



INVESTIGATION REPORT

LOCAL GOVERNMENT ACT 2000

ALLEGATION OF FAILURE TO COMPLY WITH THE CODE OF CONDUCT

INVESTIGATING OFFICER

MRS JUNE GURRY
GOVERNANCE SUPPORT MANAGER

Dated: 9 October 2017

Updated with Independent Person response: 18 January 2018

1. Introduction

- 1.1 The Monitoring Officer requested that I undertake an investigation following a complaint as to the conduct of Councillor Stubley, in respect of her dealings on matters related to unauthorised encampments on Churston Common during 2016/2017. Councillor Stubley has been represented by her solicitor, Mr Roger Richards, from the outset of this investigation.
- 1.2 This report represents my findings and is being presented to Anne Marie-Bond, Monitoring Officer, who will determine how this matter shall be progressed in line with the Protocol for the Assessment and Determination of Allegations of Breaches of the Members Code of Conduct, and would act as legal advisor to Council's Standards Hearing Sub-committee if she determines that they should consider this complaint.
- 1.3 This investigation has been carried out in accordance with the guidance on 'How to Conduct an Investigation' produced by Standards for England that was applicable to the Code of Conduct for Members pursuant to the Local Government Act 2000.

2. Details of the Complaint and Methodology

- 2.1 The Monitoring Officer received a verbal complaint in respect of Councillor Stubley's conduct in respect of the issues surrounding unauthorised encampments at Churston Common and specifically in relation to:
1. Use of a personal e-mail account;
 2. Language and tone of communication to Council Officers, fellow Councillors and members of the public;
 3. Potential misrepresentation of facts;
 4. Potential misrepresentation of decision making; and
 5. Conduct which is potentially outside that appropriate for a Ward Councillor
- 2.2 The provisions of the Code of Conduct of Torbay Council that have been considered in my investigation are:-
4. You **must** –
 - (a) treat others with courtesy and respect
 5. You **must not** –
 - (b) do anything which may cause the Council to breach a statutory duty or any of the equality enactments (as defined in section 149 of the Equality Act 2010 the requirements of which are included at appendix B);
 - (e) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council;

(h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.

2.2 I have also considered the requirements set in the Constitution as follows:

Local Protocol – Members IT (use and security of iPads, use of emails and confidentiality when forwarding emails to third parties/use of data)

Article 11 (Decision-making), Elected Member Job Description (in relation to officers' role, members taking advice from officers and limitations on decision-making)

Local Protocol – Member and Officer Relations (guiding principles on dealings between members and officers)

2.3 Extensive email correspondence between Councillor Stubbley, fellow elected members, officers and the community provided the evidence for the basis of the complaint. The emails range from July 2016 to March 2017. A corporate complaint was considered prior to my investigation which linked to the complaint against Councillor Stubbley. I have reviewed these emails and the corporate complaint which resulted in a number of questions and areas for response by Councillor Stubbley. These were presented to Councillor Stubbley for written response.

2.4 The evidence that has been compiled and considered during the course of the investigation is set out in the Evidence and Document pack attached.

2.5 I have taken account the responses on behalf of Councillor Stubbley in respect of my questions and areas for response as contained in the Standards Investigation Plan.

2.6 I have also taken account of the following:

- Code of Conduct of the Council of the Borough of Torbay
- Torbay Council – Constitution relevant provisions (as detailed above in paragraph 4).

2.7 I have considered the provisions of the Code of Conduct and the Constitution. I have grouped the potential breaches into the following questions:

2.7.1 Did Councillor Stubbley's behaviour through her communications with members of the public, fellow councillors and officers, breach the Code of Conduct (Paragraph 4)? To support this element of the Code of Conduct, did Councillor Stubbley represent individual constituents within her ward serving all equally, in particular those who did not support the works on Churston Common (Elected Members Job Description Paragraph 1)?

2.7.2 Did Councillor Stubbley act in accordance with the Council's statutory requirements in respect of the protected characteristics for gypsies and travellers (Paragraph 5 (b))?

