

PRIVATE AND CONFIDENTIAL

Case Reference:

Final report of an investigation under Section 59 of the Local Government Act 2000 by Rhian Davies appointed by the Monitoring Officer for Westminster City Council into an allegation concerning Councillors Aziz Toki and Barbara Grahame

DATE: 27th October 2009

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1 Executive summary

- 1.1 In June 2009 the Standards Committee received a complaint from Councillor Caplan alleging Councillors Toki and Grahame had breached the City Council's Code of Conduct. The complaint alleged that Councillors Toki and Grahame had used council facilities in connection with party political matters, produced letters for circulation to the public on a large scale and had sought officers assistance to do so.
- 1.2 The Assessment Sub-Committee of the Standards Committee met on 14th July to consider the complaint and referred the matter to the Monitoring Officer for investigation.
- 1.3 I have considered paragraph 6 of the City Council's Code of Conduct which states that:
- You:
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (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;
 - (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.
- 1.4 Having investigated this matter, I consider that Councillors Toki and Grahame failed to comply with paragraph 6 (a), (b) (i) and (ii) and (c) of the City Council's Code of Conduct.
- 1.5 This report therefore concludes that there is a finding of failure in respect of the allegation that Councillors Toki and Grahame breached the City Council's Code of Conduct.

2 Official details

Councillor Toki

- 2.1 Councillor Toki was elected to office on 4 May 2006 and has been a member ever since.

- 2.2 Councillor Toki currently serves on the following committees: Licensing Committee and Sub Committees and the Community Safety Policy and Scrutiny Committee
- 2.3 Councillor Toki gave a written undertaking to observe the Code of Conduct on 5 May 2006.
- 2.4 Councillor Toki attended a training session on the new Code of Conduct in September 2007.

Councillor Grahame

- 2.5 Councillor Grahame was first elected to office on 5 May 1994, and has been a member ever since having been re-elected most recently on 4 May 2006 for a term of four years.
- 2.6 Councillor Grahame currently serves on the following committees: Planning and City Development Committee; Children and Young People Policy and Scrutiny Committee; the Licensing Committee and its Sub Committees.
- 2.7 Councillor Grahame gave a written undertaking to observe the Code of Conduct on 5 May 2006.
- 2.8 Councillor Grahame attended a training session on the Code of Conduct, provided by the Director of Legal and Administrative Services, in September 2007.

3 The relevant legislation and protocols

- 3.1 The City Council has adopted a Code of Conduct in which the following paragraph is included:

You:

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (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;
 - (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.
- 3.2 During the course of this investigation I have also considered:

- The City Council's Code of Governance for Members,
- The Code of Recommended Practice on Local Authority Publicity,
- The Local Government Act 1986, section 2,
- The Councillor Call for Action Best Practice Guidance, on behalf of Communities and Local Government by the Centre for Public Scrutiny and the Improvement and Development Agency,
- The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, and
- The Interpretation Act 1978

3.3 The relevant extracts of the City Council's Code of Governance (my emphasis added) are:

Section 3 Facilities for Members

Guidelines on the Use of Council Resources

All the expenses of the Authority are met from public funds. Any facility provided, should not, therefore, be used without first considering whether the use to which it is to be put is legitimately a Council purpose as opposed to a private or political purpose. While it is not intended to prevent or hinder in any way Members from carrying out their duties, Members themselves must take account of the distinction between their official duties as Members of the Council and their wider party political role.

Although the Council does provide facilities for political groups to assist them in the discharge of their functions, e.g. the provision of accommodation for group and caucus meetings and the provision of support services for the Leader of the Council and the Leader of the Opposition, the provision of such administrative/clerical support is strictly limited to the internal work of the political group in relation to Council business. While there can be no objection to officers being involved in assisting with the organisation and distribution of material relevant to Council business (e.g. in connection with the organisation of group meetings) it would be inappropriate for officers to be asked to become involved in the distribution of any material which might be regarded as "inappropriate" (for example it would not be appropriate for officers to be asked to distribute material which is disparaging to other Members of the Council).

[For further advice on the above, please contact the Head of Cabinet Support on extension 2015].

Council stationery and photocopying, despatch and postal facilities, wherever provided, are available to provide support to Members of the Council. These services are provided to assist Members in the performance of their official Council duties and with constituent's casework only. They must not be used by Members in connection with party political matters.

Please note: The production of papers and letters for circulation to Members of the public etc on a large scale will not normally be acceptable nor will services be provided on matters which are, in the opinion of the Chief Executive, of a political nature.

