

Merton Council

Standards and General Purposes Committee Agenda

Membership

Councillors:

Peter McCabe (Chair)
Janice Howard (Vice-Chair)
Agatha Mary Akyigyina
Adam Bush
Stephen Crowe
John Dehaney
Mary-Jane Jeanes
Ian Munn BSc, MRTPI(Rtd)
Gregory Patrick Udeh
David Williams
Mike Brunt
Martin Whelton

Substitute Members:

Michael Bull
Sally Kenny
Oonagh Moulton
Imran Uddin

Date: Tuesday 9 May 2017

Time: 7.15 pm

Venue: Committee rooms C, D & E - Merton Civic Centre, London Road,
Morden SM4 5DX

This is a public meeting and attendance by the public is encouraged and welcomed.
For more information about the agenda please contact or telephone .

All Press contacts: press@merton.gov.uk, 020 8545 3181

Standards and General Purposes Committee Agenda

9 May 2017

- 1 Apologies for Absence
- 2 Declarations of Pecuniary Interest
- 3 Independent Investigators Report 1 - 30

Note on declarations of interest

Members are advised to declare any Disclosable Pecuniary Interest in any matter to be considered at the meeting. If a pecuniary interest is declared they should withdraw from the meeting room during the whole of the consideration of that matter and must not participate in any vote on that matter. If members consider they should not participate because of a non-pecuniary interest which may give rise to a perception of bias, they should declare this, withdraw and not participate in consideration of the item. For further advice please speak with the Assistant Director of Corporate Governance.

Committee: Standards and General Purposes Committee

Date: 9th May 2017

Wards: n/a

Subject: Independent Investigators Report

Lead officer: Paul Evans – Monitoring Officer

Lead member: n/a

Contact officer: Paul Evans – 0208 545 3338

Recommendations:

That the Standards and General Purposes Committee consider the report of Richard Penn, the Independent Investigator, into complaints made against Cllr Stephen Alambritis and agree the recommendations.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. A report to present to the Standards and General Purposes Committee the investigation report of Richard Penn, the Independent Investigator appointed to investigate complaints referred for investigation concerning Cllr Stephen Alambritis.

2 DETAILS

- 2.1. The Council's Constitution sets out the procedure for the consideration of complaints made concerning members conduct further to the Localism Act 2011. A copy of the Council's Code of Conduct is attached at appendix 1 for ease of reference.
- 2.2. The Standards and General Purposes Committee on 5th December 2016 considered complaints made in respect of Cllr Alambritis and decided the issues raised did merit formal investigation. Richard Penn from Solace Enterprise was appointed the Independent Investigator to carry out the investigation. Richard Penn is the ex chief executive of Bradford Council, was the Commissioner for Standards for the Welsh Assembly, and has considerable experience of conducting investigations of this type.
- 2.3. Richard Penn's report is attached at Appendix 2 for consideration. In summary his conclusions and recommendations are set in in paragraphs 2.4-2.9 as follows:
- 2.4. "Having considered all of the available evidence **my conclusion is to confirm that Councillor Alambritis did breach the Council's Protocol on the Use of Resources**, a breach for which he has already apologized. The Council has confirmed that the costs involved have been fully refunded.
- 2.5. **My finding is that Councillor Alambritis has not breached the Council's Code of Conduct in relation to its requirements for 'leadership' or 'objectivity'.**

2.6. **Recommendation 1**

2.7. that Councillor Alambritis should consider making a formal apology to the Standards and General Purposes Committee for his action in initiating the Labour Party consultation, an apology that recognises that not only did the Labour Party letter cause confusion among many of its recipients but that it also damaged trust and confidence in the Council generally and specifically in him as Leader of the Council.

2.8. **Recommendation 2**

2.9. that the requirements of the Protocol on the Use of Council Resources rules are reinforced generally with the political groups and those who support them, and specifically that the rules on the use of the Council's Business Reply service are reinforced to avoid any repetition in the future.

3 CONSIDERATIONS OF THE MONITORING OFFICER AND THE INDEPENDENT PERSON

3.1. Further to the procedure the Monitoring Officer and Derek Prior, the Council's Independent Person consider that the report should be referred to the Standards and General Purposes Committee for consideration with a recommendation that the report does not reveal findings that require a hearing. The report makes recommendations in relation to appropriate action required which the Standards and General Purposes Committee are recommended to accept.

3.2. The meeting of the Standards and General Purposes Committee will be open to the press and public unless confidential or exempt information under Part VA Local Government Act 1972 is likely to be disclosed.

4 ALTERNATIVE OPTIONS

4.1. The Standards and General Purposes Committee may consider that the report does contain findings that merit a hearing of the complaints in the circumstances. This is not recommended by the Monitoring Officer or the Independent Person as set out above. The Committee should set out clearly any reasons for such a decision if members are so minded.

