

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

**MONITORING OFFICER DECISION NOTICE:
BREACH OF CODE OF CONDUCT**

GLA Case Reference: November 01/16

Decision

That there has been a breach by Nicky Gavron AM of paragraph 4(a) and paragraph 5 of the Greater London Authority's Code of Conduct.

Complaint

A complaint was made about Nicky Gavron AM, a London-wide Member of the London Assembly.

The complaint was contained in an email sent to the GLA's Human Resources department on 8 November 2016, which stated that the Complainant had been *"informed by a colleague that a call was made to my current employer regarding my application to the GLA. I am very concerned that my employer was contacted when I had not received even an invite to interview, let alone a job offer. It is my understanding that this is a breach in confidentiality. When I submitted my application, I did not give consent for anyone at the GLA to contact or inform my employer that I had made an application or was looking for new career opportunities...I am understandably concerned that the actions taken by the GLA could have a very negative impact on my current employment."*

In a subsequent telephone conversation with a member of staff from the GLA's Human Resources team on 10 November 2016, the Complainant confirmed that she believed that Nicky Gavron AM had made the relevant telephone call to the Complainant's employer.

Code of Conduct and Data Protection Requirements

The GLA's statutory Code of Conduct for Elected Members contains the following provisions:

Paragraph 4 – "You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it; (ii) you are required by law to do so; (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or (iv) the disclosure is—

(a) reasonable and in the public interest; and (b) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law"; and

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

In this context, the Monitoring Officer has noted the following guidance issued by the former ethical standards regulatory body, Standards for England, on the issue of when and how members might bring their office and/or their authority into disrepute:

"Q43: What is "disrepute"?"

In general terms, disrepute can be defined as a lack of good reputation or respectability.

In the context of the Code of Conduct, a member's behaviour in office will bring that member's office into disrepute if the conduct could reasonably be regarded as either: 1) Reducing the public's confidence in that member being able to fulfil their role; or 2) Adversely affecting the reputation of members generally, in being able to fulfil their role.

Conduct by a member which could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties will bring the authority into disrepute...

Q44: What is the significance of the words "could reasonably be regarded"?"

An officer carrying out an investigation about someone allegedly breaking the Code of Conduct does not need to prove that a member's actions have actually diminished public confidence, or harmed the reputation of an authority, in order to show a failure to comply. The test is whether or not a member's conduct "could reasonably be regarded" as having these effects.

This test is objective and does not rely on any one individual's perception. There will often be a range of opinions that a reasonable person could have towards the conduct in question. Members will have failed to comply with the Code if their conduct "could reasonably be regarded" by an objective observer as bringing their office or authority into disrepute."

Furthermore, under the provisions of the Data Protection Act 1998, personal data must be processed¹ only in accordance with the eight data protection principles (schedule 1 of the Act). Those principles relevant in this case are:

Principle 1 – Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in schedule 2 are met.

The relevant schedule 2 condition is that:

The data subject has given their consent to the processing.

¹ 'Processing' is any action or decision taken in relation to personal data.

Principle 2 – Personal data shall be obtained only for one or more specific and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

Principle 7 – Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

Procedure

The approved procedure under which complaints are to be considered is as follows:

“Initial assessment of your complaint

The Monitoring Officer will conduct an initial assessment of all complaints on a case-by-case basis and, in doing this, will also take into account relevant guidance and advice (and may seek the views of an Independent Person appointed by the GLA for such purposes).

The Monitoring Officer will also take into account any relevant criteria and factors that, over the course of time, the GLA’s Standards Committee had previously taken into account when assessing complaints.

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. As an additional example, the failure of an elected Member to respond to correspondence or to choose to terminate correspondence with an individual would also be unlikely in and of itself to be investigated.

After conducting an initial assessment of your complaint, the Monitoring Officer will do one of the following:

- (a) decide that no action should be taken on your complaint (and inform you of this decision and the related reasons); or
- (b) pass your complaint to the Monitoring Officer of a different authority, if he/she considers that that is a more appropriate way of dealing with your complaint; or

- (c) decide that he/she is minded to investigate your complaint, subject to representations of the member you have complained about (who may seek the views of an independent person appointed by the GLA for such purposes); or
- (d) decide to investigate your complaint (and inform you of this decision and the related reasons).