- 2.7.3 Did Councillor Stubley's comments in her emails impact on the impartiality, professionalism and integrity of officers (Paragraph 5 (e))?
- 2.7.4 Did Councillor Stubley's conduct in the manner in which she dealt with her own research and her comments to the public in respect of officers bring her office or the Council into disrepute (Paragraph 5 (h))?
- 2.7.5 Did Councillor Stubley meet the requirements of the Council's Constitution – Local Members' IT Protocol in respect of her handling of emails and providing confidential data to third parties (Local Protocol – Members' IT Paragraphs 1.3, 4.6, 10.1 and 10.2)?
- 2.7.6 Did Councillor Stubley use officer resources prudently in light of her repeated and insistent requests on being provided with a breakdown of figures on travellers costs (Local Protocol – Members and Officer Relations Guiding Principles 3.1 (h))?

3. Councillors Details and Training Records

- 3.1 Councillor Di Stubley, was elected as a Councillor in May 2015 for the Churston with Galmpton ward in the Borough of Torbay.
- 3.2 Councillor Stubley gave a written undertaking to observe the Code of Conduct on 12 May 2015.
- 3.3 Councillor Stubley has received the following relevant training;
- 13 May 2015 – Welcome and Introduction to Torbay Council
 - 19 May 2015 – Communications and Media Skills
 - 21 May 2015 – Making Licensing Decisions
 - 22 May 2015 – Making Planning Decisions
 - 26 May 2015 – Mock Council Meeting and How Meetings Work
 - 27 May 2015 – Where are we? Opportunities and Threats for Torbay's Future
 - 28 May 2015 – Code of Conduct
 - 3 June 2015 – How do we get there? Seizing the opportunities and minimising the threats
 - 10 June 2015 – Introduction to Finance
 - 17 June 2015 – Keeping People Safe Incorporating Corporate Parenting
 - 19 June 2015 – The Harbour Estate and Harbour Committee
 - 9 July 2015 – Working with Partners
 - 15 July 2015 – Treasury Management
 - 28 July 2015 – Information Governance – Your roles and responsibilities
 - 8 September 2015 – Safeguarding
 - 11 September 2015 – Scrutiny Skills
 - 26 October 2015 – Contacting the Council
 - 22 September 2016 – Governance training

4. Relevant Aspects of the Code of Conduct and Constitutional Requirements

4.1 Torbay Council has adopted a Code of Conduct in which the following paragraphs are included:-

4. You **must** –

(a) treat others with courtesy and respect

5. You **must not** –

(b) do anything which may cause the Council to breach a statutory duty or any of the equality enactments (as defined in section 149 of the Equality Act 2010 the requirements of which are included at appendix B);

(e) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council;

(h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.

4.2 The Torbay Council Constitution includes a number of Local Protocols and other requirements which elected members are expected to follow. The following extracts are relevant to my investigation:

Local Protocol – Members IT

1. Introduction

1.3 In the case of iPads, software and other equipment provided by the Council, the Council will also provide the necessary training and support that individual Members may require to enable them to use the equipment and services provided. The minimum training requirement for a Member is to complete IT Induction/Data Protection and Information Security training.

4. Security of the iPad and Provided Equipment

4.6 The Member are their own data controller and could be liable for any breaches, any loss or breach of personal data/equipment must be reported immediately to infocompliance@torbay.gov.uk in order to comply with Data Protection requirements.

10. Confidentiality

10.1 The Member will be able to access confidential and/or exempt Council information using the equipment provided. The Member is responsible for ensuring the continued security of any such information which they receive. The Member is reminded of their obligations under the Council's Code of Conduct for Members not to disclose such information to any third party. This includes

the forwarding of any information by way of email or any other method.

- 10.2 Some of the data will be personal data relating to individuals. The unauthorised processing or disclosure of such data is prohibited under the Data Protection Act 1998 and its associated statutory instruments and the Member is responsible for ensuring that there is no such unauthorised disclosure from the iPad or from the Council's Information Management systems.

Extracts related to officers role, members taking advice from officers and limitations on decision-making:

Article 11 – Decision-making

11.02 Principles of decision-making

All decisions by the elected Mayor, individual members, officers and of decision-making bodies and recommendations of all Council bodies (including working parties) will be made in accordance with the following principles:

- (ii) Decision makers must understand the legal requirements regarding the decision-making power and observe them.

