

**THE GREATER LONDON AUTHORITY
ETHICAL STANDARDS REGIME**

MONITORING OFFICER DECISION NOTICE

GLA Case Reference: March 01/19

Decision

That there **has been a breach** by Assembly Member Tony Devenish of paragraph 3 (1) of the Code of Conduct.

That there **has not been a breach** by Assembly Member Tony Devenish of paragraph 5 of the Code of Conduct.

That there **has not been a breach** by Assembly Member Tony Devenish of paragraph 6 (b) (ii) of the Code of Conduct.

Complaint

1. On 5 March 2019 I received a complaint (“the Complaint”) from Mr Wes Streeting MP (“the Complainant”). The Complaint alleged that Assembly Member Tony Devenish had breached the Authority’s Code of Conduct for GLA Members (“the Code”). The Complaint concerns a statement provided by Mr Devenish to the Sun newspaper (“The Sun”) which was published online on 21 February 2019 (“the Statement”).
2. The Statement was included in an article in The Sun on 21 February 2019 which discussed the GLA’s arrangements for the 2020 Mayoral and London Assembly Elections and, in particular, the procurement of a company to undertake the electronic counting of votes.
3. The Statement, as presented in the article, reads as follows:

“Tony Devenish, a Tory member of the London Assembly, said: “It is extraordinary that the Mayor has miraculously been able to find an extra £3.6 million to spend on the elections, having claimed time and time again that he can’t afford to put more cops on our streets.”

“We all know that the Mayor is obsessed with remaining in the EU, but it is beyond the pale for him to hand over millions of pounds of taxpayers’ money to one of his Remainer chums”.

4. The full Complaint reads as follows:

[The Complainant is] writing to “complain formally about Mr Devenish’s behaviour in this regard. As an experienced Assembly Member and councillor, he is fully aware that decisions regarding arrangements for elections are matters for the returning officer, in case [sic] the Greater London Returning Officer (GLRO), not elected politicians such as the Mayor of London. Mr Devenish of course himself plays an active part in the setting of the GLA budget which provides funds for the GLRO to carry out her duties, and the appointment of the Greater London Returning Officer was noted at a meeting of the London Assembly on 7 June 2018.

By claiming that the Mayor was personally responsible for this decision, he has not been honest, contrary to the principles of public life set out in paragraph 1 (4) of the GLA’s Code of Conduct. This also showed a total lack of respect towards the Mayor and the GLRO, in breach of para 3 (1).

Further, his behaviour in alleging, without any foundation whatsoever, corruption on the part of the Mayor, with the necessary complicity of the GLRO and officers who support her, has clearly brought the GLA into disrepute, contrary to Code of Conduct para 5. Given that this related to the conduct of elections, I am sure you will agree that this is a most serious matter.

If any of the Authority’s resources were used to provide this transparently party political statement to the newspaper, then I believe this would have been a breach of Code of Conduct para 6 (b) (ii), which prohibits the use of resources for political purposes.”

5. The Complainant alleges that AM Devenish has not been honest, contrary to the principles of public life set out in paragraph 1 (4) of the GLA’s Code of Conduct and has breached paragraphs 3 (1), 5 and, if GLA resources were used to provide the Statement, paragraph 6 (b) (ii) of the Code (the Code can be found in full online [here](#)¹). The relevant provisions of the Code read as below:

- 3. (1) *You must treat others with respect*
- 5. *You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;*

And, if GLA resources were used:

- 6 (b) *[You] (b) must, when using or authorising the use by others of the resources of your authority — ... (ii) ensure that such resources are not used improperly for political purposes (including party political purposes);*

¹ <https://www.london.gov.uk/sites/default/files/18-04-04-code-of-coduct-appendices-final.pdf>

Procedure

6. 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.
7. I have considered the Complaint in accordance with the Complaints Guidance.

Informal Resolution

8. 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 GLA Use of Resources Guidance ("the Resources Guidance");
 - the letter of complaint dated 5 March 2019;
 - the emails from AM Devenish responding to the complaint dated 19 and 29 March 2019; and
 - legal advice.
9. Neither party suggested any viable means by which informal resolution could be achieved and, having decided that informal resolution is not appropriate, I carried out an initial assessment of the Complaint (in accordance with Stage 3 of the Complaints Guidance).
10. In doing so I have carefully taken into account all of the circumstances, the need for proportionality when dealing with complaints, the wider public interest and the costs associated with investigations. I consider that the allegations are serious matters, given that they concern the probity of substantial funding decisions associated with the 2020 Mayoral and London Assembly elections.
11. I therefore decided to carry out an investigation (in accordance with Stage 4 of the Complaints Guidance).