Photocopier

The photocopier is not intended to be used for high volume printing and must only be used for a limited amount of copying (up to a maximum of 50 copies of any particular item).

Postal and Despatch Arrangements at City Hall

Members can use this office for the despatch of mail relating to official Council business and casework mail (the Chief Executive can require envelopes to be left open so that the use of the postal and despatch facilities may be monitored). This facility must not be used for mass circulation of individual items nor for party political material.

- 3.4 The relevant extracts of the Code of Recommended Practice on Local Authority Publicity are:

Content and Style

12. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on facts or explanation or both.

Individual Councillors

39. Publicity about individual councillors may include the contact details, the positions they hold in the Council (for example, member of the Executive or Chair of Overview and Scrutiny Committee), and their responsibilities. Publicity may also include information about individual councillors' proposals, decisions and recommendations only where this is relevant to their position and responsibilities within the Council. All such publicity should be objective and explanatory, and whilst it may acknowledge the part played by individual councillors as holders of particular positions in the Council, personalisation of issues or personal image making should be avoided.

40. Publicity should not be, or liable to misrepresentation as being, party political. Whilst it may be appropriate to describe policies put forward by an individual councillor which are relevant to her/his position and responsibilities within the Council, and to put forward her/his justification in defence of them, this should not be done in party political terms, using political slogans, expressly advocating policies of those of a particular political party or directly attacking policies and opinions of other parties, groups or individuals.

- 3.5 The relevant extract from the Local Government Act 1986 is section 2, which states:

2 Prohibition of political publicity

(1) A local authority shall not publish [,or arrange for the publication of,] any material which, in whole or in part, appears to be designed to affect public support for a political party.

[(2) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters—

(a) *whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;*

(b) *where the material is part of a campaign, the effect which the campaign appears to be designed to achieve.]*

(3) *A local authority shall not give financial or other assistance to a person for the publication of material which the authority are prohibited by this section from publishing themselves.*

- 3.6 The relevant extract from the Councillor Call for Action Best Practice Guidance, (my emphasis added) is:

“Westminster City Council has probably gone further than most in the extent to which it has already sought to empower ward members through devolving significant ward budgets of £100,000 to them to spend on a range of projects and functions locally. ...

All of their projects are based on local community surveys and other consultation activities which mean that the ward councillors’ decisions are based on a real understanding of community needs and priorities. This will minimize the possibility of any challenge to their decisions as they can point to a clear evidence base and public consultation. The ward councillors also produce regular newsletters updating local people on progress with ward projects, enhancing local accountability and awareness of what councillors can do for local residents. S236 will enable more councils to consider similar ward councillor empowerment approaches in an even more direct way.”

- 3.7 The relevant extract from The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 is:

Section 4 (4) *To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.*

- 3.8 The relevant extract from Schedule 1 of The Interpretation Act 1978, is:

“Person” includes a body of persons corporate or unincorporate.

4 The evidence gathered

- 4.1 On 6th August 2009, I had a telephone conversation with Councillor Caplan. He advised me that he did not have any further information in addition to his complaint and we therefore agreed that it did not seem necessary to meet in person to discuss it.

- 4.2 I interviewed Councillor Toki on 9th September 2009, Councillor Grahame on 10th September 2009 and conducted a joint interview with

Elaine Furness, Members' Secretary, and Veronica Mockler, the Leader of the Opposition's PA, on 11th September 2009.

