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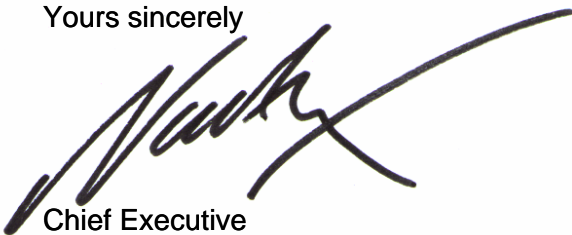
27 January 2012

Dear Member of the Standards Committee: Initial Assessment and Consideration Sub-Committee

NOTICE IS HEREBY GIVEN THAT a meeting of the **STANDARDS COMMITTEE: INITIAL ASSESSMENT AND CONSIDERATION SUB-COMMITTEE** will be held in the HMS Brave Room at these Offices on Monday 6 February 2012 at 6.00 pm when the following business will be transacted.

Members of the public who require further information are asked to contact Rebecca Brough on (01304) 872304 or by e-mail at rebecca.brough@dover.gov.uk.

Yours sincerely



Chief Executive

Standards Committee: Initial Assessment and Consideration Sub-Committee Membership:

Committee Members to be advised under separate cover.

Please ensure that you bring your Standards Reference Pack with you to this meeting.

AGENDA

1. **APOLOGIES**
2. **APPOINTMENT OF SUBSTITUTE MEMBERS**
To note appointments of Substitute Members.
3. **DECLARATIONS OF INTEREST**

Members are required to disclose the existence and nature of a personal interest under this item of business or when the interest becomes apparent. An explanation in general terms of the interest should also be given to the meeting. If the interest is also a prejudicial interest, the Member should then withdraw from the room or chamber.

4. **CONSIDERATION OF THE REPORT OF THE MONITORING OFFICER IN RESPECT OF A REFERRAL FROM THE STANDARDS COMMITTEE: INITIAL ASSESSMENT AND CONSIDERATION SUB-COMMITTEE UNDER SECTION 57A(2)(a) OF THE LOCAL GOVERNMENT ACT 2000 – CASE NO SC089** (Pages 3-20)

The Sub-Committee is convened under Regulation 17 of the Standards Committee (England) Regulations 2008 for the purpose of considering the report of the Monitoring Officer (attached).

The Sub-Committee may:

- (1) Accept the finding of the Monitoring Officer of no failure (where no failure is found).
- (2) Convene a meeting of the Standards Committee: Hearing Sub-Committee under Regulation 18 to hear the allegations.
- (3) Refer the matter to the First-Tier Tribunal (Local Government Standards in England) for determination by reason of:
 - (a) That the action available to the Standards Committee is insufficient were a finding of failure to be made; and
 - (b) The President or Deputy President of the Adjudication Panel has agreed to accept the referral.

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- If you require any further information about the contents of this agenda or your right to gain access to information held by the Council please contact Rebecca Brough, Democratic Support Officer, telephone: (01304) 872304 or email: rebecca.brough@dover.gov.uk for details.

Large print copies of this agenda can be supplied on request.

Subject:	STANDARDS COMMITTEE COMPLAINT NO SC089
Meeting and Date:	Standards Committee: Initial Assessment and Consideration Sub-Committee – 6 February 2012
Report of:	David Randall, Monitoring Officer
Decision Type:	Non-Key decision
Classification:	Unrestricted

Purpose of the report:	To set out the options available to the Sub-Committee in respect of the Investigating Officer's report into Case SC089.
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Recommendation:	That the Sub-Committee determines whether they accept the finding and recommendation of the Governance Investigator that there has been no breach of the Code of Conduct, and that no further action is necessary.
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1. Summary

Following a decision by the Initial Assessment and Consideration Sub-Committee to refer a complaint under the Code of Conduct to the Monitoring Officer for Investigation, the Investigating Officer is required to submit a report of their findings back to the Sub-Committee for its consideration.

2. Introduction and Background

2.1 At its meeting on Friday 7 October 2011 the Initial Assessment and Consideration Sub-Committee referred the complaint against Councillor R J Frost to the Monitoring Officer for investigation. The Monitoring Officer subsequently appointed Mr Duncan Milne to undertake the investigation.