Chronology of Investigation

12. The chronology of the investigation is set out below:

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

6 March	Complaint received.
18 March	I wrote to the Complainant to confirm details of the Complaint in accordance with the Complaints Guidance.
18 March	I wrote formally to AM Devenish to inform him of the Complaint.
19 March	Email responses received from AM Devenish regarding the Complaint.
21 March	I emailed AM Devenish to request additional information regarding the Complaint.
28 March	Further information provided by AM Devenish regarding the Complaint.
3 April	I wrote to AM Devenish to confirm that I had decided that the Complaint could not be resolved informally and that I had carried out an initial assessment under stage 3 of the Complaints Guidance and had decided that the Complaint warranted further investigation.
4 April	I wrote to the Complainant to confirm that I had decided that the Complaint could not be resolved informally and that I had carried out an initial assessment under stage 3 of the Complaints Guidance and had decided that the Complaint warranted further investigation.
4 April	I interviewed AM Devenish regarding the Complaint.
4 April	Suzanne McCarthy selected as the Independent Person to give views regarding the Complaint.
15 April	I requested any relevant information concerning this matter from GLA officers and the Greater London Returning Officer and her Deputy.
15 & 16 April	Information received from GLA External Affairs Press Office regarding the provision of the Mayor's statement on this matter.
16 April	I wrote to General Counsel of the SGO Corporation Limited given his comments about this matter in email correspondence that I received from the GLA External Affairs Press Office.
16 April	The General Counsel of the SGO Corporation Limited provided his views on this matter.
16 April	I provided initial information regarding the Complaint to the Independent Person.
17 April	I received information from the Greater London Returning Officer regarding the procurement of the e-counting contract for the 2020 election.
25 April	I received information received from the Deputy Greater London Returning Officer regarding this matter.

30 April	I sent an update to the Independent Person, providing a copy of information gathered as part of the investigation.
7 May	I carried out an initial review of information gathered as part of the investigation with the Independent Person.
16 May	I met with the Independent Person to have a detailed review of the information gathered as part of the investigation.
21 May	The Independent Person provided views in writing as to an appropriate outcome to the matter.
23 May	I confirmed that General Counsel of the SGO Corporation Limited was content to be referenced in this Decision Notice.
24 May	Decision made.

Factual Background

13. In conducting the investigation, I have considered evidence from the following sources:

- The letter of Complaint received on 5 March 2019;
- The article in The Sun which included the Statement issued on 21 February 2019;
- The emails from AM Devenish to the Monitoring Officer dated 19 and 28 March 2019;
- An interview undertaken by me with AM Devenish;
- The evidence gathered from the Greater London Returning Officer, the Deputy Greater London Returning Officer, and the GLA External Affairs Press Office;
- The information gathered from General Counsel, SGO Corporation Limited; and
- The views of the Independent Person received on 21 May 2019.

14. The chronology of events regarding the Statement is as follows:

- AM Devenish provided the Statement to The Sun on 21 February 2019;
- The Statement was published by The Sun as part of an article on 21 February 2019;
- The article was shared via social media by AM Devenish and by the @GLAConservatives twitter account. The @GLAConservatives twitter account is not a GLA-owned account;
- SGO Corporation Limited contacted the GLA External Affairs Press Office about the article, raising concerns about the content of the article and the Statement contained within it, when the article was published on 21 February 2019;

- SGO Corporation Limited also instructed their lawyers to write to the Sun regarding the article on 21 February 2019; and
 - The article was subsequently removed from the Sun’s website and is no longer available on line.
15. I note and take into account the following regarding the budget for the elections and the procurement of the e-counting services which are referenced in the Statement:
- The budget for the 2020 Mayor of London and London Assembly elections - including the e-counting services - is part of the GLA Budget which was approved by the London Assembly in February 2019 at the second of two public meetings of the London Assembly to consider the Budget, in accordance with the statutory process under the Greater London Authority Act 1999; and
 - The e-counting services for the 2020 Mayor of London and London Assembly elections were procured in accordance with GLA’s Contracts and Funding Code and the procurement process was compliant with The Public Contracts Regulations 2015.
16. In conducting this investigation, I received copies of email correspondence between the GLA External Affairs Press Office and General Counsel of the SGO Corporation Limited. In correspondence of 22 February 2019, General Counsel stated:

“I remain concerned that there are ... politicians who seem to have been the driving force behind the article, ... the GLA Assembly member Tony Devenish (who I would have thought should be subject to some sort of scrutiny by the Returning Officer/GLA for his comments in this case, given the almost wilful misrepresentation of the procurement process).”

