

Strictly Private and Confidential

Stanley Keable
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21 May 2018

Dear Stan,

Outcome Stage 1 Disciplinary Hearing

I am writing to confirm the outcome of your stage 1 Disciplinary hearing held under the Council's Disciplinary Procedure held on the 10th May at Hammersmith Town Hall.

I chaired the hearing with Carol Yorrick Head of HR as my HR advisor, Peter Smith Investigating Officer with Patrick Draper acting as his HR advisor. You were accompanied by Tony Greenstein as your union Representative. (Unison, Brighton & Hove Branch). Jo Poulter from HR was also present as note taker.

You called one witness Mike Cushman – chair of Free Speech on Israel who had also submitted a written statement, a written statement was also submitted from Moshe Makover – who described himself as a dissident Israel citizen and Professor. You also submitted an employment Tribunal judgement between Fraser and University & College Union and confirmed that you agreed with the response to the investigations manager's report that had been submitted by Tony Greenstein.

The Investigating officer case in summary

Peter Smith as investigating officer had conducted a disciplinary investigation under the Council's disciplinary procedure and recommended that a disciplinary hearing takes place, considering the following allegations:

1. That, in attending a counter demonstration outside the Houses of Parliament on the 26th March 2018, you knowingly increased the possibility of being challenged about your views and subsequently proceeded to express views that were in breach of the Council's Equality, Diversity and Inclusion Policy and the Council's Code of Conduct ('Working with integrity' and 'Working with the media').
2. That you made inappropriate comments which were subsequently circulated on social media which are deemed to be insensitive and likely to be offensive and potentially in breach of the Equality Act 2010 and/or the Council's Equality, Diversity and Inclusion Policy.

3. That these comments contravene standards of behaviour required of all staff as set out in the Terms and Conditions of Employment, in particular, that all staff must “avoid any contact inside or outside of work that may discredit you or the Council”.

4. That these comments have brought the Council into disrepute and that they contravene the Council’s Code of Conduct for Employees.

Peter Smith summarised his case confirming that the video on social media had been put into a transcript. The transcript was agreed as a true version of what you had said. You had confirmed the wording of the transcript but objected to the words interviewer and interviewee as you considered it a private conversation between two individuals.

Peter referred to the definition of the word collaboration as referenced in the English Oxford Dictionary as “to co-operate traitorously with the enemy” or work jointly. Esp in a literary or artistic production.

With regard to allegation 2 and the Employment Tribunal judgement between Fraser and University & College Union that you had provided that had concluded in paragraph 150 that, *‘it seems to us that a belief in the Zionist project or an attachment to Israel or any similar sentiment cannot amount to a protected characteristic.’* that he had taken advice from the Council lawyers and stated that he had been advised that It did not alter the previous advice he had received in any way. It is a judgment of an Employment Tribunal based on the specific facts at that time. It is not binding on any other Employment Tribunal and it is 5 years old. Tribunals are not bound to follow other judgments until they reach at least the Employment Appeal Tribunal (EAT) and even then, it can be distinguished on different facts.

He stated that allegation 3 is based on the Council’s own Equality & Diversity Policy based on principles of the Equality Act 2010 and quoted Section 7.5;

All staff, contractors and those in voluntary sector partnerships are expected to ensure that there is no discrimination, bullying, harassment and victimisation and accept personal responsibility for the practical application of this Equality, Diversity and Inclusion Policy.

In particular every employee is required to:

- Promote equality, diversity and inclusion and treat everyone with fairness, equity, dignity and respect.
- Recognise and value the diversity of staff and residents, taking into account diverse needs when providing services.
- Ensure their behaviour and/or actions do not amount to discrimination or harassment in any way.

He stated that allegation 4 was based around the Greg Hands’ MP letter which had been sent to the Council Leader and also published on Twitter. The letter was made public and named you as a Council employee and calling into question whether the views you had expressed were part of a wider held view of other staff members.

Your response to the investigating manager’s case

In summary the key points of your response and that of your supporting statements and witnesses were;

That the Human Rights Act gives a right to freedom of assembly and freedom of expression of opinion including a qualified right to offend when expressing your beliefs.

That public authorities should not interfere with freedom of expression and are under a positive obligation to promote a favourable environment for participation in public debates, and that disciplinary action would be in breach of Human Rights and Employment Law.

That the case against you is politically motivated and should have been rebutted and not have proceeded.

That you consider that your assertion that the Zionist movement collaborated with the Nazis is well founded in history.

That it was a private conversation that was filmed and circulated without your permission and that its presence on social media is temporary and transient. That it was part of a longer conversation and that you ended by shaking the hand of the individuals that you had been talking to.

You consider that Zionism is not a protected characteristic and think the judgement in the Employment Tribunal case of Fraser v University College Union is relevant to the disciplinary hearing. Although it doesn't set a precedent it is persuasive because there has been no judicial ruling on the question of whether or not Zionism constitutes a protected characteristic. Later in the hearing you conceded that it could probably constitute a 'belief' and therefore be considered a protected characteristic but if that were true then your own anti-Zionist beliefs would also be protected.