Job Description – Elected Member

Main Duties and Responsibilities

1. To represent the individual constituents within their Wards (or in the case of the elected Mayor constituents within Torbay), undertaking casework on their behalf and serving all equally.
2. To liaise with the elected Mayor, Executive members, other council members, officers and other service providers in ensuring that local community needs are considered and identified.
3. To be a channel of communication for the local communities about the decisions of Council and Council procedures.
4. Acting as community leader, to represent the views, aspirations and concerns of the people of Torbay as a whole, providing the focus for local democracy.
8. To develop and maintain a working knowledge of the Council's services, management arrangements, powers/duties and constraints and to develop good working relationships with the relevant officers of the Council.
9. To develop and maintain a good knowledge of the corporate policies of the Council.
10. To uphold the Council's Constitution and to promote high ethical standards. To act in accordance with the Members' Code of Conduct and the Protocols as set out in the Council's Constitution.
12. To promote and enhance the Council's reputation through participating constructively in the governance of Torbay.

Local Protocol – Member and Officer Relations

3. Guiding Principles

3.1 In their dealings with one another members and officers will:

- (a) Serve only the public interest;
- (b) Behave properly and not place themselves in situations where their honesty and integrity may be questioned;
- (c) Make decisions on merit
- (d) Be open about (and be prepared to give reasons for) their actions;
- (e) Promote equality by not discriminating unlawfully against any person;
- (f) Treat people with dignity and respect, accepting that everyone is acting in good faith, and show courtesy in all meetings and contacts, both formal and informal, between members and officers.
- (g) Uphold the law;
- (h) Seek to ensure that the Council uses its resources prudently;
- (i) Promote and support all these general principles by example, and act in a way that secures or preserves public confidence in local government;
- (j) In addition, members will respect the impartiality and integrity of officers; and
- (k) Officers will work for the Council as a whole, treating members of different party groups fairly, and showing no favour to any particular political group or individual member.

5. Findings

5.1 Councillor Stubley's behaviour through her communications and representing constituents equally (para 2.7.1 above)

5.1.1 Councillor Stubley was involved in numerous email conversations with the Police, the Council's Chief Executive, senior legal officers, environment officer, Executive Members, all councillors and constituents from her ward. Councillor Stubley received advice from officers and in particular Officer 1, Senior Solicitor and Deputy Monitoring Officer. During the course of these communications, in my opinion, it is evident that Councillor Stubley's conduct in respect of her comments made about Officer 1 do not meet the

requirements of the Code of Conduct to treat others with courtesy and respect. Examples of Councillor Stubley's conduct in these emails include:

22 December 2016 20:46 Email from Councillor Stubley to Officer 1, cc to Councillors Mills, Excell, and Mayor. The overall tone of this email demonstrates disregard and disrespect to Officer 1's position and previous advice given, an extract is provided below:

'Officer 1 I am not being rude but I do not need yours or anyone else's permission to have the facts checked out by an outside source.'

23 December 2016 email conversation between Person 2 (member of the community) and Councillor Mills, copied by Councillor Stubley to Mayor's Executive Group. Within these emails, Councillor Stubley's is disrespectful towards officers and fellow councillor, her email was copied on to Officer 1:

(Email at 00:28)

'I really feel I could cry, I am exhausted and it is because Officer 1chose to send out this information to someone like Person 3 who refuses to accept what I.....

Officer 1 and Officer 2 refused to attend the meeting and I got told off by Officer 1.....

Officer 1 is furious I have done this without consulting her....If she had been doing her job correctly the Council could have saved a great deal of money.'

3 March 2017 14:35 email from Person 2 forwarded to council officers, community members and Torbay Community Development Trust by Councillor Stubley. Councillor Stubley's tone and comments include:

'I do feel I need to point out the obvious...

Officer 1 stormed down the corridor and tore a strip off me.'

- 5.1.2 The Corporate Complaint response highlights that the community is divided on the response for dealing with unauthorised encampments with some of the community wishing to restrict access to the Common. Throughout the correspondence, Councillor Stubley responds to a number of individuals within the community, both those for and against the restrictions. It is clear Councillor Stubley supports the restrictions on the Common and her correspondence with those who do not support the restrictions demonstrates, in my opinion, that she does not serve all her constituents equally. The general tone of the email trail with Person 3 dated 21 to 22 December 2016 and Person 5 dated 15 November to 22 December provides examples and are attached at Appendix 1 and 2.

Councillor Stubley's response:

- 5.1.3 In response to my questions above, Councillor Stubley considers that her communications throughout the emails did meet the standards required of the Code. Councillor Stubley believes that in her email dated 3 March 2017 the semantics she has used were not a criticism of anyone but was merely an

explanation of the situation. She further believes that her reference to Officer 1 was a correct explanation; she considers Officer 1's conduct was aggressive and disrespectful.