2.2 The Investigating Officer's report into the allegations made is attached. The Investigating Officer has made a finding of no failure in respect of the complaint against Councillor R J Frost relating to the following paragraphs of Dover District Council's Member Code of Conduct:

- Paragraph 3(1) You must treat others with respect.
- Paragraph 3(2)(a) You must not do anything which may cause your authority to breach any of its equality enactments.
- Paragraph 5 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

2.3 The Sub-Committee is required to consider the Investigating Officer's final report and determine whether they accept the finding and recommendation of the Governance Investigator that there has been no breach of the Code of Conduct.

2.4 If the Sub-Committee overturns the Investigating Officer's findings, a hearing must then take place. The Sub-Committee members attending this meeting may participate in the hearing.

3. **Identification of Options**

3.1 There are two options open to the Sub-Committee:

3.2 Option A – To accept the findings of the Investigating Officer's report. In this event the complaint goes no further.

3.3 Option B – To not accept the findings of the Investigating Officer's report and refer the matter to the Hearing Sub-Committee.

4. **Evaluation of Options**

4.1 The role of the Sub-Committee is to decide based on the facts in the report whether it agrees with the Investigating Officers finding that the Code of Conduct has not been breached or if there is no case to answer. It is not for the consideration meeting to interview witnesses or to consider representations from the parties involved.

5. **Resource Implications**

In the event that the Sub-Committee accepts the findings of the Investigating Officer then a public notice must be issued in a local newspaper unless the subject member requests otherwise. The subject member has requested publication.

6. **Appendices**

Appendix 1 – Investigating Officer's Report

7. **Background Papers**

Report to the Initial Assessment Sub Committee of 7 October 2011.

Contact Officer: David Randall, extension 2141.

DRAFT FINAL REPORT

LOCAL INVESTIGATION SC089a

Report of a local investigation under Section 82A of the Local Government Act 2000 into allegations concerning Councillor Robert Frost, a member of Dover District Council.

W.D.Milne TD, LL.B, LARTPI
Solicitor

Investigating Officer
November 2011

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APPENDICES

- (a)** Original Complaint and email confirming telephone interview.
- (b)** Agreed notes of interview with Subject member.
- (c)** Reports attached to original agenda.
- (d)** Facebook posting of 7th August 2011.
- (e)** Explanation of Facebook privacy settings

1. INTRODUCTION

1.1 The matter was first considered by the Standards Committee: Initial Assessment and Consideration Sub-Committee on Friday 7th October 2011, with the result that the decision was made that it was appropriate for the matter to be referred to the Monitoring Officer for local investigation. In due course I was appointed by the Monitoring Officer to carry out the investigation. I am the former Head of Legal for Swale Borough Council and before my retirement from full time work had been in Local Government service for 35 years. I accordingly have considerable experience of Monitoring Officer / Standards Issues and in the last eighteen months have been appointed as Investigating Officer in twelve similar Standards Investigations. At the start of the investigation the Monitoring Officer supplied me with a copy of the Decision Notice reference SC089a together with some background papers including the original complaint.

2. METHODOLOGY

2.1 In addition to considering the information specified above, an interview was carried out with the Subject Member, Councillor Bob Frost, together with a telephone interview with the Complainant, Mr Mike Sargent. After the interview with the Subject Member a note of the interview was prepared by myself as Investigating Officer and sent to the interviewee for consideration and comment. These agreed notes and the documents referred to therein are attached to this report and were used with all the written material to assist in completing the final report and reaching a conclusion. All of the appended material should be read in conjunction with the report.

3. SUMMARY OF ALLEGATIONS AND RELEVANT PARTS OF THE CODE OF CONDUCT

3.1 The general summary of the complaint in Decision Notice SC089a is that Councillor Frost brought Dover District Council into disrepute by comments of a racist nature that were posted on a social networking site and attributed to him. These comments were reported in the Dover Express on 18th August 2011.

3.2 The Initial Assessment and Consideration Sub-Committee identified paragraph 3(1), 3(2)(a) and 5 of the Members Code of Conduct as potentially relevant in relation to the alleged conduct. Those paragraphs of the Code read as follows

paragraph 3(1) You must treat others with respect.

paragraph 3(2)(a) You must not do anything which may cause your authority to breach any of its equality enactments.

paragraph 5 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

3.3 It is submitted that these paragraphs are the most relevant sections of the Code of Conduct with regard to this case.