5 CONSULTATION UNDERTAKEN OR PROPOSED

5.1. Consultation in the preparation of the investigation report has been undertaken with complainants, members involved and the Council's Independent Person.

6 TIMETABLE

6.1. N/A

7 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 7.1. A formal investigation and hearing before the Standards Committee of a complaint would result in costs of between £5,000 and £10,000 to be paid from the Monitoring Officers budget.

8 LEGAL AND STATUTORY IMPLICATIONS

- 8.1. The Council's complaints process is set out in the Constitution and complies with the provisions of the Localism Act 2011.

9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 9.1. The Council's complaints hearing process complies with the requirements of natural justice as required by the Human Rights and equalities legislation.

10 CRIME AND DISORDER IMPLICATIONS

- 10.1. N/A

11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 11.1. N/A

12 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – Council's code of conduct
- Appendix 2 – report of the independent investigator Richard Penn

13 BACKGROUND PAPERS

- 13.1. Report to the Standards and General Purposes Committee 5th December 2106.

This page is intentionally left blank

Part 5 – A

CODE OF CONDUCT

1 Introduction

- 1.1 This code applies to elected councillors and statutory co-opted members of Merton Council.
- 1.2 As a member, or co-opted member of Merton Council, I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.
- 1.3 In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.
- 1.4 The Act further provides for registration and disclosure of interests and in Merton Council this will be done in accordance with guidance issued by the Standards Committee.

2 Principles

2.1 Selflessness

- Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

2.2 Integrity

- Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

2.3 Objectivity

- In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Constitution Part 5-A - Code of conduct

2.4 Accountability

- Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

2.5 Openness

- Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

2.6 Honesty

- Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

2.7 Leadership

- Holders of public office should promote and support these principles by leadership and example.

3 Commitment

- 3.1 I agree to behave in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.

APPENDIX 2

Merton Council

**Investigation into standards complaints against
Councillor Stephen Alambritis**

Report of Independent Investigator

March 2017

Richard Penn

Independent Investigator

Contents		Page
1	Introduction and background	3
2	My investigation into the complaints	6
3	My findings	10
4	Potential breaches of the Code of Conduct	11
5	The Council's Protocol on the Use of Resources	15
6	Recommendations	21

1 Introduction and background

- 1.1 I was appointed through 'SOLACE In Business' (of which I am a Senior Associate) by the Monitoring Officer of Merton Council in January 2017 to conduct an investigation into Members' Code of Conduct complaints that had been made about the conduct of Councillor Stephen Alambritis, the Leader of the Council.
- 1.2 The Council's Constitution sets out the procedure for the consideration of complaints made concerning the conduct of members further to the Localism Act 2011. The procedure provides that the Monitoring Officer will review every complaint received to confirm that it has been made against a serving member and that it is in relation to an alleged breach of the Code of Conduct. The Monitoring Officer informs the member against whom a complaint has been made and gives the member the details of the complaint.
- 1.3 In order to establish a preliminary view of the circumstances of the complaint and whether there may be a course of action which could be taken to resolve the issues promptly without the need for formal action, the Monitoring Officer may consult or meet with any other relevant persons, which may include the Leader of the Council or Group Leaders, the Chief Executive or any other officers, the complainant and the member against whom the complaint has been made.
- 1.4 The Monitoring Officer will then consult with the Council's Independent Person and decide whether the complaint merits formal investigation. This decision will normally be taken within 14 days of receipt of the complaint. The complainant and the member against whom the complaint is made will be informed of the Monitoring Officer's decision and the reasons for that decision.
- 1.5 In assessing whether a complaint should be investigated the following factors will be taken into consideration:
 - Public interest – the decision whether to investigate will be a proportionate response to the issues raised and expected outcomes will take into account the wider public interest and the costs of undertaking an investigation. Complaints will only be investigated where the allegations are reasonably considered to be serious matters.
 - Alternative course of action – a complaint will only be investigated where there is no other action which could be taken which would achieve an appropriate outcome in the circumstances of the case.

- Member's democratic role – where a complaint relates to a matter more appropriately judged by the electorate at the local elections, the Monitoring Officer will not normally refer these matters for investigation.
- Previous action - if the complaint has already been subject to a previous investigation or some other action relating to the code of conduct or other related process, the matter will ordinarily not be referred for further action
- Vexatious/repeated complaints – the Monitoring Officer will not refer for investigation a complaint that is the same or substantially the same as one previously made by the complainant.
- Timing of the alleged conduct – if there are significant delays between the incident complained of and the complaint the matter will not ordinarily be considered further unless there are very good reasons for the delay.
- Ulterior motive – no further action is likely to be taken if the complaint is considered to be motivated by malice, political motivation or retaliation.