- 4.3 In September 2008, December 2008 and April 2009, Councillors Toki and Grahame distributed Church Street Action Reports to a list of known contacts within the Church Street ward. All of these Action Reports made frequent references to "your Labour Councillors, Councillor Toki, Councillor Grahame, the Labour Government and Karen Buck MP".
- 4.4 Additionally the September Action Report referred to:
- 8 bullet points as to what the Labour Councillors (Councillors Toki and Grahame) had achieved in relation to housing matters.
 - "If shops close because they cannot pay steep rent increases, residents will suffer. Whilst we are working to improve Church Street, the Council is acting as a greedy landlord".
 - "Education is a priority for the Labour Government..., Church Street youngsters have had their best exam results ever at their secondary schools at similarly government funded new build Paddington Academy and Westminster Academy, and at Quinton Kynaston which will soon benefit from a £24million government funded redevelopment".
- 4.5 The December Action Report stated:
- "Westminster Council lost £17 million foolishly invested in an Icelandic Bank...your Labour Councillors will always be alert to threats to services that most affect our residents".
 - "...They urged the Council to freeze their rents to help them through this difficult period. Despite this some shopkeepers have received demands for 25% rent increases. The Council must stop acting as a short-sighted and greedy landlord We do not want to see shopkeepers going out of business and a blight of empty shops in the heart of Church Street".
 - "...That does not mean we are satisfied. We [Councillors Toki and Grahame] are pressing for more stable funding for young people's activities, better lighting and prompt response to complaints."
 - "The Labour Government's Extended Schools' initiative has enabled the primary and secondary schools which Church Street Children attend to stay open later".
 - "Playgrounds are being improved with a government grant"
 - "Proposals to build more housing in Poynter House garden are still being proposed despite resident opposition, which we support".
 - "It is therefore very worrying that in Church Street, an area where many children and vulnerable families live in overcrowded conditions, there are not enough child care places for our children. Yet at the same time we know some nurseries have vacancies. ... Councillor Grahame has been visiting nurseries across Westminster and is determined that action must be taken to ensure that every young child in Church Street can attend the nursery provision that is

best suited to their needs. If cost is a problem, subsidies must be available.”

- “In Church Street we do not lack spaces where sport can be provided but we do not get the funds to use the spaces fully”.
- “...but following intervention from Karen Buck MP additional measures are being taken”.

4.6 The April Action Report stated:

- “Your Labour Councillors supported Poynter House residents in their successful campaign to reject the ill-considered proposal for new build on their lawns”.
- “With Karen Buck MP we have been pressing the Council to create more affordable places by offering more subsidy”.
- “Last month we helped welcome Ed Balls, Secretary of State for Children, Schools and Families, and Ministers Yvette Cooper, Beverly Hughes and James Purnell when they visited the Portman Children’s Centre. Children and Parents were unfazed by their important visitors...”.
- “At present passers-by can throw rubbish, including cigarette packages, beer cans and syringes, into the lightwell where children’s play equipment is stored. This is a Council owned property!”
- “Karen [Buck] clarified that through her efforts rent increases would now be around 3% rather than the 6% previously proposed”.
- “In response to pressure from Labour Councillors, CityWest Homes has agreed to install tougher replacement doors...”.
- “Our campaign, with your support, has stopped the Council indiscriminately raising rents by 25% for the shops it owns in Church Street”.
- “We also want the Council to be a better Landlord and maintain its property well”.
- “Having lost £17 million by investing in Icelandic banks, the Council is seeking to make savings in every area. They have just informed us they are removing the hanging flower baskets...”.

4.7 Councillor Grahame drafted these Action Reports on her home computer and obtained input from Councillor Toki. Once the Action Reports were finalised, Councillor Grahame forwarded them to Elaine Furness and asked her to distribute them to the list of known contacts on a database.

4.8 The database was held by Elaine Furness and included names and addresses of people whom Councillor Grahame had previously undertaken casework for and other key people in the Church Street Ward (for example, the Chairman of the Tenants Association etc). The database was not created in order to distribute the Action Reports. When the first Action Report was circulated there were a maximum of 140 addresses on the database, contacts were subsequently added to

it and as at mid September 2009 there were 226 contacts on the database.

- 4.9 In September and December 2008, Elaine Furness printed the Action Reports, photocopied them and together with Veronica Mockler placed them in envelopes with a letter containing Westminster City Council's logo. The letters were produced by mail merge. Elaine Furness then sent the letters out by second class mail via the Council's postal facilities. Veronica Mockler took over the responsibility of copying and distributing the April 2009 Action Report.
- 4.10 Councillor Grahame also personally sent the Action Reports by email to those individuals who had contacted her directly by email. Some individuals are likely therefore to have received the report by email and through the post.
- 4.11 Between them, Elaine Furness and Veronica Mockler, took about 2 hours to distribute each Action Report which totals 6 hours of officer's time for all three Action Reports. For the purposes of this investigation I have applied an hourly rate of £25 for officer's time. I have used this amount in accordance with "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004". Accordingly I have calculated that the total value of officer's time spent assisting in the production and distribution of the Action Reports was £150.
- 4.12 Given that a maximum of 140 Action Reports were sent in September 2008 and as at September 2009 there were 226 reports on the database of contacts, for the purposes of calculating stationery costs I have used a mean of 175. On that basis 175 Reports were sent out on 3 occasions, ie 525 Reports in total. 525 envelopes = £13.35, 525 Westminster logo paper = £5.90, 525 second class franked postage = £131.25 and 1225 double sided photocopying = £5. Accordingly on my calculations the total approximate cost to the Council of producing these reports would have been £305.50.