3.4 The Complainant also made the point that in his view the seventh of the general principles (respect for others) which form a preamble to the Members code of Conduct had also been breached. The appropriate part of that general principle states that "Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability." In dealing with this aspect of the complaint it must be borne in mind that the ten general principles do not form a statutory obligation for Members and as such do not form part of the members Code of Conduct. However it is generally recognised that failure to act in accordance with those general principles may amount to a breach of the Code of Conduct itself, a principle which has been taken into account throughout this investigation.

4. THE LEGAL POSITION

4.1 This investigation concerns a single incident and in my view turns upon whether or not the Code may be applied to members in their private capacity. The Standards Board for England which was the previous title for Standards for England in their publication "the Bulletin / 43" specifically deals with this issue in some detail.

4.2. The question they considered was whether or not the application of the 2007 Code of Conduct was still affected by the decision of Collins J in *Ken Livingstone v Adjudication Panel for England* (2006).

4.3. The 2006 ruling decided that Section 52 of The Local Government Act 2000 required Members to comply with the code in their official capacity only and that it did not extend to their private conduct.

4.4. In issuing his judgement in the Livingstone case, Collins J invited Parliament to be explicit about whether it wanted private conduct to be covered by the Member's Code. Parliament took this opportunity and passed the Local Government and Public Involvement in Health Act 2007. Section 183 (4) of the 2007 Act removed the words "in performing his functions" from Section 52 (1) (a) of the 2000 Act, to enable the Code to cover some conduct in a private capacity.

4.5. At present, Section 183(4) of the 2007 Act is only in force in Wales; so in England, the Code still does not cover Members at any time in their private capacity.

4.6. The Livingstone case is however still relevant to gaining an understanding of official capacity. When drafting the 2007 Code, Parliament incorporated some of the judge's reasoning in the Livingstone case. Official capacity in the code is construed as

- conducting the business of your Authority or office, or
- acting, claiming to act, or giving the impression that you are acting as a representative of your Authority.

4.7. Hence the view of the Standard Board, now called Standards for England, that the reasoning is still relevant to a proper interpretation and understanding of official capacity, because it helps to interpret what is meant by the two phrases above that define official capacity.

4.8. That guidance was published in April 2009 and the legal position is still the same today as the relevant Statutory Instrument has not yet been passed, bringing Section 183(4) of the 2007 Act into force in England. Hence in England the Code still does not cover Members at any time in their private capacity.

4.9 Since the date of that advice based on the Livingstone case further light has been shed upon the subject by the Upper Tribunal decision in *MC v Standards Committee of LB Richmond* 2011 which contains interesting obiter comments (i.e. non binding comments) about the meaning of the phrase "acting as a representative of your authority" in paragraph 2(1)(b) of the current Code. Judge Ward put it this way. He said that whether a person is acting as a representative of an authority is a matter for determination by the tribunal of fact (i.e. a standards committee, or, on appeal, the First-tier Tribunal). He went on to say that "I do however consider that, reading the Model Code as a whole, it is evident that "representative" is not to be equated to "member". The Model Code uses both terms and must be taken to have done so deliberately. Accordingly, merely to act, claim to act or give the impression one is acting (etc) as a member is in my view of itself not sufficient unless there is material on which the tribunal of fact can properly conclude that one is acting (etc) specifically "as a representative" of the authority."

4.10 This means that where official capacity is raised as an issue in cases it would appear that the Appeal Tribunals are likely to expect the body hearing the case i.e. normally the Standards Committee, to address official capacity by making reference to the conduct of the member that amounts to acting etc as a representative of the authority i.e. in certain cases something more than merely a description of being a member or use of the title councillor may be necessary.

5. EVIDENCE

5.1 This case is a single issue matter that revolves around the posting on facebook made on 7th August 2011 as shown at page 8 of the appendices. It can be seen from the posting which shows a brief exchange between Bob Frost and one Howard McSweeney, that what was said was as the Subject Member agrees "a stupid play on words" which could have had racist overtones. However in assessing this matter

from a Code of Conduct stand point it is important to note that at no point in the exchange does the Subject Member hold himself out as being a Councillor or refer to Dover District Council in any way. Further to my mind it is clear from the exchange that at no point does the Subject Member show conduct that can be seen as amounting to acting as a representative of the District Council.