1.6 In appropriate cases the Monitoring Officer, in consultation with the Independent Person, may consider resolution of the complaint without the need for a formal investigation. This may involve:

- the member accepting that his/her conduct was unacceptable and offering an apology or other remedial action by the authority
- referring the matter to Group Leaders or officers
- the member being required to attend training
- the member being required to meet with the Monitoring Officer and/or other relevant officers
- or such other action as is considered appropriate by the Monitoring Officer and Independent Person

1.7 In this case, as the complaints concerned the Leader of the Council and Councillors Uddin, Pearce and Neil, a report was submitted to the Council's Standards and General Purposes Committee to consider the complaints with a recommendation by the Monitoring Officer and Council's Independent Person that the complaints merited formal investigation. It was the Monitoring Officer's view and the view of the Council's Independent Person, Derek Prior, that the circumstances were

'exceptional' as provided for in the Council's Complaints Process. The decision of the Committee at its meeting on 13 December 2016 was that

the complaints against the Leader of the Council should be formally investigated by an independent investigator.

- 1.8 Councillors Uddin, Pearce and Neil accepted that the letter distributed in their name could have been more appropriately written although they did consider that Councils should be able to communicate with local residents. They were of the view that the letter promoted engagement with the Council's consultation exercise and they did not appear to be aware that a Council Business Reply Service had been used. The Committee agreed that the complaint in respect of Councillors Uddin, Pearce and Neil did not merit formal investigation primarily because there is no suggestion that they were responsible for the letters involved. Rather they appeared to have offered their support to the Leader and the Labour Party. It was agreed that the Councillors should receive advice on the use of Council resources and political correspondence.

2 My investigation into the complaints

- 2.1 The context for my investigation had been established by the previous consideration of the matter by the Monitoring Officer and the Independent Person, and the decision of the Standards and General Purposes Committee that the seriousness of the matter warranted an independent investigation.
- 2.2 Between 18 October 2016 and 4 November 2016 seven formal complaints were received by the Council concerning a letter and consultation questionnaire in relation to Council Tax. The complaints concerned a letter delivered in the St Helier Ward from '*Your St Helier Labour Councillors*' and headed '*Urgent: Consultation on Council Tax increase - please read now*' and signed off by '*Cllr Stephen Alambritis – Leader of Merton Council*' and by Cllr Imran Uddin, Cllr Jerome Neil and Cllr Dennis Pearce, the Ward Councillors. The timing of this correspondence was seen to be significant as the Council was itself conducting a consultation exercise '*Have your say on council tax and council spending*' with consultation forms included in '**My Merton**' and online.
- 2.3 The complaints by the seven individuals were that:
- in a period of public consultation information sent by councillors should be presented in a fair, impartial and objective way. The letter is claimed to be offensive and discriminatory to disabled people by not mentioning them
 - a councillor may hold a view, but in a period of consultation it should not be decisive or fixed
 - councillors have acted far below what would be considered good conduct, during a period of public consultation. Councillors have caused potential to skew public opinion.
 - the Leader of the Council had written to residents whilst there was an on going council consultation exercise. The Leader should be objective and impartial and should not seek to impose his view in a ward that is not his own. The Leader should have ensured a balanced letter which was non discriminatory. It was offensive to disabled people to not mention them. It was an abuse of power to send such a letter at that time
 - the Leader was making it clear that he had made up his own mind and that the results of the consultation could be ignored.
 - the Leader's letter was an intervention in a consultation process paid for by the Council and brings into question the validity of the exercise
 - the letter appeared to jeopardise the integrity of the official Council consultation on the level of council tax.
 - whilst the letter was a matter for the Leader and he is entitled to express his view, the response form is a matter of concern.

The form is described as “bogus” and has different questions to the official Merton form.

- residents were required to state their names and addresses
- the impression given by the Leader was that the consultation outcome would determine if the council tax was raised. The letter appears to preempt this decision.
- the Council’s public consultation had been undermined as the Leader was party to another consultation exercise and failed to distinguish it from the Council’s consultation
- there was no indication in the Leader’s letter that this was not the Council’s survey and there would be an assumption any details would only be seen by Council officials
- the Council consultation was undermined and the Council brought into disrepute by the deceptive manner in which the exercise had been done
- residents would think that they had taken part in the Council consultation when in fact they have not
- Council resources have been used in a non Council consultation
- the Leader had failed to work constructively with partner agencies

2.4 In line with the Complaints Process the Monitoring Officer and the Independent Person met to consider if these seven complaints merited formal investigation. The provisions of the Code of Conduct and the Council’s Protocol on the Use of Resources which could have been breached were considered to be the following:

The Code of Conduct

Paragraph 1.3

‘In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.’

Paragraph 2.7 (Leadership)

‘Holders of public office should promote and support these principles by leadership and example.’

