



STANDARDS COMMITTEE - CONSIDERATION SUB-COMMITTEE

Meeting to be held in Civic Hall, Leeds, LS1 1UR on
Friday, 11th June, 2010
at 2.00pm

MEMBERSHIP

Independent Members

Philip Turnpenny (Chair)

Councillors

Councillor Janet Harper

Councillor Brian Selby

Parish Members

Councillor Paul Cook

CONFIDENTIAL AND EXEMPT ITEMS

The reason for confidentiality or exemption is stated on the agenda and on each of the reports in terms of Access to Information Procedure Rules 9.2 or 10.4(1) to (7)(c). The number or numbers stated in the agenda and reports correspond to the reasons for exemption / confidentiality below:

9.0 Confidential information – requirement to exclude public access

9.1 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed. Likewise, public access to reports, background papers, and minutes will also be excluded.

9.2 Confidential information means

- (a) information given to the Council by a Government Department on terms which forbid its public disclosure or
- (b) information the disclosure of which to the public is prohibited by or under another Act or by Court Order. Generally personal information which identifies an individual, must not be disclosed under the data protection and human rights rules.

10.0 Exempt information – discretion to exclude public access

10.1 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed provided:

- (a) the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies, and**
- (b) that resolution states by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 10.4 below) the description of the exempt information giving rise to the exclusion of the public.
- (c) that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

10.2 In these circumstances, public access to reports, background papers and minutes will also be excluded.

10.3 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

10.4 Exempt information means information falling within the following categories (subject to any condition):

- 1 Information relating to any individual
- 2 Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority.
- 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6 Information which reveals that the authority proposes –
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment
- 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime
 - (a) Information which is subject to any obligation of confidentiality.
 - (b) Information which relates in any way to matters concerning national security.
 - (c) Information presented to a Standards Committee, or to a Sub-Committee of a Standards Committee, set up to consider any matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under section 58(1)(c) of the Local Government Act 2000.

A G E N D A

Item No	Ward	Item Not Open		Page No
1			<p>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</p> <p>To consider any appeals in accordance with Procedure Rule 25 of the Access to Information Procedure Rules (in the event of an Appeal the press and public will be excluded)</p> <p>(*In accordance with Procedure Rule 25, written notice of an appeal must be received by the Chief Democratic Services Officer at least 24 hours before the meeting)</p>	
2			<p>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</p> <ol style="list-style-type: none"> 1. To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report. 2. To consider whether or not to accept the officers recommendation in respect of the above information. 3. If so, to formally pass the following resolution:- <p>RESOLVED – That the press and public be excluded from the meeting during consideration of the following parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information, as follows:-</p>	

Item No	Ward/Equal Opportunities	Item Not Open		Page No
3			<p>LATE ITEMS</p> <p>To identify items which have been admitted to the agenda by the Chair for consideration.</p> <p>(The special circumstances shall be specified in the minutes)</p>	
4			<p>DECLARATIONS OF INTEREST</p> <p>To declare any personal/prejudicial interests for the purpose of Section 81(3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members' Code of Conduct.</p>	
5		10.4(7c)	<p>FINAL INVESTIGATION REPORT - CASE REFERENCE 0809019</p> <p>To consider the final report of the investigator and decide whether to accept the investigator's finding, or whether to refer the matter to a hearing.</p>	1 - 86



Originator: Amy Kelly

Tel: 0113 39 50261

Not for Publication: Appendix 1 to this report has been identified as exempt information by reason of 10.4(7C) of the Access to Information Procedure Rules.

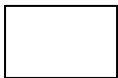
Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee – Consideration Sub-Committee

Date: 11th June 2010

Subject: Final Investigation Report – Case Reference 0809019

Electoral Wards Affected:



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1.0 Purpose Of This Report

- 1.1 The purpose of this report is to present the findings of the investigator in relation to case reference 0809019 to the Consideration Sub-Committee for consideration.
- 1.2 The final investigation report and its appendices (attached as Appendix 1) have been marked as exempt in accordance with Access to Information Procedure Rule 10.4(7C) which allows any information presented to the Standards Committee for the purposes of its consideration function to be considered as exempt information. Standards for England advise that the investigator's final report should normally be presented to the Standards Committee as an appendix to a covering report of the Monitoring Officer, and that both these reports can be considered exempt under paragraph 7C until the Standards Committee decides whether it wishes to meet in public.
- 1.3 The Consideration Sub-Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The complaint contained an allegation that the subject Member had disclosed confidential information to a meeting of a local residents' association. This alleged confidential information is reproduced within the investigation report. The investigator has not reached a final conclusion as to whether this information was truly confidential at the time of the meeting, although is unconvinced that it was. However it is clear that the information, whether defined as confidential or not, was disclosed at the public meeting and therefore is in the public domain. The Consideration Sub-Committee must consider all these factors in assessing whether

the information was confidential, and whether it remains so, and should take this into account when deciding whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