5.2 In his notes of interview the Subject Member makes it clear that in the entire time that he used facebook, of which he is no longer a member, he adopted the same policy, treating it as something he used entirely in his private capacity as Bob Frost. Needless to say due to the transient nature of sites such as facebook no record now exists of any of Mr Frost's postings that can be easily discovered, except that attached to this report and his account is now closed.

5.3 In dealing with social networking sites such as facebook it is important to ascertain what sort of privacy setting if any a person has used in making a posting. Attached at page 9 of the appendices is a brief outline of the privacy settings which are available for facebook. It can be seen from that information that three settings are available and that the setting used throughout by the Subject Member was for "friends". The Subject Member therefore intended that only those people who he had nominated as friends would be able to see the information and comment on the same. He therefore did not intend the information to be more public in circulation or for it ever to be published more widely. It does however seem that his choice of friends was unfortunate and that one such friend namely the reporter for the Dover Express appears to have been the person who leaked the matter to the media at large. Never the less it must be borne in mind, for the purposes of looking at this from a Code of Conduct point of view, that it was never his intention that the posting should be treated as anything other than private.

5.4 Finally in reviewing this situation it is important to bear in mind the action taken by the Subject Member once he discovered the error of his ways. It is clear that he accepted responsibility as soon as publication took place, ceased to use his facebook site and issued a full apology. At no point did he repeat the facebook comments in any other forum and has only spoken on the matter in order to apologise. In the circumstances it is submitted that he could have done very little else than what he did do to try and resolve the situation once wider publication of the facebook entry had taken place.

6. CONCLUSION

6.1 For the reasons specified in section 4 above relating to the legal position, it seems clear that under current law in England, applying at the time of the incident, this matter can be taken no further under the Members Code of Conduct as it relates to an activity by the Subject Member in his private capacity. Such action is not currently covered by the Members Code of Conduct in England.

6.2 The detailed evidential arguments are contained within section 5 and it must also be borne in mind that even if the matter were within the provisions of the current Code the Subject Member would have several mitigating factors in his favour. He

appears to have suffered several weeks of unwelcome media exposure, has recognised that his posting could have caused offence to others and issued a full apology and removed the posting from the social networking site at the earliest opportunity.

6.3 In summary I therefore find that there has not been a failure to comply with the Members Code of Conduct.

W D Milne
Investigating Officer

12th November 2011

4. Please explain in this section what the councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one councillor you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the assessment sub-committee when it decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible; about exactly what you are alleging the councillor said or did. For instance, instead of writing that the councillor insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

"I believe that councillor Frost has brought the Dover District council into disrepute by the racist comments attributed to him in a recent edition of the Dover Express. For a town that is the gateway to Europe, this behaviour is unacceptable and deserving of the severest censure."

It is a direct breach of the Council's ten principals (Nr7)

Duncan Milne

From: Duncan Milne [duncanmilne@f2s.com]
Sent: 08 November 2011 17:16
To: 'mikesargent47@hotmail.com'
Subject: Local Investigation SC089a

Dear Mr Sargent

Thank you for speaking to me as Investigating Officer dealing with the above matter on Thursday 27th October 2011 . I confirm that I am aware of the nature of your complaint from the details contained in your complaint form of 6th September 2011 which was reported to the Standards Committee: Initial Assessment and Consideration Sub Committee on Friday 7th October 2011.

In the course of your telephone conversation you reiterated that it was essentially the racist element in the newspaper report which concerned you the most and that before you raised the complaint you obtained a copy of the original facebook entry in order to check the facts at first hand.

You further confirmed that you were happy that you had made your position clear and did not require to be interviewed further on the matter.

I trust this is a reasonable summary of our telephone conversation and confirm that as part of the process you will be sent a copy of the draft report for your consideration in due course.

Regards

W D Milne
Solicitor

Local Investigation -Interview with Councillor Robert Frost held at Dover District Council Offices, White Cliffs Business Park, Dover Kent CT16 3PJ on Thursday 27th October 2011 between 11.00 and 12.00 hours.