The Council’s Protocol on the Use of Resources at paragraph 7.2 states that:

‘The Council’s facilities are not available for ward-wide mail shots, the distribution of leaflets or the posting of general information to constituents other than in the circumstances described above. They are also not available for posting any

material which could not lawfully be printed by the Council. In considering those issues members should seek the views of officers above there is doubt.'

The Council received nearly 3,000 business replies for the forms received under licence number SEA 8368, at a cost of 0.38p per item totalling over £1,000. As soon as it became clear that this was a Council business reply service the Leader immediately gave an apology and gave a commitment that any cost to the Council would be reimbursed.

2.5 Having considered the complaints made and the views of the relevant councillors including the response of the Leader, the shared view of the Monitoring Officer and the Independent Person was that the complaints in respect of the Leader merited formal investigation as they were reasonably considered to be serious matters for the following reasons:

- i. the consultation exercise carried out by the Leader did not present a clear picture to the public that the exercise was a party political exercise and, as a result, could be considered to have diminished public confidence in the Council's own consultation process and the Council to carry on business.
- ii. the use of Council resources through a pre-paid business reply service addressed to the Council's Communications team by the Leader and political party had cost the Council in excess of £1000. This was notwithstanding that an apology has been provided by the Leader to the Committee along with a commitment to reimburse the Council.
- iii. the data management issues created by the collection of personal data and delivery to the Council could have a negative impact on public confidence in the Council.

2.5 They took the view that councillors are entitled to correspond with residents setting out their own views on matters, even if this is in a consultation period. This is something which residents are used to and is an accepted part of local politics. Their view was that the letter was part and parcel of local politics. Other examples were available of political parties writing leaflets to residents in the same period and no complaints have been made. However, the letter had been accompanied by a consultation form and a Council Business Reply Service mailer. These documents together resulted in the complaints being made because they provided a link between the 'political' letter

and political considerations, and possible confusion with a non-political Council consultation on the same subject. 3,000 people posted a letter to the Council using Council resources as a result of this political exercise.

2.7 I interviewed the following individuals in relation to my standards investigation:

- Sally Burns (complainant)
- Jeanette Townley (complainant)
- Tristan Wood (complainant)
- Mariette Akkermans (complainant)
- Sally Phillips (complainant)
- Councillor Hanna (complainant)
- Peter Walker (complainant)
- Ged Curran, Chief Executive of Merton Council
- Mark Humphries, AD Infrastructure and Transactions, Merton Council
- Keith Bartlett, Post and Print Room Manager, Merton Council
- Councillor Stephen Alambritis, Leader of Merton Council

2.8 I had been provided with a copy of the Monitoring Officer's report to the Standards and General Purposes Committee at its meeting on 13 December 2016 which included as Appendices copies of each of the seven complaints as well as the response of the Councillor Alambritis, the Leader of the Council, who was the subject of these complaints. The purpose of my interviews was to obtain further information and views from each of the complainants, to understand the way the relevant officers of the Council had dealt with the matter and to obtain a further response to the complaints from the Leader of the Council.

2.9 I provided each interviewee with a draft note of the main points covered at the interview and then produced an agreed note of each interview following any necessary amendment to the draft note. As well as elaborating on the complaints that were set out in the appendices to the Monitoring Officer's report each complainant was asked what remedy they were seeking to their complaint.

2.10 I have extracted from these agreed interview notes relevant points that the complainants considered needed to be considered by myself as the investigator and by the Standards and General Purposes Committee.

3 My findings

- 3.1 The context for my investigation had been established by the previous consideration of the matter by the Monitoring Officer and the Independent Person, and the decision of the Standards and General Purposes Committee that the seriousness of the matter warranted an independent investigation.
- 3.2 In particular the following reasons were given as the basis for concluding that an independent investigation was warranted :
- i. the consultation' exercise carried out by the Leader did not present a clear picture to the public that the exercise was a party political exercise and, as a result, could be considered to have diminished public confidence in the Council's own consultation process and the Council to carry on business.
 - ii. the use of Council resources through a pre-paid business reply service addressed to the Council's Communications team by the Leader and political party had cost the Council in excess of £1000. This was not withstanding that an apology has been provided by the Leader to the Committee along with a commitment to reimburse the Council.
 - iii. the data management issues created by the collection of personal data and delivery to the Council could have a negative impact on public confidence in the Council.
- 3.3 I have considered carefully all of the evidence that I have been able to collect as a result of my investigation including the report of the Monitoring Officer to the Standards and General Purposes Committee, the background documentation including various Council Policies and Protocols and the interviews with complainants, relevant Council officers and the Leader of the Council.
- 3.4 I have been able to conclude on the basis of all this evidence whether or not Councillor Alambritis breached any of the requirements of the Council's Code of Conduct, and if so what remedies may be appropriate.