- 5.1.4 In relation to my comments in respect of the corporate complaint, Councillor Stubley believes that I am misinformed. She believes the community was not divided as evidenced by the public meeting held on 8 February 2017 where she advises me that the majority were in favour of reinforcing the common.
- 5.1.5 In respect of serving all constituents equally and representing those who did not support the restrictions on the Common, Councillor Stubley considers that she has met this requirement. Furthermore, Councillor Stubley believes that on contentious matters where there is a majority view on one side and a small minority view on the other, a Councillor must be at liberty to deal with the majority position, otherwise the Councillor will not be acting in the best interests of her constituents. In relation to the Elected Member Job Description 'To be a channel of communication for the local community', Councillor Stubley considers this is the communication with the majority democratic view. Councillor Stubley denies that she is not dealing equally between the factions. She believes in a democratic way she is supporting the community while listening to the small minority and explaining to them that the overwhelming democratic feeling of her constituents was opposed to their views. Councillor Stubley is of the view that it is impossible to serve all constituents equally and must take heed of the overwhelming majority as exemplified by Brexit. Councillor Stubley believes my comments in 5.1.2 are naïve, undemocratic and wrong.

5.2 Councillor Stubley acting in accordance with the Council's statutory requirements in respect of the protected characteristics for gypsies and travellers (para 2.7.2 above)

- 5.2.1 As an elected member, Councillor Stubley has a duty to ensure her conduct does not cause the Council to breach a statutory duty or any of the equality enactments which includes gypsies and travellers (as defined in section 149 of the Equality Act 2010 and included at Appendix B of the Code of Conduct). Under this requirement of the Code, as part of their community leadership role, Councillors are required to 'foster good relations between persons who share a relevant protected characteristic and persons who do not share it; and having regard to the need to foster good relations involves the need to (a) tackle prejudice, and (b) promote understanding. Throughout the correspondence I cannot see any evidence which demonstrates that Councillor Stubley has met this requirement of the Code. Examples include Councillor Stubley's email dated 15 November 2016 19:08 to Person 5, an extract is provided below:

'...due to unauthorised encampments on both Commons – which were horrendous this year, i.e. a serious assault on a local person, verbal assaults and threats to walkers using the common, Mums stopping for ice creams and verbal assaults made on her in front of her children. Men showing naked outside, in full view of the general public. Plus the cost involved to evict and clean up after they have gone.

It was so bad the Police picked up on comments on social media of vigilantes threatening to firebomb the areas in order to get the travelers out of the area. The problems this year have been the worse so far.

I for one feel the personal safety of the general public should be paramount in the discussion.'

Councillor Stubbley's response:

5.2.2 In response to my question, Councillor Stubbley advises that she considers she has acted in accordance with the Council's statutory requirements in respect of the equality protected characteristics of gypsies and travellers, and that the support of local electors is a primary duty for her, and the requirement to deal with travellers either by the Council's policy or the bringing in of a PSPO is a furtherance of her duty as a ward Councillor. Furthermore, Councillor Stubbley believes there is nothing wrong in what she has said where she urges or suggests that the Council should breach any statutory duty and my comments above are taken out of context. She considers there are many ways in which the problem of travellers can be dealt with by a local authority and it is proper for her to allow debate on these different approaches and bring them to the Council.

5.2.3 Councillor Stubbley considers her conduct has not caused the Authority to breach any statutory provision nor has she urged any individual to do anything that would cause there to be friction. She considers that she has always referred matters to the Council for them to deal with. Councillor Stubbley asked questions provoked by her constituents as to why the Council uses certain strategies and not other lawful ones, which she considers her job as a Councillor.

5.2.4 Councillor Stubbley considers the reference from the e mail to Person 5 is a statement of fact which is in essence criminal acts committed by the travellers which have been reported to the police. She believes there is not a breach of any code of conduct by relaying factual information already complained of to Police officers.

5.2.5 Councillor Stubbley believes she has been stating throughout that it is the duty of Torbay Council to protect the common both under the by-laws for the Common and the Deed of Gift of the Common; the duty is to protect the common from Travellers; once on the common then the law with regard to eviction, of whatever type the Council use, must be obeyed. She adds this is two fold however and while Torbay Council have a duty to carry out the eviction lawfully then the Travellers also have a duty to live within the law. She believes her e mail merely states the facts.