Considering what information should be provided after initial assessment

After the Monitoring Officer has assessed your complaint, he/she will then decide whether a written summary of your complaint should be provided to the Member complained about; whether your identity should be provided to that Member (if this has not already happened). When taking these decisions, the Monitoring Officer must consider whether providing these or any details would be against the public interest or would undermine a person's ability to investigate your complaint (as this may be necessary at a later stage).

How are you told about the Monitoring Officer's decision?

The Monitoring Officer will write to you and the Member you are complaining about following the initial assessment to inform them of the outcome. A decision not to investigate a complaint (along with summary details of the complaint) will then be published on the GLA's website.

A decision of 'no action' is the end of the GLA process

Where the Monitoring Officer has decided that no action should be taken on your complaint, there is no ability to ask the GLA for a review of the Monitoring Officer's decision, which is final. In these circumstances, you may be able to complain to the Local Government Ombudsman (PO Box 4771, Coventry CV4 0EH; Telephone: 0300 061 0614; Fax: 024 7682 0001).

Investigation

In this case, the following actions were undertaken:

August-September 2016	A job description is discussed and agreed between the Head of Office for the Labour Group and the Head of Committee and Member Services (also the Monitoring Officer) – with HR input also – for a new Research and Support Officer post in the GLA's Labour Group team. The purpose of the role is to provide Nicky Gavron AM with both the usual research support and other enhanced support.
11 October	The position is advertised, with a deadline of 25 October.
Late October	It is agreed that the recruitment panel will be comprise of the Head of Office for the Labour Group and the Head of Committee and Member Services (also the Monitoring Officer), with Nicky Gavron AM present as Observer.
27 October	Nicky Gavron AM receives the application forms for the full-time RSO post, with a recommended long-list and short-list provided by the officers. The Complainant's application was on the long-list.
30 October	Nicky Gavron AM (by her own account, in discussion with the Leader of the

	Assembly's Labour Group and then during the investigation process) telephones the Complainant's employer, and discloses the fact that the Complainant had applied for the position at the GLA.
8 November	An email is sent to the Complainant advising that they have not been shortlisted for interview.
8 November	The Complainant emails the GLA's 'glajobs' email address stating that they are 'very concerned that [the] employer was contacted when [the Complainant] had not received even and invite to interview' and that it is their 'understanding that this is a breach in confidentiality.'
10 November	A Member of staff from the GLA's HR team calls the Complainant to understand what happened. The Complainant states that it was Nicky Gavron AM who called her employer.
14 November	The GLA's Recruitment Manager meets the Labour Group's Head of Office to appraise her of the situation.
15 November	The Leader of the Assembly's Labour Group meets with Nicky Gavron AM to inform her there has been a complaint and highlights its serious nature. In that informal discussion, Nicky Gavron AM confirms that she spoke to the employer (only) and, according to the notes of that meeting, recognises she should not have done so.
15 November	The Labour Group's Head of Office writes to the Head of Committee & Member Services about the situation. It is agreed that the HR team would reply to the Complainant and that the interview process will be paused immediately.
16 November	The GLA's Recruitment Manager writes to the Complainant to say 'internal checks' are being conducted to 'better understand what has happened.'
25 November	The GLA's Recruitment Manager writes to the Complainant to update her on 'the steps the GLA is taking', including that 'the Authority's Monitoring Officer is due to commence a formal investigation.' The Complainant is asked if they have any comments or concerns; or if they would like to have a confidential discussion with the Monitoring Officer.' No response is received.
5 December	A further email is sent to the Complainant to check if she has any comments on the proposed next steps. Again, there is no reply.
30 December	The Monitoring Officer, having liaised with the Authority's Independent Persons on the procedure to be followed, writes to Nicky Gavron AM, formally triggering an investigation process. The GLA's Corporate Governance Manager is formally appointed by the Monitoring Officer as investigating officer.
10 January 2017	The Investigating Officer emails the Complainant to ask if they wish to provide input into my investigation. No reply is received. The investigation

proceeds, by taking information and statements from relevant persons.

February 2017 Investigation report provided to Monitoring Officer

Reasons for decision

The Monitoring Officer carefully considered the following:

- The investigation report and detailed statements provided to the Investigating Officer;
- the relevant paragraphs of the GLA's Code of Conduct for Members; and
- the GLA's Data Protection policy and procedures.