4 **Potential breaches of the Council's Code of Conduct:**

- 4.1 The Council's Code of Conduct is included in the Council's Constitution at Part 5 A. The Introduction to the Code states:

'1. This code applies to elected councillors and statutory co-opted members of Merton Council.

2. As a member, or co-opted member of Merton Council, I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

3. In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.'

- 4.2 In his report to the Standards and General Purposes Committee the Monitoring Officer flagged up a potential breach of that part of the Code that relates to 'Leadership'. Paragraph 2.7 of the Code states:

'Holders of public office should promote and support these principles by leadership and example.'

- 4.3 Two of the complainants also referred specifically to a potential breach of this part of the Code. This requirement is about the duties of all members to promote and support the principles of the Code and does not relate in any way to the specific role of the Leader of the Council. As the Leader pointed out in his interview with me:

'It was very much my decision to engage primarily with the poorer half of the Borough. It is a sad fact that 70% of the responses to the official Council consultation came from just two postcodes in the Wimbledon constituency namely SW19 & SW20. This has regularly been the case in Merton on consultations and I knew we would get a repeat of this – that is why I decided to establish the views of the poorer part of the Borough about a possible rise in Council Tax.'

'I do not accept that I have shown a lack of integrity – I have always made it clear that I was personally against any increase in Council Tax, and I do not accept that I have not shown leadership. I may be the Leader of the Council but I am also a ward councillor with particular views about the specific needs of my residents in that part of the Borough.'

- 4.4 The Monitoring Officer and the Independent Person supported this view in concluding that:

'councillors are entitled to correspond with residents setting out their own views on matters, even if this is in a consultation period. This is something which residents are used to and is an accepted part of local politics. Their view was that the letter was part and parcel of local politics. Other examples were available of political parties writing leaflets to residents in the same period and no complaints have been made.'

- 4.5 Two complainants referred to a potential breach of the Code in respect of Section 2.3 'Objectivity':

'in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.'

It is clear that this part of the Code is concerned specifically with those occasions when councillors are carrying out public business on behalf of the Council. It has no relevance for the actions of a councillor (in this case Councillor Alambritis) acting politically in sending a Labour Party letter to residents in a number of wards in the Borough.

- 4.6 One of the reasons that led to the conclusion by the Monitoring Officer and the Independent Person that this matter was 'exceptional' was that the consultation exercise carried out by the Leader did not present a clear picture to the public that the exercise was a party political exercise and, as a result, could be considered to have diminished public confidence in the Council's own consultation process and the Council to carry on business. One complainant referred to a potential breach of the Code in respect of Section 1.3 '*maintaining public confidence*'. This is not one of the 'Principles' of the Code but is a part of the Introduction to the Code which makes it clear that a councillor should follow the requirements of the Code to ensure that the public of Merton have confidence in him or her.

- 4.7 One complainant said:

'The Council should promise that the lessons learned as a result of this will result in elected members not being allowed to unfairly influence official processes. Public trust and confidence in the Council and its leadership have been deeply and adversely affected by the way the Leader has acted and the Council should commit publicly to better support its disabled and vulnerable residents.'

- 4.8 Another complainant said:

'I sent in my complaint because his actions in this matter have

undermined the important role of the Leader of a Council and have brought the Council into public disrepute. The Leader of a Council should model good behaviour; that means he should behave in a transparent and honest manner, be accountable at all times, and demonstrate a sound understanding of the role and responsibilities of local councillor and Leader. By not acknowledging his failings and by not properly apologising to the public of Merton he has further exacerbated the situation. He is simply not fit to be the Leader of the Council, and he has shown this unfitness by his apparent lack of understanding of the Council's rules that apply to the behaviour of councillors, including (but not exclusively) the use of Council resources.

4.10 And another said:

'The Leader of the Council should not have initiated the Labour Party 'rogue consultation' [my own expression], nor prejudiced its result by stating his own position, but over and above that it is the Leader's arrogant stance and his disdain for his accountability – 'what's all the fuss about?' 'This is a politically-motivated witch-hunt' – that I really object to, as these attitudes are simply not appropriate for a Leader of a democratic organisation.

4.11 And another said:

'On the issue of confidence, the report focuses on the fact that the correspondence from the Leader of the Council did not give a clear picture that the exercise was partly political. The content of the correspondence, and the way in which it has since been used, also serves to diminish public confidence in the Council's processes'.

4.12 There is no clear evidence that by his actions Councillor Alambritis has breached the Council's Code of Conduct in respect of either '*Leadership*' or '*Objectivity*' as alleged by a number of the complainants. Quite simply, the requirements of both of those Principles do not relate to the actions by Councillor Alambritis that have been complained of.