Councillors Toki and Grahame's comments

- 4.13 Councillor Toki advised me that Councillor Grahame mostly drafted the Action Reports, that he just inputted information to them and that Council officers did not input any information into them. Councillor Toki was unable to comment as to how the Action Reports were actually produced and said that Councillor Grahame would be best placed to advise upon this.
- 4.14 Councillor Toki did not believe that the Action Reports were party political nor that they had been produced with that intention. He said that the Action Reports had been produced in good faith, that they were intended to let people know what was going on and what their councillors were doing for them. He acknowledged that the ward was split a couple of months ago but said that it was never his intention to make this a Conservative/Labour issue – they were just communicating

with their constituents and it was a fact that they (Councillors Toki and Grahame) were Labour councillors.

- 4.15 Councillor Grahame advised me that the purpose of the Action Reports were to inform their constituents of what their Labour Councillors were doing, specifically Councillor Toki and herself. Its primary purpose was not to tell people what Labour had been doing but what their local councillors were doing for their constituents. Councillor Grahame said that in one of the Action Reports she had also championed the London Tigers and that it was well known that Cllr Ahmed, the conservative ward Councillor) was a leading supporter of the Tigers.
- 4.16 When questioned as to why the Action Reports had not been sent out in the names of all 3 Church Street Councillors, Councillor Grahame said that she did not know what Cllr Ahmed was doing. Since she had no idea of his interests or any details of his casework she was, therefore, not in a position to include him in the Action Reports. Councillor Grahame said that she would have loved the Action Reports to be a cross-party newsletter.
- 4.17 Councillor Grahame advised me that prior to Cllr Ahmed's election, it had been a tradition for decades for a Councillors surgery to be held on a Tuesday evening in Church Street. She had asked Cllr Ahmed if she could draw up a rota for the Church Street surgery to include him, but he had advised her that he wanted to do a separate surgery on a Thursday evening. Councillor Grahame said that this shocked her as it meant that there would be two surgeries in Church Street, ie one Conservative and one Labour.
- 4.18 Councillor Grahame said that the Council's Communications Department produce publicity but members of the public are not able to differentiate what the government is doing as opposed to what the Council is doing from that publicity. Councillor Grahame said that, for example in respect of the references to Education in the September 2008 Action Report, she was drawing attention to the fact that they are Labour initiatives.
- 4.19 Councillor Grahame said that she hadn't realised that she had referred to other people, (eg Labour councillors and MPs) quite so much in the Action Reports, it "jumped out at her now", but she also queried how else she could let people know what she did.
- 4.20 Councillor Grahame advised me that she thought it was alright to use the Council facilities to prepare these Action Reports and did not believe that they were party political in that sense. She thought that she was just giving information and did not think she was doing anything wrong. Councillor Grahame said that she could see the point that was being made now but did not think so at the time. Councillor Grahame said that on reflection she could see that the reports could be regarded as party political.

- 4.21 Councillor Grahame advised me that she had not previously seen the *Code of Recommended practice on Local Authority Publicity*, she was therefore unfamiliar with its contents. I also asked Councillor Toki, via email, whether he had seen this particular Code before our interview, he confirmed that he had not.
- 4.22 Councillor Grahame said that the reference to the “Council acting as a short-sighted and greedy landlord” was accurate and not disparaging to other members of the Council. Initially she said that she did not see anything wrong with the use of the terms “short-sighted” and “greedy” however, after some reflection she said that the use of the word “greedy “ could be wrong but, in her view, there was nothing wrong with the use of the word “short-sighted” as there was cross-party agreement on this point.
- 4.23 Councillor Grahame said that, like everyone, she had a view on how things appeared to her, that someone else’s view might differ from hers and that all of these views are subjective. She said that the Action Reports were not a dispassionate report written by officers; it was her description of what her activities had been. She said that everything she had written was factual but could be regarded by others as subjective since she had written it.
- 4.24 Councillor Grahame said that she did not think the style of the Action Reports was offensive. Councillor Grahame criticised the publicity sent out by the Council’s Communications Department as, in her view, it did not accurately reflect everything the Council does so Councillor Grahame felt she had to tell people herself what she was doing as a councillor as the Council wasn’t saying anything detrimental about itself.
- 4.25 Councillor Grahame said that on reflection she could understand that the Action Reports could be regarded as “personal image making” but her intention had only been to set out the part that she had played in the Church Street matters which she had mentioned in the Action Reports. Councillor Grahame also said that she didn’t think that she had promoted herself and stressed that her primary purpose for writing the Action Reports was because she wanted people to know what she was doing rather than promoting herself.
- 4.26 I asked Councillor Toki why the September Action Report had referred to him by name in relation to the presentation of a petition to the Council on Church Street Shop rents. He responded that it was a factual statement, he had presented the petition to the Council and they were simply informing their constituents of that.
- 4.27 Councillor Grahame said that she was unaware as to whether the Conservatives were also sending out newsletters and so couldn’t say whether she was gaining an advantage for herself or simply informing