17. In response to this, I wrote to General Counsel of the SGO Corporation Limited to advise that this investigation was underway. He provided the following further commentary:

“Thank you for bringing this matter to my attention and can I say how much we welcome this investigation, and the opportunity to comment.

As you will have seen from my exchange with the Press Office, the moment we were alerted to the article we took steps to have it removed.

Let me explain why; as the world’s largest developer and supplier of election technology, we face a constant stream of misleading information and fake news, much of it designed to undermine the integrity of the election process, and more often than not, much of it emanating from elected representatives in pursuit of their own political agenda.

In the present case, it was the linking of our name to what was presented as a deeply flawed if not corrupt, procurement process, (“remainer” Chairman “given a

£9 million contract"...by "remainer" Mayor), and the complete misrepresentation of the costs of the upcoming election over that of previous years (when we were not involved, but in circumstances where the requirements are now fundamentally different, in terms of security, infrastructure testing, system resilience, training etc) which compelled us to act. I am sure those facts will be corroborated by the Returning Officer and TFL who have the responsibility to oversee the election itself and they should have been immediately obvious to Mr Devenish.

In terms of the complaint itself, I entirely endorse and support the complainants case that the behaviour of GLA Member Mr Devenish fell well below the standards required, and I would add that in my view, there is also a Selflessness case for him to answer, in that, whatever his personal motivation, by failing to take into account the impact such statements were likely to have on the integrity of the voting process, he was acting contrary to the public interest.

We operate worldwide, at a time when the integrity of voting systems and the legitimacy of democratic institutions and elections has become a matter of heightened public interest and debate, and are enormously proud to be a part of the 2020 GLA Election. I can't tell you what damage this kind of fake news does, and just how much it serves to undermine confidence in elected institutions, their officials and elected representatives. Without swift action on our part, I can guarantee that these defamatory statements would have led to a deeply flawed view being adopted by those interested in undermining confidence in the 2020 election.

I sincerely hope that the outcome of your investigation will serve to show that this sort of behaviour is unacceptable, especially coming as it did, from an elected representative."

Discussion

Allegation of breach of paragraph 3. (1) and 5 of the Code

18. The complainant has alleged that:

- I. AM Devenish is fully aware that decisions regarding arrangements for elections are matters for the Greater London Returning Officer, not the Mayor of London;
- II. As an Assembly Member, Mr Devenish plays a part in the setting of the GLA budget which provides funds for the GLRO to carry out her duties;
- III. In stating that the Mayor has responsibility for this decision, AM Devenish has not been honest, contrary to the Nolan Principles of Public Life, and he has also shown a lack of respect towards the Mayor and the GLRO;

- IV. AM Devenish's statement alleges corruption on the part of the Mayor, with the necessary complicity of the GLRO and officers who support her, bringing the GLA into disrepute;

19. It is therefore alleged that AM Devenish is in breach of the following requirements in the Code:

- *3 (1) You must treat others with respect*
- *5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;*

20. AM Devenish in his emails of 19 and 29 March 2019 states that:

- I. [His] "recollection is that [he] was contacted by The Sun and they quoted [his] words;
- II. "Journalists approach AM's daily on such stories. The media carry out due diligence - we have a free press".
- III. His comment in The Sun was "both 'fair comment' and within [his] rights' of freedom of speech".
- IV. He "believes the contents of [his] quote was accurate and there was no intent to misinform"; and
- V. He "took issue with the allegation that [he] alleged corruption" as he did not say that. He further states that "nothing in my quote alleged corruption on the part of anyone".

21. AM Devenish's position is that, for the above reasons, there has been no breach of the Code of Conduct.

22. I have carefully taken into account the further comments made by AM Devenish when I discussed this complaint with him as part of my investigation.

23. I have also considered all of the evidence provided during my investigation and have shared this evidence with the GLA's Independent Person.

24. To the extent that I do not specifically mention in this decision notice evidence or representations which have been raised in correspondence, or otherwise considered as part of my investigation as referred to above, I have taken these matters into account, but they do not change the decision reached.