That you are not anti-Semitic or racist in any way and that you had not intended to offend.

You recommended that the proceedings are dismissed with an apology to you and that the investigating manager is sent on a training course on the Human Rights Act 1998 and the Equality Act 2010.

My Findings

When public authorities carry out their functions, the Equality Act 2010 says they must have due regard or think about the need to:

- eliminate unlawful discrimination
- advance equality of opportunity between people who share a protected characteristic and those who don't
- foster or encourage good relations between people who share a protected characteristic and those who don't

Beyond that the Council has a clear ethos and commitment to build social inclusion into everything we do as an organisation. We take active steps to foster good relations throughout our communities and have a track record of supporting Holocaust Memorial Day, an annual Unity Day march and other similar inclusive events designed to promote good relations within our borough.

I acknowledge that you are not in a politically restricted post and have a right to attend a demonstration in your own time and express your own opinions.

However, the Council's Code of Conduct is binding on all Council employees. It provides a structured framework that will enable employees to achieve and maintain the highest standards of conduct. It sets out the expected standards of behaviour of all employees. The code also aims to protect employees from misunderstanding or criticism.

Breaches of the Code of Conduct and the standards it sets down may result in disciplinary action being taken against the employee.

Given the values of the Council we must all;

- Avoid any conduct inside or outside work which may discredit you and/or the Council

Working with integrity

We expect you to do whatever is needed to protect your own reputation and standing with the public and to build respect for the Council.

Ensure that you:

- Avoid any conduct or associations inside or outside work which may discredit you and/or the Council.
- Do nothing away from work, which might damage public confidence in the Council, or make you unsuitable for the work you do.

You asserted that you were having a private conversation / debate. However, you attended a public demonstration on a public street and whilst mingling with the opposing demonstration entered into a conversation with another person. You stated during the hearing that you were aware of the presence of a camera.

You presented a considerable amount of information in support of your statement that the Zionists collaborated with the Nazis and accept that it is a matter of some continuing debate and contention also that it could not be considered an equal partnership.

I do not consider it is for me to make a judgement as to whether Zionism constitutes a protected characteristic or pass comment on your interpretation of historical events other than to say that the evidence you presented relates to events pre-holocaust.

More the question is to whether the comments you expressed caused offense and breach the Councils Code of Conduct. In particular by damaging public confidence in the Council or bringing the Council's name into disrepute.

The fact is that your comments were recorded and circulated widely and you have been identified as a Council employee.

I find the most relevant sections of the transcript to be -

Unknown: "But you say, you say it is unreasonable to extrapolate the fact that you commented in that way on that mural and the fact that that mural reflects kind of traits which have existed for hundreds of years that really resulted in the anti-Semitism that resulted in the holocaust... there is a connection between."

You: "I don't think it is what caused the holocaust, no."

Unknown: "You don't think it was anti-Semitism which caused the holocaust."

You: "Well obviously the Nazis used anti-Semitism"

Unknown: "No, it was anti-Semitism that caused the holocaust. Are you really, are you suggesting it was not anti-Semitism?"

You: "No, no I am not saying that. I am saying the Nazis were anti-Semitic. The problem I have got is that the Zionist movement at the time collaborated with them."

I think reviewing the transcript and viewing the video clip again a number of times that based upon the balance of probability, the average person would interpret your comments (regardless of your intention) as suggesting that Zionists collaborated with the Nazis in the holocaust and is highly likely to cause offence.

I checked after the hearing and found that David Grossman's video of your conversation was still available and had been viewed 79,400 times, received 137 comments and been retweeted 275 times directly plus a considerable number of further retweets.

The clear majority of the comments that I read had interpreted your comments negatively and the Council received a written complaint from a local MP that were brought to the attention of the leader of the Council and passed to the Chief Executive.

My Decision

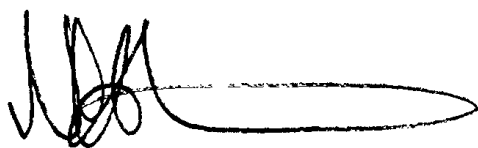
After giving careful consideration to the matters presented to me I find your statements that have been widely circulated and publicised and that have been linked to your employment with the Council to;

- have caused offense and be insensitive
- amount to serious misconduct arising from a breach of the Code of Conduct for employees in that they have brought the Council and its reputation into disrepute.

Given the seriousness of the misconduct, I have decided to dismiss you from your employment with London Borough of Hammersmith and Fulham from the date of this letter with pay in lieu of your contractual notice.

You have the right to appeal against this decision; any appeal must be made within ten days of receipt of this letter. If you wish to appeal, you should write clearly stating your grounds of appeal to Mark Grimley, Director of Corporate Services, mark.grimley@lbhf.gov.uk Room 142, First Floor, Hammersmith Town Hall, King Street, London W6 9JU.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'N. Austin', followed by a long horizontal line extending to the right.

Nicholas Austin
Director of Residents' Services