her constituents what she had done. As far as she was concerned the Action Reports were an information tool and not written in order to confer an advantage or disadvantage upon anyone. Councillor Grahame referred to the IDeA publication which states that Councillors are supposed to let people know what they do. She said that as a Councillor she feels obliged to let people know what she is doing.

- 4.28 I asked Councillor Grahame how she would react were the Conservative ward Councillor to circulate material of a similar nature. She replied that she would probably think what a good idea and ask herself why she wasn't doing the same. Councillor Toki also said that he would not mind if the Conservative Councillor produced something similar. He said that their constituents had a right to know what's going on.
- 4.29 Councillors Toki and Grahame believed that no more than 200 Action Reports had been distributed. Neither of them felt that the distribution of the Action Reports was "large-scale" as referred to in the Council's Code of Governance. Councillor Grahame said that she did not know what the Council's view was on what constitutes a "large-scale" and said that she had previously written to up to 50 residents on 3 separate occasions about a specific issue which amounted to 150 letters. In view of that, Councillor Grahame's view was that 200 was not large-scale.
- 4.30 Councillor Grahame said that had someone alerted her to the possibility that the Action Reports could breach the Code of Conduct, or had criticised the style and contents of the Action Reports, she would have happily modified them, drafting them in light of the guidance provided. However, Councillor Grahame maintained that the use of the word "short-sighted" was acceptable.
- 4.31 Councillor Toki felt strongly that they should have been advised earlier if the Action Reports were considered to be inappropriate. It was only after all three Action Reports had been circulated that a complaint had been made. Only at that point was Councillor Toki made aware that there might be a problem. Councillor Toki had thought that since no-one had commented upon the Action Reports they were acceptable.
- 4.32 Neither Councillor Toki or Grahame felt that they had used their positions improperly.

5 Summary of the material facts

- 5.1 Councillors Toki and Grahame drafted Church Street Action Reports in September 2008, December 2008 and April 2009. These Action Reports were forwarded to a Council officer who arranged for them to be printed, copied and distributed to addressees who had had previous

contact with either Councillor. This resulted in an approximate cost of £305.50 to the Council.

- 5.2 The Action Reports frequently referred to “your Labour Councillors, Councillor Toki, Councillor Grahame, the Labour Government and Karen Buck MP”. The Action Reports did not refer to any work undertaken by the Conservative Ward Councillor but instead reported only on those actions taken by the Labour ward Councillors. The Action Reports also contained criticism of some of the Council's policies and drew attention to successful initiatives of the Labour Government.
- 5.3 On 2nd June 2009, Councillor Caplan submitted a complaint to the Standards Committee (c/o the Monitoring Officer) alleging that Councillors Toki and Grahame's conduct may constitute a breach of the Code of Conduct by virtue of using Council resources for party political matters.

6 Additional submissions

- 6.1 Both Councillors Toki and Grahame informed me that Councillors are already personalised on the Council's website since they are identified as being either Conservative or Labour and that their visiting cards also identify them as such. I do not consider that this is relevant to this investigation since the website and Council produced visiting cards are intended for identification purposes and not to gain political support.
- 6.2 Councillor Grahame drew my attention to the 'Councillors Guide 2009/10' published by the IDeA as it states that Councillors should be proactive and make it their job to tell people what is going on”. I do not consider that this is relevant to the investigation since there is nothing in the IDeA guidance which supports the use of public money for party political purposes. The IDeA guidance considers that the level of resources which a local authority should provide to Councillors to assist them in fulfilling this part of their role is an decision for each individual authority to make. The Council's decision on this matter is reflected in the Code of Governance.
- 6.3 Councillor Toki did not feel that there had been any inappropriate use of officers. He said that he always used the same officer for assistance with correspondence. I do not consider that Councillor Toki's reasoning that he had always used the same officer to assist him with administrative matters is relevant to the investigation since it does not address whether the use of that officer's time was spent on official Council business.