- 1.4 Furthermore, Standards for England advise that that the Consideration Sub-Committee should consider the effect of Regulation 17(4) of the Standards Committee (England) Regulations 2008 which allows the subject Member to prohibit the publication of a notice, stating that the Standards Committee has found that there has been no failure to comply with the Code of Conduct. However, Standards for England also advise that in most cases the public interest in transparent decision making by the Standards Committee will outweigh the subject Member's interest in limiting publication of an unproven allegation that has not yet been determined.
- 1.5 Members of the Consideration Sub-Committee should be aware that if they choose not to exclude the press and public and to publish the final report and appendices, and then subsequently decide that they accept the investigator's finding of no failure, they will be overriding the subject Member's right to choose whether to prohibit the publication of a notice about the outcome of the case. This is because the press and public will already be in possession of the full details of the case before the outcome of the consideration meeting is known.

2.0 Background Information

- 2.1 The original complaint was initially considered by the Assessment Sub-Committee on 18th May 2009. The Assessment Sub-Committee decided to refer part of the complaint to the Monitoring Officer for investigation. The Assessment Sub-Committee decided to take no further action on the remainder of the complaint, and the complainant did not request a review of this decision.
- 2.2 The Monitoring Officer initially considered whether to defer the investigation due to the subject Member's poor health, and their inability to take part in the investigation. However after further discussion with the subject Member and their Group Whip, the Monitoring Officer decided to commence the investigation process on 3rd June 2009.
- 2.3 On 17th June 2009 the investigation was delegated to an external solicitor, Mr. Jonathan Goolden, then of Jonathan Goolden Solicitors, and now of Wilkin Chapman Goolden Solicitors.
- 2.4 Mr. Goolden issued a draft report of the investigation on 27th April 2010 for the parties to comment on. The final report was marked 13th May 2010, but was subsequently issued to the Council and to the subject Member on 20th May 2010.

3.0 Main Issues

- 3.1 A copy of the final report and the supporting documentation is attached as Appendix 1 to this report. As a result of his investigation, the investigator has concluded that there has not been a failure to comply with the Code during the alleged incident. The investigator has concluded that the information given by the subject Member was either not confidential or was disclosed reasonably, in the public interest, in good faith and in compliance with the reasonable requirements of the Council, and therefore the conduct was not sufficient to breach the Members' Code of Conduct.

- 3.2 The Consideration Sub-Committee must now consider whether:
- It accepts the investigator’s finding of no failure (a “finding of acceptance”), or
 - The matter should be referred to a hearing; and
- If the matter is to be referred to a hearing whether:
- The matter should be referred to the Hearings Sub-Committee for determination; or
 - The matter should be referred to the First-Tier Tribunal (Local Government Standards in England) for determination.
- 3.3 The Consideration Sub-Committee should note that it may only decide to refer the matter to the First-Tier Tribunal (Local Government Standards in England) for determination if:
- It has determined that the action it could take against the subject Member would be insufficient were a finding of failure to be made; and
 - The Principal Judge (or his Deputy) of the First-Tier Tribunal (Local Government Standards in England) has agreed to accept the referral.
- 3.4 When making the above decisions the Consideration Sub-Committee will only consider the final report, it will not interview witnesses, nor take representations from the complainant or subject Member.
- 3.5 The Consideration Sub-Committee may also make recommendations to the Authority on matters arising from the final report.
- 3.6 If the Consideration Sub-Committee makes a finding of acceptance, it shall, as soon as reasonably practicable, arrange for a notice to be published stating that the Consideration Sub-Committee have found that there has not been a failure on the part of the subject Member to comply with the Code of Conduct. This notice shall not be published if the subject Member requests this.

4.0 Implications For Council Policy And Governance

- 4.1 The Consideration Sub-Committee should carry out its consideration of the final report in accordance with the Standards Committee Procedure Rules. Therefore when making the above decisions the Consideration Sub-Committee will only consider the final report, it will not interview witnesses, nor take representations from the complainant or subject Member.

5.0 Legal And Resource Implications

- 5.1 The legal implications are set out in the main body of the investigator’s report.

6.0 Conclusions

- 6.1 As a result of his investigation, the investigator has concluded that there was no failure to comply with the Members’ Code of Conduct by the subject Member during the alleged incident.

7.0 Recommendations

- 7.1 The Consideration Sub-Committee must decide whether:
- a)
- It accepts the investigator’s finding of no failure (a “finding of acceptance”), **OR**

- The matter should be referred to a hearing; and
If the matter is to be referred to a hearing whether:
 - The matter should be referred to the Hearings Sub-Committee for determination; or
 - The matter should be referred to the First-Tier Tribunal (Local Government Standards in England) for determination.

AND

- b) It wishes to make recommendations to the Authority on matters arising from the final report.

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