4.13 **My finding is that Councillor Alambritis has not breached the Council's Code of Conduct in relation to its requirements for '*leadership*' or '*objectivity*'.**

4.14 Notwithstanding this, although Councillor Alambritis' actions did not amount to a breach of any of the Principles in the Code of Conduct, it is clear that his actions have damaged the confidence of the complainants in the Council generally and specifically in him as its appointed Leader. In particular, a number of complainants have pointed to the commitment Councillor Alambritis gave during the budget process in 2015 to an

open and transparent consultation about potential increases in council tax, along with his commitment to be bound by the outcome of that consultation. They claim that his action in initiating a separate Labour party exercise that emphasised his personal commitment to no increases in council tax was a deliberate attempt to counterbalance what he knew to be positive support from the Council's consultation for an increase in council tax to fund increases in social care provision. Councilor Alambritis has denied this and in the event the Council under his leadership has committed to a 3% increase in council tax in 2017/18.

5 The Council's Protocol on the Use of Resources

5.1 Paragraph 7.2 of the Protocol states that:

'The Council's facilities are not available for ward-wide mail shots, the distribution of leaflets or the posting of general information to constituents other than in the circumstances described above. They are also not available for posting any material which could not lawfully be printed by the Council. In considering those issues members should seek the views of officers above there is doubt.'

5.2 It is clear that by using the Council's Business Reply Service Councillor Alambritis breached the Protocol. He immediately gave an apology and gave a commitment that any cost to the Council would be reimbursed. He wrote to the members of the Standards and General Purposes Committee on 13 December 2016 (the day of the Committee meeting) in the following terms:

'I understand you are meeting on 13 December to consider complaints in relation to a Labour Party letter and survey seeking resident's views on council tax, which was distributed in Mitcham and Morden constituency. Although the letter was from the Labour Party, residents were encouraged to send their thoughts back to the council using the council's reply paid address.

I would wish the panel to be aware that the Labour Party, and myself personally, were not cognizant of the rules around use of the council's reply paid address. Nonetheless when this was made clear to me I apologised to the Chief Executive for the oversight and agreed to pay the cost of any replies so that there was no use of council resources.

Mitcham and Morden Labour Party have been invoiced by the council and have paid in full the relevant amount so there has been no cost to the council. There may be the odd late reply and if so Mitcham and Morden Labour Party will pay for these where received'.

5.3 When complainants were shown a copy of this letter at my interview with them, some of their responses were:

'He may have apologised to the Standards Committee for his misuse of Council resources but he should apologise to the general public, particularly those he disenfranchised when they responded to the political consultation believing it to be the Council's official consultation.

I also understand that his proposed compensation to the

Standards Committee for the misuse of Council resources related solely to the cost of postage involved. There were additional costs involved – for example the staff time in dealing with the political consultation returns and sorting this situation out and also the cost of responding to the Information Commissioner and any fine or financial penalty that results. He should acknowledge and agree to pay any additional costs over and above the postage involved and also apologise for these being incurred. I would expect a much fuller public acknowledgement and apology from Councillor Alambritis for these breaches of the Code of Conduct and full repayment of any additional costs to the Council in addition to postage.'

and:

'The letter of apology from Councillor Alambritis to the Standards Committee ... is again limited to the postage costs involved and confirms once more that Cllr Alambritis does not grasp the extent of what he did wrong nor is it a sufficient apology.'

and:

'I actually attended the Standards Committee when the report from the Monitoring Officer and Independent Person was presented. I have to say that I was very dissatisfied with the Leader's lack of contrition Although his letter to the Committee acknowledges that he was in the wrong – and I accept that this may have been a mistake and not a deliberate attempt to use Council resources improperly – I do not accept that because the Labour Party has now paid back the money to the Council there is no problem and that there is nothing more to do. Firstly, I'd question whether the repayment acknowledges and compensates for all the council's costs – indirect as well as direct. But, more seriously, in presenting such an offhand defence and lack of awareness of the context of his actions, Councillor Alambritis has displayed a lack of moral compass that is essential in any elected member – let alone the leader of a council.'

In addition, I am very surprised that Councillor Alambritis – who must have received extensive training in his role, and must have signed undertakings about proper use of council resources – should not have thought twice about the propriety of his actions'.

and finally, another commented:

'Cllr Alambritis claims that there was no intention to mislead or use the council's resources. Yet the address side of the reply is

nearly identical to that of the official reply form, suggesting that it was deliberately replicated.

One key change was made, which also suggests intention. The Business Reply Service Licence No. on the Alambritis form is different to that in the official form. That change can only have been deliberate. This raises yet further questions, as to whose Licence No. this is. Cllr Alambritis has had to reimburse the Council, which implies it is a Council Licence, but a different one to the that used by the Consultation Team. There is a need to know to which part of the Council this new Licence is attached, and how it came to be put on the form by Cllr Alambritis.