7 Reasoning as to whether there have been failures to comply with the Code of Conduct

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

7.1 In order to consider whether Councillor Toki and Grahame have breached paragraph 6 (b) (i) of the Code of Conduct it is necessary to form a view as to whether or not the Action Reports could be considered as “party political”.

7.2 Section 2 of the Local Government Act 1986, states

...A local authority shall not publish (or arrange for the publication of,) any material which, in whole or in part, appears to be designed to affect public support for a political party.

In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters—

(a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;...

7.3 In my view the content and the style of Action Reports must be considered as inappropriate in a Council publication for the following reasons:

- Despite Church Street being a split ward, the Action Reports refer only to the work of the Labour Councillors. No attempt was made to inform the Church Street constituents as to the actions of Councillor Ahmed (the Conservative party ward member) during this period.
- In addition to the above, the Action Reports frequently refer to the “Labour Party and Government and Karen Buck MP”.
- The Action Reports appear to promote the Labour Party over the conservative party and are in my view clearly written by a Labour Party Supporter.
- By making references to, for example, the Council as a “greedy and short-sighted Landlord” and “indiscriminately raising rents” it is clear that Councillors Toki and Grahame opposed the Council’s position on the Church Street Shop Rents which was politically controversial at the time. Even if the words “short-sighted, greedy and indiscriminately” were deleted from the updates on shopkeepers rents, the text would still be regarded as political statements as they are clearly written by one party opposing the politically controversial policies of another.
- A further example of the political and emotive language found within the Action Reports is - “It is therefore very worrying that in Church

Street, an area where many children and vulnerable families live in overcrowded conditions, there are not enough child care places for our children. Yet at the same time we know some nurseries have vacancies. ...Councillor Grahame has been visiting nurseries across Westminster and is determined that action must be taken to ensure that every young child in Church Street can attend the nursery provision that is best suited to their needs. If cost is a problem, subsidies must be available.”

- The style and contents of the Action Reports, in particular those extracts referred to in paragraphs 4.4 – 4.6 above, would more usually be found in party political flyers/newsletters. Such publications would be funded by the political party publishing them as it is a breach of section 2 (as above) for a local authority to do so.
- Since the majority of the recipients of the Action Reports would be aware that the Council has a conservative majority, criticism of the Council policies could be regarded as a political attack on the local conservative party.
- At interview Councillor Grahame said that she had to tell people herself what she was doing as a Councillor; the Council wasn't saying anything detrimental about itself; and that since the Council's Communications Department made no distinction between what was a Council or Government initiative she had to let people know that, for example, Education matters reported in the September Action Report were Labour initiatives. By virtue of seeking to inform recipients of the Action Reports that the education initiative is a Labour Government initiative, in my view the Action Reports are to be regarded as material seeking to affect support for a political party. In a newsletter published by the Council, it should be irrelevant as to whether such initiatives are those of the Labour Government or local Conservative party.
- The Action Reports were first published in September 2008, ie within 2 months of the Church Street Ward bi-election (24th July 2008) which resulted in the Ward becoming split, ie 2 Labour Councillors and 1 Conservative Councillor.

7.4 Accordingly, given the contents, style and also the timing of the first publication of the Action Report, I have concluded that the Church Street Action Reports were of a party political nature.

7.5 It is however worth noting that Councillor Grahame was able to see that on reflection the reports could be regarded as party political but that it had not been her intention from the outset. Indeed both Councillors Toki and Grahame indicated that they would have amended the Action Reports had they been alerted to any potential breaches at an early stage.

You must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986. [Paragraph 6 (b) (ii)]