In accordance with section 28(7) of the Localism Act 2011, the Monitoring Officer has consulted one of the independent persons appointed by the Greater London Authority for the purposes of section 28, and taken his comments into account.

Having considered Nicky Gavron AM's conduct with regards to the above, the Monitoring Officer is of the view that:

- (a) Nicky Gavron AM is, clearly, a senior and experienced person who has worked in the public sector for many years. It is therefore reasonable to expect her to know what is required in relation to personal information received in a formal recruitment process and, in particular, the need for confidentiality to be applied and maintained throughout such a process. Using that information to contact an applicant's employer without consent is a breach of trust, and a breach of the Authority's rules, which could have serious employment implications for the individual concerned. This is reflected in the requirement set down by paragraph 4(a) of the GLA's Code of Conduct.
- (b) Whilst taking careful account of Nicky Gavron's submissions during the investigation process, including in particular the accessibility issues in relation to properly being able to read the material on the application forms and noting that Nicky Gavron AM may well have made an honest mistake in thinking that the applicant's employer was actually a previous employer, it is not accepted that the disclosure was made in good faith, in the terms referred to in paragraph 4(a) (iv)(b) of the Code of Conduct. It is clear from the investigation process that Nicky Gavron AM contacted an applicant's employer without the applicant's consent, whilst knowing that such disclosures should not take place (whether in relation to a previous or current employer).
- (c) The fact that, having contacted the GLA to make a complaint and to then confirm the information in a subsequent telephone conversation, the Complainant did not participate any further in this process does not detract from the fact that Nicky Gavron AM made an unauthorised disclosure of information that she either knew, or should have known (given her experience), was confidential.
- (d) The Investigating Officer's report to the Monitoring Officer is clear that the unauthorised disclosure of personal data referred to in (a) above represents a potential breach of the Authority's Data Protection rules.

Noting that there was an unauthorised disclosure of confidential information and that this disclosure represents a potential breach of the Authority's Data Protection rules, and noting also the guidance from the former Standards for England regulatory body (quoted above), the Monitoring Officer has concluded that Nicky Gavron AM's actions in this regard could reasonably be regarded as bringing her office and the Authority into disrepute. Although it is not known whether Nicky Gavron AM's actions caused any actual employment implications for the Complainant or actually diminished public confidence or harmed the reputation of her office or the Authority, the question is whether Nicky Gavron AM's actions could reasonably be regarded as having these effects and in this case, the answer must be 'yes'.

For the reasons set out above, the Monitoring Officer has decided that:

1. In relation to the matters set out within this Notice, Nicky Gavron AM breached paragraph 4(a) of the Greater London Authority's Code of Conduct for Elected Members; and
2. In relation to the matters set out within this Notice, Nicky Gavron AM breached paragraph 5 of the Greater London Authority's Code of Conduct for Elected Members.

The Monitoring Officer will provide a copy of this Notice to the Authority's Assistant Director for Human Resources and Organisational Development, as the relevant senior officer in relation to recruitment processes, for consideration as to what further action, if any, may be required in relation to any future participation by Nicky Gavron AM in recruitment activity, including in particular her access to the personal data of applicants for positions at the Authority.

The Monitoring Officer will provide a copy of this Notice to the Authority's Executive Director of Resources, as the relevant chief officer in relation to potential Data Protection breaches, for consideration as to what further action, if any, may be required under the Authority's Data Protection policies in connection with this case.

The Monitoring Officer will finally provide a copy of this Notice to the Leader of the London Assembly's Labour Group, for consideration as to what further action, if any, may be deemed necessary within that party group's structures.

Confidentiality and publication

The Complainant did not confirm that a summary of the complaint could be provided to Ms Gavron AM and could be made available on the Authority's web site; but in taking into account the principles of natural justice and public interest, as well as the general requirement to be transparent and the previous commitments in that regard given by the Authority and Monitoring Officer (upon the establishment of the current Standards regime), the GLA's Monitoring Officer decided that these details should be provided to Nicky Gavron AM as part of this process and should also be published, but without disclosing the Complainant's name or personal details (given the nature of the issues at hand).

This Decision Notice has been sent to the Complainant and Nicky Gavron AM on 21 July 2017.

Right to appeal

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

Signed: Ed Williams, GLA Monitoring Officer

Date: 21 July 2017