A third Licence No. could and should have been used, if this was simply a normal Labour Party consultation. The Labour Office in Morden has its own Licence, which Cllr Alambritis confirms is in regular use. The decision was clearly made not to use the Labour Party Licence number, but to use one which came from the Council, suggesting a deliberate attempt to avoid using Labour Party resources.

The statement that 'As soon as the issue of the business reply service had been raised Cllr Alambritis had given an apology for the oversight and a commitment to reimburse the Council for any costs' appears inaccurate. On 18 October, at 12.49pm, the Chief Executive emailed Cllr Alambritis further to an earlier conversation, and following legal advice, stating that the Labour Party would be required to reimburse the council, and requesting a written apology, and confirmation that the Reply label would no longer be circulated with the 'promotional paperwork. This implies that at that point, Cllr Alambritis had not made a commitment to reimburse, or the Chief Executive would not have needed legal advice. Similarly, the apology was not Cllr Alambritis's initiative'.

5.4 The Council's Assistant Director, Infrastructure and Transactions, told me:

'No one from the Labour Group, the Leader's Office or the local Labour Party sought advice from me or my staff on this occasion. The Labour Group has in the past been very good at getting it right but on this occasion I understand that the people who had dealt with this in the past were not around. I am certain that it was a genuine mistake that the Council's Business Reply service was used for the Labour Party consultation and there is no evidence that this was an attempt to confuse those who voted or an attempt to avoid paying for the service as soon as it was

spotted the Labour Party offered to refund the cost and has subsequently done so fully and very quickly. The responses to the Labour Party consultation were all diverted to the Labour

Party offices on Morden and the Council consultation forms were sent to Chris Witherington as usual for analysis.

The rules on the use of Council resources are very clear and I would have thought should have been known to everyone including elected members. However, this indicates that those rules need to be reinforced generally with the political groups and those who support them, and specifically the rules about the use of the Council's Business Reply service need to be reinforced to avoid any repetition in the future'.

5.5 Keith Bartlett, the Council's Post and Print Room Manager, told me that:

'The rules about using the Council's business reply service are clearly set out and understood by those who need to use them. It is normally Council officers who use the Business Reply service and we have recently had a purge of many of the Business Reply addresses that have been used in past consultations to ensure that only 'live' addresses are being used. The address that was used on the form that went out with the Leader's letters was an old one but was still in use'.

5.6 I asked Mr. Bartlett whether anyone from the Leader's Office or any of the Councillors (including the Leader of the Council) involved in the Leader's consultation had asked for advice or guidance on the use of Business Reply Service addresses in relation to the consultation. Mr Bartlett told me that no one had asked for advice or guidance in this connection, and that if they had they would have been reminded that it may not be appropriate to use the Council's Business Reply service for political consultations, and told that they should seek legal advice on the matter if they had been uncertain. Councillor Alambritis told me that enquiries had been made previously officer to officer about using the Council's Business Reply service in such consultations and that is why the Business Reply address was included on the Labour Party questionnaire on this occasion. Mr Bartlett also confirmed that the Labour Party had repaid the whole cost of its use of the Council's Business Reply Service for its consultation.

5.7 When I advised Councillor Alambritis that some of the complainants have said that there would have been costs additional to the postage - Council officers' time. for example - in dealing with the Labour Party returns and a possible penalty imposed by the Information Commissioner, his response was that:

'Any other costs to the Council would be very small indeed and almost impossible to quantify. So far as the Information Commissioner is concerned he has already ruled that there was no data protection issue and therefore no financial penalty has been imposed.'

5.8 I have seen the letter of 6 December 2016 from the Information Commissioner's Office to the Council following its receipt of concern from Councillor Hanna about the way the Council had handled personal information as a result of Labour Party letter to residents of some of the wards in the Mitcham and Morden Constituency. Councillor Hanna wrote to the ICO on 3 November 2016 raising his concern regarding the personal data provided to the Council (given the return address provided) being provided to any third party. He said that the unofficial response form presented itself as originating from the Council, and therefore the respondents would not expect their personal data to be shared in any way. The unofficial forms were passed by the Council to the Mitcham and Morden Labour Party offices. The ICO asked the Council to respond to this concern and provide the following information:

- *Details of any action the Council has taken to resolve these concerns.*
- *In what capacity does the Council consider the Leader of the Council to have sent out the unofficial response forms (as Leader of the Council, or as a representative of Mitcham and Morden Labour Party or any other third party, for example)?*
- *Please address the concern that personal data may have been obtained by the Leader of the Council under false pretences; specifically, that a form was circulated giving the impression that the information requested was part of the Council's official consultation.*
- *Please explain the Council's decision to provide the information obtained through the unofficial response form to the Mitcham and Morden Labour Party offices, given that it would appear respondents may have been under the impression that they were providing this information directly to the Council.*
- *Please confirm the number and content of complaints the Council has received relating to this matter.*

5.9 The Council replied to the ICO by letter on 13 December 2016 providing the required information. On 3 January 2017 the ICO responded to say that:

'it seems unlikely that the London Borough of Merton (the 'Council') has breached the Data Protection Act 1998 in this

case. This is because we consider the covering letter accompanying the unofficial survey sufficiently identified the Labour Party as its originator and the recipient of any information provided in response.