Paragraph 3. (1) Treating others with respect

25. Decisions taken to authorise expenditure on, or in relation to, the Greater London Authority elections (GLA elections) are not taken by the Mayor, but by the Greater London Returning Officer (GLRO). AM Devenish would know this - or ought to know this - in his Assembly Member capacity. In interview, AM Devenish said he was “vaguely aware” of how funding decisions for the elections are made.
26. The process of allocating contracts in respect of the GLA elections is ultimately the responsibility of the GLRO (following an appropriate process) and not of the Mayor. The words of the Statement when read as a whole, on any reasonable interpretation, suggest that the Mayor is personally responsible for the allocation of funds in connection with the Elections. This element of the Statement is therefore misleading.
27. The Statement also says that the Mayor has handed over millions of pounds of taxpayers’ money to one of his “Remainer chums”. The integrity of the GLA elections process is of paramount importance and the Statement could reasonably be read as suggesting that there has been some impropriety or lack of due process on the part of the Mayor or the GLA in relation to the allocation of funds in connection with the GLA elections in 2020. This is a very serious matter. To publicly state that the Mayor has been responsible for a decision to give millions of pounds of public funds to a friend in connection with the elections is misleading and inappropriate and does not demonstrate the respect that under the Code elected Members should afford each other when making public statements to the media.
28. Whilst I have found no evidence to justify a finding that Mr Devenish acted dishonestly in providing the Statement as alleged, I do find that in making the Statement – and taking into account the reasonable inferences that can be drawn from it – he failed to have sufficient regard to the obligation on him to treat others with respect, and this was contrary to paragraph 3(1) of the Code, by failing to ensure that reasonable steps were taken to ensure that the premises for the Statement about the Mayor and election funding were soundly based in fact before it was made.

Decision on alleged breach of paragraph 3(1)

29. Having found that AM Devenish had provided the Statement, I find that for the reasons set out above he has breached paragraph 3(1) of the Code by making the Statement, and I therefore find that aspect of the Complaint proven.

Paragraph 5. Bringing your office or authority into disrepute

30. Given that Mr Devenish has been an Assembly Member since 2016 and as such has been involved in three annual rounds of budget setting in the GLA, I would expect him to be aware of the process for approval of the GLA group’s budget provision. While the funding for elections is part of the ‘Greater London Authority: Mayor of London’ element of the

budget, it is one of a number of costed elements which fall outside of the Mayor's core spending decisions.

31. The factual basis for the story on which comment was invited was something with which AM Devenish was, or should have been, familiar. As an Assembly Member he would have been supplied with a copy of the Mayor's Draft Budget for 2019-20, which was then debated at two Assembly Budget Meetings. Although he did not attend the Final Draft Consolidated Budget Meeting on 25 February 2019, he was present at the Draft Consolidated Budget Meeting on 24 January 2019.
32. At the January meeting, various amendments to the Mayor's Draft Budget were proposed by the political group of which AM Devenish is a member, and considered and voted on by the Assembly; there is mention of measures which might provide more resources for policing, but no mention of amending the sum allocated for elections.
33. Robust challenge from Assembly Members about the Mayor's decision making and policy making regarding budget allocation is acceptable and a key part of their role in holding the Mayor to account. It is acceptable to challenge the Mayor's allocation of funding to policing versus other Mayoral initiatives/policies, and indeed AM Devenish has done this previously. Importantly, any comments made to the media by Members need to be based in fact.
34. In the circumstances I would expect AM Devenish to have taken steps to consider the factual basis of the story presented to him before providing a statement. AM Devenish advised that he "can't recall" the circumstances under which he provided this statement.
35. I entirely accept that Mr Devenish - as an individual and as an Assembly Member - is entitled to express political views and opinions in his personal and political capacity and pursuant to his legitimate rights to freedom of expression (as an Assembly Member, this is subject to public resources being used appropriately in accordance with the GLA Use of Resources Guidance and any publicity complying with the Code of Recommended Practice on Local Authority Publicity).
36. AM Devenish also states that "Journalists approach AM's daily on such stories. The media carry out due diligence". I recognise that journalists do contact Assembly Members regularly to ask for comment on stories, and politicians are fully entitled to provide such comment, sometimes on disputed facts. However, in this matter, the supposed facts as to which any statement is invited relate to an Assembly budget decision and are therefore within the knowledge of an Assembly Member, who knows (or should have known) that they were inaccurate. Therefore, that Assembly Member can reasonably be expected to consider the supposed factual basis before taking the opportunity to make a comment to the media directed not just at a political opponent but also at others.