5.3 Councillor Stubbley's impact on the impartiality, professionalism and integrity of officers (para 2.7.3 above)

5.3.1 The Corporate Complaint concluded that officers acted appropriately and provided consistent advice in respect of the Council's position. Councillor Stubbley's comments in her emails, a number of which were sent to the community, brings in to question officers' impartiality, professionalism and

integrity. Councillor Stublely also makes disparaging remarks in respect of Officer 1's advice in a number of her emails. Examples include Councillor Stublely's email dated 3 March 2017 (attached at Appendix 3) to the Mayor, councillors, officers and the community; and emails between Officer 1, Councillor Stublely, Person 3 (copied to the Mayor, councillors Excell, Haddock and Mills and members of the community) dated 22 and 21 December 2016 – extracts provided below (please refer to Appendix 1 for the full email conversation):

Email from Councillor Stublely to Person 3, 21 December 2017:

'I will add it has been checked out by a solicitor already both Person 2 and my daughter who is a lawyer, not to mention the Council Solicitor but please feel free to take independent legal advice.....'

Knowing the information that was researched and presented to Council to the Senior Councillors, also that Person 6 has confirm along with two other independent solicitors as well as the Council's one simply highlights that this could all have been done years ago to save the Council serious amounts of money and officers time'

Email response from Officer 1, Senior Solicitor and Deputy Monitoring Officer, 22 December 2017:

'...I respond to seek clarification to which Council Solicitor you refer to with regards to confirming this information.'

It is of great concern that works to Churston Common have been carried out without consent from the appropriate Officers within the Council first being obtained....

As expressed to you on a number of occasions recently, before any further action was to be taken by the Council in regards to Churston Common, the community needed to come up with agreed options in respect of any proposed works being carried out to Churston Common and that these agreed options should be submitted in writing to the Council

Councillor Stublely's response:

5.3.2 In response to my questions, Councillor Stublely considers she has not complained about Officer 1 and that the complainant was a member of the community. Councillor Stublely does not consider her comments have impacted on the professionalism of officers. In addition, Councillor Stublely considers she is a new councillor and Officer 1 is a professional and in light of this, allowance should be made for Councillor Stublely's inexperience.

5.4 **Councillor Stublely's conduct in the manner in which she dealt with her own research and her comments to the public in respect of officers bring her office or the Council into disrepute (para 2.7.4 above)**

5.4.1 Councillor Stublely received support and advice throughout the correspondence from a number of council officers and the Police, namely:

- Email from Steve Parrock dated 30 July 2016
- Email from Justin Wyles Sector Inspector, Devon and Cornwall Police

dated 3 August 2016

- Email from Officer 1 dated 3 August 2016
- Email between Officer 1, Officer 4 and Councillor Stubley dated 4 August 2016
- Meeting with Councillors Mills, Haddock, Stubley, Officer 2, Officer 1 and Officer 3 on 10 August 2016
- Email from Officer 1 to Councillor Stubley dated 11 August 2016
- Officer 1 email dated 11 August 2016 advising on Council's IT Protocol and use of personal email addresses
- Summary of how Torbay Council manages unauthorised encampments and the relevant legal procedures utilised (emailed via Councillor Mills to all councillors on 24 August 2016)
- Email from Officer 1 to Person 9 dated 28 November 2016 advising of consents required for works on Churston Common
- Email from Officer 1 to Councillor Stubley dated 22 December 2016 11.30

5.4.2 In addition to the support and guidance provided by the police and officers, Councillor Stubley undertook her own research outside of the Council and communicated with Natural England. I cannot find evidence that Councillor Stubley shared the information she acquired outside of the Council with Council officers to seek their professional guidance and verification before sharing it with the community. As a result Councillor Stubley has misrepresented the facts to the community – this is demonstrated in Councillor Stubley's email dated 21 December 2016 and Officer 1's response dated 22 December 2016 (see extracts provided at paragraph 5.3.1 above and full email provided at Appendix 1); and Councillor Stubley's email dated 3 March 2017 attached at Appendix 3.