In regard to Cllr Alambritis' use of the Council's business reply service, we consider this to be a matter of conduct rather than a data protection concern. It appears that the Council is addressing the issue and is in the process of investigating Cllr Alambritis' actions insofar as they relate to its Code of Conduct. We therefore do not consider any further action is necessary at this stage regarding the concerns raised.

Although we do are not taking any further action at this stage, a record of the concerns raised will be kept on file in order to build up a picture over time of the way the Council handles personal information.'

- 5.10 Having considered all of the available evidence **my conclusion is to confirm that Councillor Alambritis did breach the Council's Protocol on the Use of Resources**, a breach for which he has already apologized. The Council has confirmed that the costs involved have been fully refunded.

6 Recommendations

6.1 In formulating my recommendations to the Standards and General Purposes Committee I have also considered the remedies proposed by the seven complainants. None of the complainants accept that the apology given by Councillor Alambritis to the Standards and General purposes Committee in his letter of 13 December 2013 was adequate.

6.2 The complainants have proposed:

'He should make a full public apology for his failure to deliver the promises he made in March 2016 about an open and transparent consultation and the establishment of a Mitigation Fund. He should commit publicly to listening more carefully and to delivering promises he makes rather than trying to undermine them when he doesn't like what he sees'.

'So far as a remedy is concerned I am looking for official recognition that the Leader was wrong to take the action he did. I don't believe that Councillor Alambritis should continue to be the Leader of the Council, and I have lost trust and confidence in his integrity and in his alleged commitment to meet my family's needs and somehow that trust and confidence needs to be regained. The Leader should acknowledge publicly that he was wrong and that he genuinely regrets his actions, and that might is the necessary start to that process of regaining trust and confidence'.

'The ongoing issue for me is that the Leader has not acknowledged that the complaints and the concerns behind them are legitimate. He may have apologised to the Standards Committee for his misuse of Council resources but he should apologise to the general public, particularly those he disenfranchised when they responded to the political consultation believing it to be the Council's official consultation. His comments about the complaints being "politically vexatious" also show a lack of sensitivity to the public he serves and set a poor example in terms of public accountability'.

'The letter of apology from Councillor Alambritis to the Standards Committee that you have just shared with me is again limited to the postage costs involved and confirms once more that Cllr Alambritis does not grasp the extent of what he did wrong nor is it a sufficient apology.....His actions have damaged the trust and confidence of voluntary organisations and those involved in adult social care in Merton in the Council Leader, and therefore

in the council. He should now acknowledge this and commit to rebuilding that trust and confidence.

... He should apologise formally to the people of Merton in a front page statement in 'My Merton' that acknowledges his mistakes including the misuse of Council resources and include a reference to developing a constructive and honest relationship with local voluntary and health organisations. He should apologise to those Council officers who managed the official consultation for undermining their work'.

'I consider that that there needs to be a public acknowledgement by the Leader of his wrongdoing in initiating the Labour Party parallel consultation and thus muddling the official consultation, and that it is not simply about his wrongdoing – whether intentional or otherwise - in using Council resources. He should not only acknowledge all that he has done wrong but he should also apologise publicly and sincerely. He is accountable to the residents of Merton and his actions so far indicate that he does not accept this accountability nor what this means in practice'.

'So far as a remedy is concerned, as Councillor Alambritis launched the Council consultation exercise in 'My Merton' and then undermined it with his misleading letter he should apologise to all electors especially those who responded to his bogus letter in a prominent space on a forthcoming 'My Merton'.

6.2 The common theme emerging from these proposals by the complainants is that the apology made by Councillor Alamabritis is not a sufficient recognition of the concerns resulting from his actions, as the apology is limited to a recognition by Councillor Alambritis that there had been a misuse of the Council's resources.

6.3 **Recommendation 1:**

that Councillor Alambritis should consider making a formal apology to the Standards and General Purposes Committee for his action in initiating the Labour Party consultation, an apology that recognises that not only did the Labour Party letter cause confusion among many of its recipients but that it also damaged trust and confidence in the Council generally and specifically in him as Leader of the Council.

Recommendation 2:

that the requirements of the Protocol on the Use of Council

Resources rules are reinforced generally with the political groups and those who support them, and specifically that the rules on the use of the Council's Business Reply service are reinforced to avoid any repetition in the future.

Richard Penn

Independent Investigator

March 2017

This page is intentionally left blank