- 7.6 The Code of Recommended Practice for Local Authority Publicity is in this instance the “applicable” Code. Since Councillor Grahame had not previously seen this Code she was therefore unable to have had regard to it. I also asked Councillor Toki, via email, whether he had had sight of this Code prior to our meeting on the 9th September. He confirmed that he had not.
- 7.7 I therefore conclude that Councillors Toki and Grahame breached this part of the Code of Conduct but did so unknowingly since they had not previously had sight of the “Code of Recommended Practice for Local Authority Publicity” and were therefore unable to have regard to it. This therefore raises a question as to how many other councillors are aware of this Code and whether it ought to be brought to their attention in future training sessions on the Code of Conduct.
- 7.8 In particular I consider that they did not give regard to paragraphs 12, 39 and 40 of the “Code of Recommended Practice for Local Authority Publicity”. Those paragraphs can be found at paragraph 3.4 above and refer to the content and style of the publicity and “personal image” making.
- 7.9 I have already referred to the contents and style of the Action Reports in paragraph 7.3 above and do not consider it necessary to repeat those comments. However, in relation to the possibility that Councillors Toki and Grahame were “personal image” making, having regard to the fact that the Action Reports were Council Publications I consider that it was inappropriate that the Action Reports referred only to the work of each Labour Councillor and failed to acknowledge the work of Councillor Ahmed.
- 7.10 Again, it is worth noting that Councillor Grahame made it clear that had she been told that the Reports were potentially in breach of the Code of Conduct she would have redrafted them taking into account the various codes and guidance that had been brought to her attention.

You must, when using or authorising the use by others of the resources of your authority act in accordance with your authority’s reasonable requirements; [Paragraph 6 (c)]

- 7.11 The City Council’s “reasonable requirements” are set out in the Code of Governance. The relevant extracts of that Code can be found in paragraph 3.3 above.
- 7.12 Councillors Toki’s and Grahame’s views are that the Action Reports are information tools, ie to inform their constituents of their work on Church Street matters. Neither of them had considered that it was wrong to

use Council resources to assist in the production and circulation of these Action Reports as they had, at least at that stage, not considered them to be party political material. Councillors Toki and Grahame are both regretful that no one had alerted them to any offending matters in the Action Reports at an earlier stage in order that they may have addressed the concerns, in accordance with the guidance available.

- 7.13 In my view Councillors Toki and Grahame failed to act in accordance with the Council's Code of Governance. For example the Code states that

"it would be inappropriate for officers to be asked to become involved in the distribution of any material which might be regarded as "inappropriate" (for example it would not be appropriate for officers to be asked to distribute material which is disparaging to other Members of the Council)."

- 7.14 I consider that the references to the council being a "greedy and short-sighted" landlord and having "foolishly invested" in Icelandic banks are disparaging comments to the council as a whole. It therefore follows that the request for council officers to assist with the production and circulation of this report is to be deemed "inappropriate".

- 7.15 I have already concluded above that the Action Reports were party political material. Accordingly Councillors Toki and Grahame did not act in accordance with the Council's reasonable requirements by using council facilities to produce and circulate the Action Reports since the Code of Governance states "Council stationery and photocopying, despatch and postal facilities,...must not be used by Members in connection with party political matters."

- 7.16 Councillors Toki and Grahame both advised me that the Action Reports were not circulated on a large scale, they understood that a maximum of 200 copies had been circulated. Elaine Furness, member's secretary, advised me that no more than 140 copies were circulated of the September 2008 Action Report. By mid September 2009 there were 226 names on the distribution list, however since the Action Reports had not been circulated since April 2008 it is reasonable to suggest that no more than 200 copies of the Action Reports were produced at any one time.

- 7.17 The Code of Governance states that "the production of papers and letters for circulation to members of the public etc on a large scale will not normally be acceptable." Neither Councillor Toki or Grahame considered that 200 copies constituted "large scale". Councillor Grahame said that she was unaware as to what the Council itself considered as "large-scale", indeed this is not defined in the Code of Governance. However, the Code of Governance does state that "The photocopier is not intended to be used for high volume printing and must only be used for a limited amount of copying (up to a maximum of 50 copies of any particular item)." This extract refers specifically to the photocopier in the Member's room. In the absence of clear guidance

as to what constitutes “large-scale”, regard should have been given to the guidance that Members must only use their photocopy to a maximum of 50 copies.

- 7.18 Finally the Action Reports were posted second class via the Council’s post room. The Code of Governance entitles members to use the Council’s post room for “the despatch of mail relating to official Council business and casework mail.” Although Councillors Toki and Grahame are of the view that the Action Reports were “official Council business”, given the content of those Action Reports and the lack of involvement from the Conservative Ward Councillor, in my view they cannot be regarded as official Council business. Additionally the Code of Governance states that “this facility must not be used for mass circulation of individual items nor for party political material.” Given my earlier conclusion that the material is “party political” then the use of the Council facilities to despatch the Action Reports is a breach of the Code of Governance.
- 7.19 Accordingly for all of the reasons set out above, I consider that the use of Council facilities by Councillors Toki and Grahame for the production and circulation of the Action Reports was a breach of the Council’s Code of Governance. Accordingly Councillors Toki and Grahame breached the Council’s Code of Conduct as they did not act in accordance with the Council’s reasonable requirements when using Council resources.
- 7.20 It is however worth raising that the “Councillor Call for Action Best Practice Guidance” issued by the Centre for Public Scrutiny and the Improvement and Development Agency on behalf of Communities and Local Government congratulated Westminster City Council for its use of “ward budgets”. The guidance stated that “...The Ward Councillors also produce regular newsletters updating local people on progress with ward projects, enhancing local accountability and awareness of what councillors can do for local residents...” Arguably this guidance therefore raises the question as to whether the Council ought consider whether facilities should be provided to produce ward newsletters.