Decision on alleged breach of paragraph 5

37. I have considered whether, when looked at objectively, the conduct by AM Devenish could reasonably be regarded as bringing his office, or the GLA, into disrepute by damaging the reputation of his office or that of the GLA. The circumstances and content of the Statement I consider to be reasonably capable of being linked to the official – as opposed to the private - capacity of AM Devenish.
38. I have considered carefully whether in all of the circumstances the conduct complained of is sufficiently serious to bring AM Devenish’s office, or the GLA, into disrepute. Whilst Members may properly take a vigorous approach to political debate, they should consider the accuracy of factual assertions.
39. However, whilst I consider the Statement to be inappropriate, ill-advised and potentially misleading, I do not consider that, in providing this Statement, AM Devenish has brought his office, the London Assembly or Greater London Authority into disrepute.
40. I have considered whether a reasonable person would think that the Statement – when read in the context in which it was made and as part of the article as a whole – would damage the reputation of the GLA or whether it would reasonably be considered as ill-founded political comment but without causing, or having the potential to cause, reputational damage.
41. This requires me to make a judgment, and I have decided that the Statement does not cross the necessary level of seriousness in order to cause – in the mind of a reasonable person when reading the article as a whole – actual or potential reputational damage.
42. When reaching this decision I consider it important to note that the Article makes clear – on behalf of the Mayor – that he had no involvement whatsoever in the award of the contract and confirms that was a decision taken by the GLRO, which mitigates any reputational damage arising out of the Statement.
43. I also note the limited duration for which the Statement was in the public domain.
44. Having found that AM Devenish had provided the Statement, I find that he has not breached paragraph 5 of the Code by giving the Statement and therefore find that aspect of the Complaint not proven.

Allegation of breach of paragraph 6. (b) (ii) of the Code

Decision on alleged breach of paragraph 6 (b) (ii) of the Code

45. I find no evidence that AM Devenish, in providing the statement to The Sun, used, or authorised the use by others of, the resources of the Authority, and therefore I find no evidence that GLA resources were used improperly for political or party political purposes.

46. Having found that AM Devenish had provided the Statement, I find that he has not breached paragraph 6. (b) (ii) of the Code by giving the Statement and therefore find that aspect of the Complaint not proven.

Other allegations made in relation to the Statement which is outside of the scope for this complaint

47. General Counsel for the SGO Corporation Limited, in his correspondence, has raised a question of whether there is a case to be made against AM Devenish on the basis of the Selflessness requirement under the Code of Conduct. From a procedural perspective, I am investigating the specific complaint made by Mr Streeting MP which does not raise this issue, and I therefore do not consider it substantively in this Decision Notice. However, I note in passing that there is no allegation that AM Devenish was seeking to make a financial or similar benefit for himself.

Concluding remarks

48. In accordance with section 28(7) of the Localism Act 2011, I have sought and taken into account the views of one of the independent persons appointed by the Greater London Authority for the purposes of section 28. Her comments are attached at Appendix A.

49. This Decision Notice has been sent to the Complainant and AM Devenish on Friday 24 May and is available on the Authority's website.

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

Signed:



Emma Strain
GLA Monitoring Officer
24 May 2019

Appendix A: Statement from the Independent Person

I am one of the Independent Persons appointed by the Greater London Authority.

I was instructed by Emma Strain, the Greater London Authority's Monitoring Officer, on 4 April in respect of complaint brought by Mr Wes Streeting MP against Assembly Member Tony Devenish, on 6 March 2019.

I have been kept informed by the Monitoring Officer throughout her investigation of the complaint. I have received a copy of the complaint, a copy of the correspondence from Assembly Member Devenish on this matter and notes of the interview the Monitoring Officer conducted with Assembly Member Devenish. I have also received a copy of other materials gathered as part of her investigation.

The complaints process describes the role of the Independent Person.

4.5 The role of the independent person(s), in law, is:

- *To give views, which must be taken into account, to the Monitoring Officer before he/she makes a decision on an allegation that he/she has decided to investigate;*
- *To give views, if requested by the Monitoring Officer, on any other allegation that has been received; and*
- *To give views to any member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation.*

In this case I have only been asked to give views to the Monitoring Officer before she takes her decision on the complaint she has investigated.

Having considered all of the material, I have come to the independent conclusion that there has been a breach of para 3(1) by Assembly Member Devenish in providing the Statement.

However, I have concluded that there is no breach of para 5 nor para 6(b)(ii) of the Code of Conduct.

A handwritten signature in black ink, appearing to read 'Suzanne McCarthy', with a large, stylized flourish at the end.

Suzanne McCarthy
21 May 2019