5.4.3 Throughout the correspondence there are a number of references to a decision by senior councillors in relation to the unauthorised works on the Common. Formal authorisation had not been given by the Council, however, the community proceeded with the works. Email correspondence between Officer 1 and Person 9 dated 28 November 2017 confirmed the Council's position and that the works were not authorised. Despite this, a meeting was then held on 5 December 2017, attended by Councillors Mills, Stubley and Excell with community representatives and the Torbay Community Development Trust. The draft minutes of that meeting gave the impression that 'the works to replace the boulders with larger blocks was considered to be maintenance of the existing arrangements and did not need any further approval'.

5.4.4 Following the meeting held on 5 December 2016, Councillor Stubley then repeatedly misled the community by stating on numerous occasions that a decision had been taken authorising the works – examples include: Councillor Stubley's emails dated 21 December 2016 to Person 3 and Person 6 of Natural England; Councillor Stubley's email to Person 5 dated 22 December 2016; Councillor Stubley's email dated 22 December 2016 to Officer 1 – 'A democratic decision was made with the evidence put before the Senior Councillors and careful evaluation of the full facts that were presented in the meeting that recently took place.'
'The Councillors made this decision with the refusal of yourself or any representation of the legal department in this matter. Therefore they have the right to do this.'

'I fully agreed and supported the Senior Councillors decision, after I too had clarification from another legal source.'

Councillor Stuble's email dated 3 March 2017 contradicts her previous comments 'None of the Councillors made a decision, the evidence was considered and the Executive Councillors said they did not need to make any decision as the Friends already had permission in place.....'

- 5.4.5 The Corporate Complaint response calls into question the conduct of Elected Members and the way in which they engaged with the community giving the appearance of being in a position to make a decision on behalf of the Council.
- 5.4.6 Paragraph 5.3 above sets out my view as to the potential damage to the integrity of officers throughout and thereby has the potential to bring the Council into disrepute.

Councillor Stuble's response:

- 5.4.7 In response to my questions, Councillor Stuble considers she is entitled to undertake her own research and is entitled as any citizen to take whatever course she desires in ascertaining the facts. She considers no standing order of the Council can take away the right of a Councillor to embark on their own investigation and research and the Constitution does not state that private investigation by a Councillor cannot occur. Furthermore, Councillor Stuble believes it is incorrect that Council officers refused to countenance a PSPO stating it is for the police to initiate. Therefore, Councillor Stuble is of the view that councillors should undertake research themselves as otherwise they may be misled or make incorrect decisions in light of officers' incorrect advice. She adds the provision of a PSPO is perfectly within the ambit of a Councillor to suggest, especially when as here, it has been suggested previously by her electorate.

Councillor Stuble states a senior Council officer did state that the PSPO could only be brought about by the Police. Councillor Stuble believes this was factually incorrect and as such she would have been allowing the Council to become into disrepute unless she had corrected this.

In addition, Councillor Stuble states it is not true that she does not consider it necessary to provide information acquired outside the Council to officers. Councillor Stuble feels she can investigate and can adduce matters without the requirement of bringing matters to the attention of officers. Councillor Stuble considers Council officers are not the fount of all knowledge and nothing in the constitution can remove the ability of a Councillor to seek independent advice.

Councillor Stuble considers the matter of integrity of officers can only be enhanced where, like Councillors, their decisions are also subject to scrutiny. Councillor Stuble states that officers do not get it correct all of the time and it is the duty of Councillors to make sure that information and advice is correct.

- 5.4.8 Councillor Stuble did not consider it necessary to provide the information she acquired outside of the Council to Council Officers to seek their professional guidance/verification before sharing it with the community. Councillor Stuble

believes, as a private individual as well as a Councillor, she may take part in private conversations and be advised by many people. However, in her role as Councillor, Councillor Stubley does believe she must and does consider officer advice when dealing with actual Council business.

5.4.9 Councillor Stubley does not consider she has damaged the integrity of officers and has not therefore brought the Council into disrepute. Councillor Stubley believes officers made comments without properly ascertaining the full facts about the situation of Churston Warborough Common.

5.4.10 Councillor Stubley denies misleading the community and considers no decision was made at the meeting held on 5 December 2016. Councillor Stubley believes my interpretation at para 5.4.3 above is factually incorrect as she considers permission to protect the Common had been given in the past by senior officers of the Council and the meeting which was conducted by the Deputy Mayor and Councillor Excel was to evidence the information . Councillor Stubley's involvement was just to arrange the meeting. Councillor Stubley considers her emails refer to a decision that was made at that meeting, not by Councillor Stubley or the participants, but by the two senior Councillors who evaluated the previous permissions and evaluated the situation and then stated that permission was already in place to protect the common. She considers no decision was made at this meeting. Her only action was to disseminate the facts of what happened at the meeting on 6 December 2016 and there is no evidence that she ever purported to making the decision.