1. At the start of the interview, which was attended by yourself and a friend, Councillor Wayne Elliott, the leader of the Conservative Group on Deal Town Council, you confirmed that you had received a copy of the Decision Notice of the Initial Assessment and Consideration Sub Committee of Friday 7th October 2011, reference SC089a. The general summary of the complaint was read to you together with the section dealing with possible breaches of the Code.

2. You explained that at the time of the alleged breach of the Code in early August 2011 i.e. the time of the original facebook posting, you were on holiday in the Isles of Scilly. The posting was originally made using a blackberry mobile phone which had internet facility and you agreed that the copy of the facebook exchange attached hereto was correct.

3. It is important to note that at no time during your use of facebook, of which you had only been a member for some two to three months, do you ever recall referring to yourself as a Councillor or mentioning Council business. Throughout your use of the system you conducted yourself purely in a private capacity referring to yourself simply as Bob Frost. Similarly with regard to the facebook settings you only ever recall using the "friends only" setting which was the case on the evening in question. You were accordingly amazed when information from your private facebook entries appeared in the media.

4. You now, however, realise that you were somewhat trusting in the selection of friends who you allowed to view the site. One of the so called friends was the Dover Express via one of its reporters and you now realise that it was through that link that the contents were leaked / syndicated to the Daily Mail and the BBC. The original facebook exchange was between you and another friend, a Mr Howard McSweeney who is both a friend and editor of a publication entitled the Dover Forum.

5. In considering the email exchange it is in your view important to view the same in the correct historical context. The exchange took place on 7th August 2011 which was the night after the first Tottenham riots. You had been listening to the extensive coverage of the riots on radio five and had spent most of the night listening to the same. This was because you were worried for the safety of your three children, all of whom currently reside in north London. You realise now that what you wrote was really a stupid play on words and one you did not intend to cause offense. However as soon as you realised that offence had been caused you removed the comments from the site and made a public apology by which you still stand. Since then you have ceased to use facebook and have closed your account.

6. You wish to make it clear that in your view you are not a racist and have never felt until this incident that any of your friends would have treated you as being such. You taught mathematics in London schools in predominately black areas and you have many friends from the ethnic minorities.

7. You were utterly amazed by the scale of the publicity that attached to your facebook entries, which have been widely reported in local and national newspapers as well as on television and radio. You have had to endure ten very difficult weeks to date and wish to make it clear that the effect on your wife and family has also been considerable. You already feel that you have paid a relatively high price for the comments which have resulted in your terminating your three day a week maths teaching post with the local Sir Roger Manwood School. You terminated your employment in order to minimize the risk of the school receiving adverse publicity.

8. You do not seek to excuse your action but feel that the Dover Express may have had an ulterior political motive in pursuing your case. Prior to the incident you had exchanged emails with a reporter on the paper complaining about the paper's policy of publishing paid advertisements for massage parlours in its advertisement columns. You felt that it was the wrong thing to do and morally corrupt of the paper to obtain income from that source. You also make the point that other local newspapers such as the East Kent Mercury have a policy, on moral grounds, of not accepting such advertisements.

9. Finally you made the point that you stand by your public apology, where you acknowledged that what you said was wrong and that you were mortified by the offence that you had caused.

These are the points you wish to make with regard to the allegations against you.

W D Milne
Solicitor

31st October 2011
Amended 4th November 2011.

Manwood teacher posted online 'jungle bunnies' jibe Tories suspend councillor for 'racist' slur

Exclusive
Kathy Bailes

By kathy.bailes@krmmedia.co.uk

A DOVER district councillor and Sandwich school teacher has been suspended from the Conservative Party after he posted a "racist" comment on Facebook.

Maths teacher Bob Frost, who was elected to the district council to represent North Deal for the Conservative Party in May, wrote the insult, which alluded to the riots in London and included a derogatory term for ethnic minorities - "jungle bunnies" - on August 7, less than 24 hours after trouble flared in Tottenham.

Clr Frost, who teaches at Sir Roger Mannwood's school and describes himself as a "right wing libertarian," tried to amend the insults three days later following a call to him by another Conservative representative.

He posted: "I have just had a phone call that accused me of racism for my above posting."

"Looking at the dictionary it would appear that the term jungle bunnies is pejorative and is a racist slur relating to African-Americans.

