigation. The Decision Notices are attached at Appendix 1.

Procedure

Having initially been dealt with in accordance with the statutory and GLA procedures that were in force in March 2012 until 30 June 2012, the Complaints were then considered in accordance with the Authority’s relevant, approved procedures, which are attached as Appendix 2.

Mr Jonathan Goolden, a solicitor at the firm of Wilkin Chapman Goolden, was instructed by the Monitoring Officer to investigate these Complaints. The Monitoring Officer was aware that he would need to provide evidence as a witness in this matter and therefore delegated the function of gathering evidence to assist the investigation to the GLA’s Information Governance Manager.

The Information Governance Manager began gathering evidence in May 2012 and completed the evidence-gathering process in September 2012 (noting that this period encompassed the time within which the Authority and many of its senior officers were engaged in the delivery of the 2012 Olympic and Paralympic Games in London). This process involved asking key members of staff and the complainants to provide him with all documentation in their possession relating to the complaints and their views on the documentation. The collected documents and statements were then passed to Mr Jonathan Goolden in October 2012. Upon assessing the evidence obtained, Mr Goolden decided that there were issues that required further consideration and that it was necessary to obtain further, detailed evidence in relation to specific areas. This additional information was provided to Mr Goolden in February 2013.

The Monitoring Officer then delegated the function of considering the Investigation Report and making a determination on the complaints to a Deputy Monitoring Officer, Fiona Fletcher Smith (the Authority's Executive Director of Development, Enterprise and Environment). These measures were put in place to ensure that, whilst it was considered that no actual conflict of interest existed, there could be no perception of a conflict between the role of the Monitoring Officer and his involvement in the activities that were subject of the investigation.

The report was sent to the Deputy Monitoring Officer who then considered the matter in accordance with Stage 4 of the Guidance on Making a Complaint about a GLA Member's Conduct.

Reasons for decision

The Deputy Monitoring Officer carefully considered the following:

- Decision Notices GLA Case Reference: Mar-04-12, 05-12, 06-12;
- the report of Jonathan Goolden of 28th February 2013;
- further clarification by email received from Boris Johnson in April 2013;
- The GLA's Use of Resources Guidance
- The Code of Recommended Practice on Local Authority Publicity ("the Publicity Code"), in particular, paragraph 34 of the Publicity Code which provides:
- "During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute."
- the following paragraphs of the GLA's Code of Conduct for Members in force at the time:

2. Paragraph 2:

(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of the Authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of the Authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of the Authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

(6) In this Code "relevant authority" has the meaning given to it by section 49 of the Local Government Act 2000. It also includes any "functional body" as defined in section 424 of the Greater London Authority Act 1999.

Paragraph 6 : You-

(b) must, when using or authorising the use by others, of the resources of your authority -

- (i) act in accordance with your authority's reasonable requirements; and
- (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c): must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

The Deputy Monitoring Officer carefully considered the contents and conclusions of Jonathan Goolden's report. Also, in order to assist the Deputy Monitoring Officer in this determination, and in accordance with the relevant provisions of the Localism Act 2011 and the Authority's approved procedure, Suzanne McCarthy, appointed to serve as an Independent Person for the Authority by the Mayor and London Assembly, was engaged to act as the Independent Person in relation to this complaint.

Taking full account of the views of the Independent Person on this matter, who concurs in full with the decision set out in this Notice, and having considered all relevant material, the Deputy Monitoring Officer has taken the view that, whilst in principle, the use by Mr Johnson of the Twitter account was capable of being conduct falling within his official capacity and thus within the scope of the GLA Code of Conduct, there is no evidence to indicate that Mr Johnson was either personally responsible for the misuse of the account nor that he authorised others to do so.

In relation to the use of Facebook and linking the GLA website to Mr Johnson's campaign Facebook site, the Deputy Monitoring Officer has also taken the view that, whilst in principle, the use of this account and the GLA website by Mr Johnson was capable of being conduct falling within his official capacity, thus also within the scope of the GLA Code of Conduct, there is no evidence to indicate that Mr Johnson was either personally responsible for the misuse or that he authorised others to do so.

The Deputy Monitoring Officer reached this view because firstly it has not been possible to obtain evidence to show who operated the Twitter and Facebook accounts at the time of the complaints. Mr Goolden concludes that it appeared that the practical process of typing and posting on Twitter and Facebook was handled by GLA staff who worked under the management of the former Director of Communications and that the former Director indicated that due to this role and his role as the Mayor's spokesman he was ultimately responsible for the management of the Twitter account. Secondly, there is no evidence that would indicate that Mr Johnson operated the accounts or authorised others to operate the accounts on his behalf.

The Deputy Monitoring Officer also considered the evidence from Mr Johnson who confirmed by email in April 2013 that he did not have any involvement in the operation of either the Twitter account or Facebook. There is therefore no evidence to indicate that Mr Johnson operated or authorised others to operate the accounts on his behalf. The Deputy Monitoring Officer felt that this direct question should have been put to Mr Johnson during the investigation.

As such, the Deputy Monitoring Officer has decided that Mr Johnson, in his capacity as Mayor of London, has not failed to comply with the GLA's Code of Conduct in respect of these matters.

In the view of the Deputy Monitoring Officer, the use of these social media tools on the 20 March 2012 was not in accordance with the GLA's guidance on the use of its resources or the Publicity Code. This was recognised by the Authority's Head of Paid Service and Monitoring Officer at the point when the complaints were received and the situation was remedied within a matter of hours of the issue being raised initially by Mr Duvall. However, there is no evidence that Mr Johnson operated the accounts himself or authorised others to operate the accounts on his behalf.

Detailed guidance on the proper use of the Authority's resources was issued and widely circulated to staff by the Authority's Statutory Officers in March 2012, along with specific guidance on the use of social media and the Monitoring Officer addressed meetings of large numbers of staff on the issues during the 2012 pre-election period. However, noting the issues that formed the basis of these complaints, the Deputy Monitoring Officer has recommended that the Monitoring Officer writes to the Chief of Staff, the Director of Communications and all staff in the GLA's External Affairs

Department to provide further guidance to them on the application of the Authority's Use of Resources rules, with particular reference to social media issues.

Confidentiality and Publication

The Complainants, Len Duvall AM and Patrick Heneghan, confirmed that their identities and a summary of their complaints could be provided to Mr Johnson and made available on the Authority's website; in also taking into account the public interest and the general requirement to be transparent, the GLA's Monitoring Officer decided that these details should be provided to Mr Johnson and should also be published.

This Decision Notice has been sent to the Complainants and to Mr Boris Johnson on 12 July 2013 and will be made available on the Authority's website.

Right to appeal

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

Signed:



Date:

12/7/13

GLA Deputy Monitoring Officer