5.4.11 Paragraphs 5.3.2 and 5.3.3 above set out Councillors Stubley's response in respect of the integrity of officers and bringing the Council into disrepute.

5.5 Councillor Stubley's handling of emails and providing confidential data to third parties and the requirements of the Council's Constitutional Local Members' IT Protocol (para 2.7.5 above)

5.5.1 During November and December 2016, a personal e-mail address was used by Councillor Stubley when dealing with Council business. Councillor Stubley also forwarded email trails to additional recipients. Councillor Stubley did seek advice from Officer 1 in regards to sending emails to additional recipients and Officer 1 responded via email on 11 August 2016. Within that email, advice was also given in respect of councillors using their council email address to ensure data security.

5.5.2 Throughout the documentation there are a number of email conversations which include forwarding and copying of emails by Councillor Stubley. There is potential for data and confidential information being shared inappropriately which may amount to a breach of Data Protection requirements. It will be necessary to review the documentation with the Council's Data Protection Officer to identify any potential breach.

Councillor Stubley's response:

5.5.3 In response to my questions, Councillor Stubley confirms that the emails from the private email address were from her and during this period she had IT issues and could not use her council email address. Councillor Stubley does not believe she has contravened any requirement of the Constitution including disclosing confidential and/or exempt Council information to third parties.

5.6 Councillor Stubley's use of officer resources in light of her repeated and insistent requests on being provided with a breakdown of figures on travellers costs (para 2.7.6 above)

5.6.1 Councillor Stubley received extensive support and advice from officers, in particular Officer 1 (see para 5.4.1 above). Despite this advice, Councillor Stubley made repeated and insistent requests for information regardless of the responses she had received. The email trail between Councillor Stubley, Officer 4 and Officer 1 dated 4 August 2016 provides an example and an extract is provided below:

Email from Officer 4 to Councillor Stubley, 4 August 2016:
'I am afraid I have to interject in this.

Officer 1 is tasked by me, with a significant workload, and I have to ensure that her time is used in the most productive way possible.

Officer 1 has moved her diary to make herself available to meet with you, in order to ensure that she can fully explain to you the position, and immediately answer any questions that you have. This is the most time efficient manner for her to deal with this issue. This is entirely reasonable and one which I fully support.'

Councillor Stubley's response:

5.6.2 In response to my questions, Councillor Stubley does believe she has used Council resources prudently and considers that whenever a request is made, if the officers are not forthcoming, she is entitled to ask again or request why the information has not been forthcoming. Councillor Stubley states this information can be made as a Freedom of Information Act matter when there would be a requirement on the Council officers to ascertain it. Once the Monitoring Officer interjected Councillor Stubley ceased to ask further questions on this matter.

6. Conclusions

6.1 I acknowledge and appreciate that it is challenging for Members to manage issues when there is conflict within their constituency. In such circumstances, it is incredibly important that Members ensure they promote and support the highest standards of conduct and behaviour in accordance with the Code of Conduct and the Council's Constitution.

- 6.2 Whilst considering carefully the responses that Councillor Studley has provided to the issues raised, I do believe, on the balance of probabilities, and on the basis of the evidence I have set out in my report, that Councillor Studley has breached the Code of Conduct in respect of:
- 6.2.1 Paragraph 4 - must
- (a) treat others with courtesy and respect,
- 6.2.2 Paragraph 5(b) - must not do anything which may cause the Council to breach a statutory duty or any of the equality enactments (as defined in section 149 of the Equality Act 2010 the requirements of which are included at appendix B);
- 6.2.3 Paragraph 5 (h) - must not conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.
- 6.3 Further, I believe on the balance of probabilities that there has been a breach of the Members' IT Protocol as well as the Local Protocol – Members and Officer Relations in respect of the prudent use of officer resources.

Councillor Studley's response:

- 6.4 Councillor Studley does not agree with my conclusions. She believes that my conclusions are misguided and has indicated an intention to appeal some or all of my contentions.

