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## HERTSMERE BOROUGH COUNCIL STANDARDS COMMITTEE

STANDARDS ASSESSMENT PANEL - 21 August 2020

### ASSESSMENT DECISION

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<b>Case No:</b>	<b>HBC/2020/006</b>
<b>Complainant:</b>	<b>Dr Dan Ozarow</b>
<b>Subject Member:</b>	<b>Councillor Anthony Spencer of Hertsmere Borough Council</b>
<b>Date Complaint Received:</b>	<b>10 May 2020</b>

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#### Summary of Complaint:

The complainant alleged that on 24 February 2020 Councillor Anthony Spencer of Hertsmere Borough Council posted defamatory remarks about the complainant on his public Councillor twitter account in breach of the Members Code of Conduct of Hertsmere Borough Council and the Council's adopted Protocol on the Use of Resources by Councillors.

#### Potentially Relevant provisions of the Members Code of Hertsmere Borough Council

##### Paragraph 2.1

You must comply with this Code whenever you: (a) conduct the business of your authority, or (b) act, claim to act or give the impression you are acting as a representative of your authority

##### Paragraph 2.2

This Code has effect in relation to your conduct in an official capacity

##### Paragraph 3.1

You must treat others with respect

##### Paragraph 3.2

You must uphold the law

Paragraph 3.3 (a)

You must not do anything which may cause your authority to breach any of the equality enactments

Paragraph 3.3 (b)

You must not bully any person

Paragraph 5.1(a)

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;

**Members of the Standards Assessment Panel**

Councillor Alan Plancey - Chairman of Standards Committee (Chairman)

Mr. Clifford Shanbury - Independent Person

Harvey Patterson - Monitoring Officer, Hertsmere Borough Council

**Panel Decision**

That no further action be taken in relation to the complaint.

**Reasons for Decision**

The Panel noted that the Members Code of Conduct for Hertsmere Borough Council only applied to members when they acted in an official capacity which would include when they conducted the business of the Council or acted, claimed to act, or gave the impression that they were acting as a representative of the Council.

The Panel also noted that the Twitter account used by Councillor Spencer to 'tweet' the remarks complained of was in fact a private account belonging to Councillor Spencer. However, Councillor Spencer had identified himself as 'Councillor Anthony Spencer' and had referred to another councillor (Councillor Jeremy Newmark) and to a forthcoming meeting of the Council. Consequently, the Panel concluded that Councillor Spencer was giving the impression he was acting as a representative of Hertsmere Borough Council and therefore, he was subject to the jurisdiction of the Members Code of Conduct.

The Panel further noted that Councillor Spencer's tweet was principally a criticism of Councillor Newmark (who had not complained) and that his remarks about the complainant had referenced his unsuccessful candidature for a rival political party in the then recent Borehamwood Kenilworth by-election. Although the Panel did not condone the words used by Councillor Spencer, they did consider that his observation that the complainant's election prospects had been harmed by his background and political views, fell within the bounds of acceptable political criticism. As such, the obligation in the Members Code of Conduct to treat others with respect would not be interpreted in a way that would inhibit the expression of legitimate political views, nor, in the view of the Panel, did Councillor Spencer's remarks constitute bullying or cause the Council to be in breach of any of its duties under the Equality Act 2010.

Moreover, as Councillor Spencer's remarks had been made after the Kenilworth by-election had taken place, it followed that they could not have been intended to harm the complainant's prospects in that election. Consequently, the Panel did not consider that

Councillor Spencer had misused his position as a councillor to confer a disadvantage on the complainant. In addition, as Councillor Spencer's Twitter account was a private account, he had not misused any of the Council's resources contrary to the requirements of the Member Code of Conduct and/or the Protocol on the Use of Resources by Councillors.

Finally, insofar as the complainant alleged that Councillor Spencer's remarks were defamatory and constituted criminal offences, these were not matters in respect of which the Panel or the Standards Committee had any jurisdiction. Defamation was a matter for the courts to determine and the alleged commission of criminal offences were matters for the appropriate authorities: the Police, the Electoral Commission and the Crown Prosecution Service.

Accordingly, no further action would be taken in relation to the complaint.

### **Finality of Decision**

There is no right to appeal the decisions of the Standards Assessment Panel

### **Distribution**

In accordance with the Council adopted arrangements, copies of this decision will be provided to:-

- The Subject Member: Councillor Anthony Spencer of Hertsmere Borough Council
- The Complainant: Dr. Dan Ozarow.
- The Subject Members' Group Leader: Councillor Morris Bright MBE.

**Signed**



**Date** 9 September 2020

**Monitoring Officer**

**For and on behalf of Chairman of the Standards Assessment Panel**

