

STANDARDS DETERMINATION SUB COMMITTEE

11th July 2011

FINAL DETERMINATION OF AN ALLEGED FAILURE TO FOLLOW THE CODE OF CONDUCT - COMPLAINT REF: 02/10

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| Responsible Portfolio Holder | Councillor M Braley |
| Responsible Head of Service | Claire Felton, Head of Legal, Equalities and Democratic Services and Monitoring Officer |
| Non-Key Decision | |

1. SUMMARY

An allegation was made that a Councillor (“the Subject Member”) had failed to follow the Council’s Code of Conduct. The Standards Assessment Sub-Committee referred the matter for local investigation. The investigation has been completed and the Investigating Officer has made a finding of failure to comply with the Code of Conduct. The Consideration Sub-Committee will be considering the Investigating Officer’s report on the matter on the same evening as the Determination Sub-Committee is taking place in the absolute expectation that the matter would be deemed suitable for determination by the Determination Sub-Committee. The outcome of the Consideration Sub-Committee’s deliberations will be reported at the outset of this meeting. The Determination Sub-Committee is therefore requested to determine the matter.

2. RECOMMENDATION

2.1 Members are requested to consider the Investigating Officer’s report at Appendix 1. Members may reach one of the following decisions:

- a) that the Subject Member has not failed to comply with the relevant Code of Conduct; or
- b) that the Subject Member has failed to comply with the relevant Code of Conduct but that no action needs to be taken; or
- c) that the Subject member has failed to comply with the relevant Code of Conduct and that a sanction should be imposed; as the Subject Member has now ceased to be a member of the relevant authority, the only sanction available to the Sub-Committee is censure.

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3. BACKGROUND

- 3.1 The Standards Assessment Sub-Committee considered an allegation about the Subject Member and on 13th July 2010 decided to refer the matter to the Monitoring Officer for local investigation having identified that the Subject Member might have failed to comply with the Code of Conduct by failing to treat other Councillors with respect.
- 3.2 The Monitoring Officer appointed an Investigating Officer who has investigated the allegation and his report is at Appendix 1.
- 3.3 The Investigating Officer has made a finding that the Subject Member has failed to comply with the Code. Therefore, in accordance with the Regulations the allegation has been referred to the Standards Committee Consideration and Determination Sub-Committees for final determination.

Pre-Hearing Process

- 3.5 Standards for England (SfE) advises that a pre-hearing process should be followed before a final determination hearing to try to allow matters at the hearing to be dealt with more fairly and economically by alerting the parties to possible areas of difficulty and, if possible, allowing them to be resolved before the hearing itself. A questionnaire has been sent to the Subject Member to identify:
- if the Subject Member disagrees with any of the findings of fact in the investigation report, and if so whether they are likely to be relevant to the issues to be determined;
 - whether evidence about those disagreements will need to be heard during the hearing;
 - any factors the Subject member wishes the Sub-Committee to take into account if it finds that the Subject member has failed to follow the Code of Conduct;
 - whether the Subject Member will be represented at the hearing; and
 - whether the Subject member intends to call any witnesses.
- 3.6 The Subject Member has responded to the questionnaire and has indicated that he will attend the hearing but has not indicated that he wishes to call witnesses.

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Procedure for the Hearing

- 3.7 The procedure to be followed at the hearing is set out in the agenda papers.

Non-attendance of the Subject Member

- 3.8 SfE guidance is that the Sub-Committee may consider the report in the Subject Member's absence if the Subject member does not attend the hearing. If the Sub-Committee is satisfied with the Subject Member's reasons for not being able to attend the hearing, it should arrange for the hearing to be held on another date.

Determining the Complaint

- 3.9 SfE guidance is that the hearing is a formal meeting of the Council and not a court of law. Evidence is not given under oath but the Sub-Committee is required to decide factual evidence on the balance of probabilities. The Sub-Committee should work in a demonstrably fair, independent and politically impartial way.