You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; [Paragraph 6 (a)]

- 7.21 When considering the meaning of the word “person” in the paragraph above, I have used the definition contained within Schedule 1 of the Interpretation Act 1978, ie
- *“Person” includes a body of persons corporate or unincorporate.*
- 7.22 Councillors Toki and Grahame told me that the main purpose of the Action Reports were to inform their constituents as to what they had been doing in their role as (Labour) Councillors, they regarded them as “information tools”.

- 7.23 Councillor Grahame said that she would “love to” have drafted the Action Reports as a cross party document. At interview Councillor Grahame was clearly upset that Councillor Ahmed had refused the invitation to participate in the Tuesday night surgeries preferring to hold his own surgery on a Thursday night.
- 7.24 The Council’s Code of Conduct does not expressly refer to Section 2 of the Local Government Act 1986, but since it is unlawful for the Council to publish material in contravention of Section 2, if an individual member uses Council resources to produce publicity material in contravention of Section 2 that would be using the Council’s resources “improperly” for the purposes of the Code of Conduct. In that regard Councillors Toki and Grahame have therefore used the Council’s resources improperly.
- 7.25 The Action Reports were only circulated to those individuals with whom Councillors Toki and Grahame had had previous contact and were not sent to all constituents within the Church Street ward.
- 7.26 Given that I have concluded in paragraph 7.3, that the Church Street Action Reports are Party Political material, it therefore follows that Councillors Toki and Grahame nonetheless improperly used their position as members to secure an advantage for themselves (and/or the Labour Party) and/or to disadvantage another person (or the Conservative Party), albeit without malice. I therefore consider this to be a “technical” breach of paragraph 6 (a).
- 7.27 Accordingly I consider that Councillors Toki and Grahame breached paragraph 6 (a) of the Council’s Code of Conduct by circulating the Action Reports.
- 7.28 I discussed my finding in relation to paragraph 6 (a) with the Standards Board for England. They advised me that they had never used paragraph 6 (a) in circumstances similar to this complaint. In their view, where paragraph 6 (b) (i) and (ii) and (c) adequately deal with the alleged breach in conduct, pursuing a breach under paragraph 6 (a) would not add anything and could be considered as too oppressive.

8 Findings

- 8.1 In September 2008, December 2008 and April 2009, Councillors Toki and Grahame drafted “Church Street Action Reports”. These Action Reports were forwarded to a Council officer who arranged for them to be printed, copied and distributed to addresses who had had previous contact with either Councillor. This resulted in an approximate cost of £305.50 to the Council.

- 8.2 The Action Reports provided an update as to what the Labour Councillors had done in Church Street, made frequent references to “your Labour Councillors, Councillor Toki, Councillor Grahame, the Labour Government and Karen Buck MP” but did not refer to any work undertaken by the Conservative Ward Councillor. The Action Reports also contained criticism of some of the Council’s policies and drew attention to Labour Government initiatives.
- 8.3 On 2nd June 2009, Councillor Caplan submitted a complaint to the Standards Committee (c/o the Monitoring Officer) alleging that Councillors Toki and Grahame’s conduct may constitute a breach of the Code of Conduct by virtue of using Council resources for party political matters.
- 8.4 Having carefully considered section 2 of the Local Government Act 1986 and the Code of Recommended Practice on Local Authority Publicity, I am of the view that the Church Street Action Reports are material of a Party Political nature. I have reached this conclusion since in my view the Action Reports are not apolitical, they make no references to the work of the Conservative ward Councillor but make numerous references to the Labour Party, Labour Councillors and Karen Buck MP, and disparaging comments on the Council’s policies.
- 8.5 There is a finding of failure as Councillors Toki and Grahame have breached the Council’s Code of Conduct in relation to paragraph 6 (a), (b) (i) and (ii) and (c), ie,
You:
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (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;
 - (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.