7. Independent Person

- 7.1 The Independent Person has had sight of this report and has made the following comments:

'Having read the investigation report, based on the information and papers made available to me, it seems to me that the report is thorough and addresses all the issues. With regards to the findings I make the following observations on the following sections:

5.1 **Councillor Studley's behaviour through her communications and representing constituents equally (para 2.7.1 above)**

Based upon the investigation report, Councillor Studley has used her email communication to openly criticise an officer and deny what had been said. She also ensures various members of the public were also made aware of her position and criticism of the officer.

5.3 **Councillor Studley's impact on the impartiality, professionalism and integrity of officers (para 2.7.3 above)**

It is acknowledged that Councillor Studley was relatively inexperienced compared to some of her other colleagues, however, a number of courses have been undertaken and the issues continue over a period of time. It does not therefore excuse Councillor Studley for the comments she made. Even the little experience she had at this time

would have indicated and suggested that the comments would damage the integrity of the officers concerned. She clearly doesn't trust the information that she was provided with and sought to undertake her own research rather than seeking further advice and guidance. Given the initial inexperience, seeking support would have seemed the more obvious path. It is a regretful that Councillor Stubley didn't recognise that there were officers who could help and support her.

5.4 Councillor Stubley's conduct in the manner in which she dealt with her own research and her comments to the public in respect of officers bring her office or the Council into disrepute (para 2.7.4 above)

Councillor Stubley's views on this matter are quite clear and she has made her opinion known. She undertook her own research in order to support her own view. As a consequence, to an outsider looking in, it would appear that Councillor Stubley has clearly taken a side which has resulted in a stance that represents the view of one element of her community. I leave it to others with more experience on such matters to decide if it should be expected that an elected Member should represent all the views of their community given the circumstances. To use her family members as a way of legitimising this agenda is in my view naïve and further undermines the relationship she should have with the Council's officers. She was clearly 'on a mission' and rather than accepting support from officers she instead criticised those officers who didn't support her view.

I understand that Councillor Stubley has been given the opportunity to input and consider the report. Her response appears to focus on justifying her position, rather than objectively reflecting upon her behaviour. I am disappointed that a Councillor who has been elected to represent the community and who should be demonstrating high standards has been unable to self-reflect. Consequently, this means that the Standards Committee has to determine the matter, when the outcome could have been very different.'

8. Recommendations

8.1 On reviewing the responses provided by Mr Richards on behalf of Councillor Stubley, it is my view that, whilst recognising Councillor Stubley has attended the training required of a new councillor, there remains a misinterpretation by Councillor Stubley of the expectations on her in the role of a councillor. There are a number of misunderstandings throughout the responses I have received on behalf of Councillor Stubley, particularly the role of a community leader. There is also a need for Councillor Stubley to recognise the need to communicate in the appropriate manner when reaching a wider audience in respect of her comments made about those with protected characteristics. In light of this, I recommend Councillor Stubley undertakes the following development and training to ensure she fully understands the requirements of her role as councillor and the conduct expected of her:

- a. Members roles and responsibilities and working with officers;

- b. Mentoring from an experienced Member in respect of Councillor Stublely's communications with constituents and officers, and her community leadership. An appropriate mentor to be identified by the Conservative Group Leader and Governance Support Manager;
 - c. Data protection;
 - d. Managing conflict in communities; and
 - e. Meeting the requirements of the Code of Conduct and Councillor's responsibilities in respect of gypsies and travellers
- 8.2 The Constitution and the Council's policy in respect of use of private emails by councillors for council business is made clearer and that all Members are briefed so they are fully aware of their responsibilities when communicating electronically.
- 8.3 Potential data protection breaches are referred to the Council's Data Protection Officer for investigation.

Appendices:

Appendix 1: Email trail with Person 3 dated 21 to 22 December 2016

Appendix 2: Email trail with Person 5 dated 15 November to 22 December 2016

Appendix 3: Email from Councillor Stublely to the Mayor, councillors, officers and the community

Evidence and documents considered (pack presented in date order)

Document	Date
Extensive email correspondence between Councillor Stublely, elected members, council officers, partners and the community	Range: 29 July 2016 to 3 March 2017
Summary of how Torbay Council manages unauthorised encampments and the relevant legal procedures utilized	August 2016
Draft notes of meeting to discuss Galampton Warborough Common	5 December 2016
Corporate Complaint Response Ref. 277498	March 2017