"Needless to say I did not mean to use any offensive racist term and was referring to the urban jungle."

Innocuous

He adds: "As for the bunny bit it was originally animals but I thought people might object to me calling fellow humans this so I chose something I thought was innocuous and also cuddly."

The "apology" was taken down the same night after a second furious phone call from a Conservative representative.

The 49-year-old has now been suspended from the Conservative Party and an investigation into the comments will take place.

A panel of district party members will be set up to look at the posting and hear Mr Frost's explanation before deciding on what action to take.

Mr Frost has now issued a statement to apologise "unreservedly" for his comments.

He said: "What I said was wrong and I apologise unreservedly.

"I am mortified by the offence that I have caused and have deleted these comments. I am very sorry."

Dover District Council deputy leader Sue Chandler condemned the posting, saying: "There is no place in our society for this kind of language.

"We have therefore suspended Clr Frost from the Conservative Group pending an investigation."

A senior Tory colleague, who declined to be named, described Mr Frost as a "f*** **** idiot."

The Frost Files

Previous postings by Deal resident Bob Frost include comments on the Dover Express Facebook page about single mothers.

He wrote: "Well, being in the Market Square you might ask how all the single mothers congregating with their pushchairs spawn are able to afford both their beer and their tattoos. I

have a horrible idea I am paying for both."

When a reply from this newspaper pointed out some of those mothers may be from his North Deal ward Mr Frost responded: "While there is a certain demographic which may well fit the description in North Deal it is most unusual for them to waddle so far from their territory."



Apology: North Deal councillor Bob Frost will



KENT

18 August 2011 Last updated at 21:04

Dover councillor apologises over 'racist' Facebook post

A councillor in Kent has been suspended from the Conservative Party while it investigates an apparently racist comment he made on Facebook.

Dover District Councillor Bob Frost appeared to make comments about black people during an online conversation about the recent riots.

Mr Frost, a teacher, has apologised "unreservedly" and deleted the posts.

Deputy Council Leader Sue Chandler said: "There is no place in our society for this kind of language."

She added: "We have therefore suspended Councillor Frost from the Conservative Group pending investigation."

The comment was made while Mr Frost was having a conversation on the social-networking site, alluding to the London riots while he was on holiday.

On his status he wrote: "I'm missing the vibrant and multi-cultural society which I normally celebrate here in Sicily! Not!"

It was then suggested by someone else on Facebook that he take a trip to north London.

He replied: "All the bunnies here are of the woodland variety rather than the jungle."

Sola Afuape, chair of the equality charity Afiya Trust, said: "You don't expect somebody in a position of power, in a leadership position, to make comments like this.


"They're clearly offensive - racist in fact."

In a statement, Mr Frost said: "What I said was wrong and I apologise unreservedly. "I am mortified by the offence that I have caused and have deleted these comments.

"I am very sorry."





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 **Bob Frost** Adam's f+c and an American Appalacian folk duo for £10 (all profits to RNLI) AND they serve beer.
Sunday at 19:54 · Like


Write a comment...

 **Bob Frost**
I'm missing the vibrant and multi cultural society which I normally celebrate here in Scilly! Not!
 Sunday at 17:13 via BlackBerry · Like · Comment


 **Howard Mcsweeney** you could always take a trip up to north london.
Sunday at 17:50 · Like

 **Bob Frost** Howard. I can assure you that all the bunnies here are of the woodland variety rather than jungle

Sunday at 18:12 · Like

 **Howard Mcsweeney** you can be such a killjoy bob, nothing better than a good old fashioned riot.
Sunday at 22:58 · Like

Write a comment...

 **Bob Frost**

Facebook Privacy Settings

Posting content on your own wall (status, photo, check-in)

You can control the privacy settings. You can set them to public, friends or custom.

1. **Public:** Anyone can see the information – even people not on Facebook. It will show up when people do a search for you on Facebook or on any other search engine.
2. **Friends:** Only people you are friends with on Facebook can see the information. If you "tag" a friend (put their name in the information) then their friends can also see the information.
3. **Custom:** You can block specific people from seeing the information.

Posting on someone else's wall (commenting on their status, liking their status)

Anything you post on someone else's wall is subject to the privacy settings they have chosen.

NB: If you do not set a privacy setting when you do something it will revert to the setting used the last time you set it