Sanctions

- 3.10 If the Sub-Committee finds that a Subject Member has failed to comply with the Code of Conduct the sanction which it may apply is set out in paragraph 2.
- 3.11 The Adjudication Panel for England has produced advice for its own case tribunals which the SfE suggests should be considered by Standards Committees. This advises that in deciding what action to take, the tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus the action taken by the Sub-Committee should be designed both to discourage or prevent the particular Subject Member from any future non-compliance and also to discourage similar action by others. Tribunals should take account of the actual consequences which have followed as a result of the Subject Member's actions while at the same time bearing in mind what the possible consequences might have been even if they did not come about.
- 3.12 SfE guidance provides that when deciding on a sanction the Sub-Committee should ensure that it is reasonable and proportionate to the

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Subject Member's behaviour. Before deciding what sanction to issue, (or in this case, whether to issue the only available sanction, that of censure) the Sub-Committee should consider the following questions, along with any other relevant circumstances:

- What was the Subject Member's intention? Did the Subject Member know that he was failing to follow the Code of Conduct?
- Did the Subject member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result of failing to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the Subject member accept they were at fault?
- Did the Subject member apologise to the relevant people?
- Has the Subject member previously been warned or reprimanded for similar misconduct?
- Has the Subject member failed to follow the Code of Conduct before?
- Is the Subject member likely to do the same thing again?
- How will the sanction be carried out? For example who will provide the training or mediation?
- Are there any resource or funding implications? For example, of a Subject Member has repeatedly or blatantly misused the relevant authority's information technology resources, the Sub-Committee may consider withdrawing those resources from the Subject member.

Aggravating and mitigating factors when deciding sanctions

3.13 The Adjudication Panel for England has published guidance on aggravating and mitigating factors it takes into account when assessing an appropriate sanction and these include:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the Code of Conduct, particularly when formed after taking appropriate advice;
- A Member's previous record of good service;
- Substantiated evidence that the Member's actions have been affected by ill-health;

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- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the Member;
- Compliance with the Code since the events giving rise to the determination;
- Actions which may have involved a breach of the Code may nevertheless have had some beneficial effect for the public;
- Dishonesty;
- Continuing to deny the facts despite clear contrary evidence;
- Seeking unfairly to blame other people;
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code; and
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

Decision

3.14 The Sub-Committee should announce its decision at the end of the hearing and SfE advises that it is good practice to make a short written decision available on the day of the hearing. The Sub-Committee must give its full written decision to the relevant parties as soon as possible after the hearing, in most cases this should be within 2 weeks of the hearing. The Sub-Committee must arrange for a summary of the decision and reasons for it to be published in at least one newspaper circulating in the area of the authority involved. If the Sub-Committee finds that the Subject member did not fail to follow the Code of Conduct the Subject member is entitled to decide that no summary of the decision should be passed to local newspapers.

4. KEY ISSUES

4.1 Financial Implications

4.2 None

4.3 Legal Implications

4.4 The Local Government Act 2000 ss60-67 as amended provides the statutory framework for the investigation of complaints against Members. The Standards Committee (England) Regulations 2008 as amended govern the conduct of these proceedings. The Sub-Committee should

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also take account of the guidance published by Standards for England on Standards Committee Determinations.

4.5 **Service/Operational Implications**

4.6 It is vital for the reputation and credibility of the Council that complaints against elected Members are seen to be robustly investigated. Adherence to the Code of Conduct is a key element of sound governance

4.7 **Customer / Equalities And Diversity Implications**

4.8 None.

5. **RISK MANAGEMENT**

5.1 The main risk associated with the details included in this report is loss of reputation.

6. **APPENDICES**

Appendix 1 Investigating Officer's Report

7. **BACKGROUND PAPERS**

- Standards Board for England guidance on Standards Committee Determinations
- Standards Board for England guidance on Local Investigations
- Adjudication Panel for England's guidance on decisions to be made by a Case Tribunal where a Respondent has been found to have failed to comply with a Code of Conduct

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