



Not for Publication: Appendix 1 to this report has been identified as exempt information by reason of 10.4(7C) of the Access to Information Procedure Rules.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: 1st February 2010

Subject: Final Investigation Report – Case Reference 0910005

Electoral Wards Affected:



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

☐

Community Cohesion

☐

Narrowing the Gap

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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 0910005 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. When considering this matter Standards for England advise 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.

- 1.4 In addition, as one of the allegations in this case has to be forwarded to the Hearings Sub-Committee or the First-Tier Tribunal (Local Government Standards in England) for determination, there is no requirement for the authority to publish a notice regarding this part of the investigation until after the hearing has taken place. When considering this matter the Consideration Sub-Committee may wish to consider the effect of Regulation 20(2) of the Standards Committee (England) Regulations 2008 which allows the subject Member to prohibit the publication of the finding of the Hearings Sub-Committee in a local newspaper or on the Council's website, as long as that finding is that the subject Member has not breached the Members' Code of Conduct.
- 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 they accept the investigator's finding of no failure, or the Hearings Sub-Committee subsequently decide that there has not been a failure to comply with the Code of Conduct, 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 case is known.

2.0 Background Information

- 2.1 The original complaint was initially considered by the Assessment Sub-Committee on 14th August 2009. The Assessment Sub-Committee decided to refer all of the allegations to the Monitoring Officer for investigation.
- 2.2 On 15th September 2009 the investigation was delegated to an external solicitor, Ms Claire Lefort of Weightmans Solicitors.
- 2.3 Ms Lefort issued a draft report of the investigation for the parties to comment on 20th November 2009. The final report was subsequently issued on 14th December 2009.

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 her investigation, the investigator has concluded that there has been no failure to comply with the Code during the first alleged incident, and that there has been a failure to comply with the Code during the second alleged incident. The Consideration Sub-Committee will therefore have to consider each finding separately and made a decision in relation to each separate allegation.

Allegation 1 (reasoning and finding set out in paragraphs 95-99 of the final report)

- 3.2 In relation to the finding that there was no failure to comply with the Members' Code of Conduct through one of the alleged incidents which took place on 6th July 2009, the Consideration Sub-Committee must 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 If the Consideration Sub-Committee makes a finding of acceptance in relation to this allegation, 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.

Allegation 2 (reasoning and finding set out in paragraphs 100-104 of the final report)

- 3.4 In relation to the finding that there was a failure to comply with the Members' Code of Conduct by the subject Member during the other alleged incident which took place on 7th July 2009, the Consideration Sub-Committee must now consider whether:
- This matter should be referred to the Hearings Sub-Committee for determination; or
 - This matter should be referred to the First-Tier Tribunal (Local Government Standards in England) for determination.
- 3.5 The Consideration Sub-Committee has no power to reject the investigator's finding of failure, and no power to request that the investigator undertake further investigation.
- 3.6 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.
- 3.7 The Consideration Sub-Committee should note that the maximum sanction that the Hearings Sub-Committee can impose is six months suspension. In their advice on applying sanctions Standards for England advise that suspension may be appropriate for more serious cases, such as those involving:
- Trying to gain an advantage or disadvantage for themselves or others;
 - Dishonesty or breaches of trust; and
 - Bullying.
- 3.8 The Consideration Sub-Committee should note that the First-Tier Tribunal (Local Government Standards in England) have stated that it would be rare for them to impose a suspension for longer than six months, not least because the effect of such a lengthy suspension might be seen as leading to constituents being left without effective representation at a time when the suspended elected member is not able to fulfil his responsibilities. Less rarely, however, the Tribunal will disqualify an elected member. Whereas a suspension will apply only to the particular council whose Code of Conduct has not been followed, a disqualification will preclude the member concerned from being appointed to any relevant authority. Thus it would be an appropriate sanction for a Member whose conduct leads to the view that the Member concerned is unfit to hold such public office.

- 3.9 The First-Tier Tribunal (Local Government Standards in England) has already published guidance (Guidance on decisions available to a Tribunal) as to when disqualification is likely to be an appropriate sanction. The following is an extract from that guidance:
1. The Respondent has deliberately sought personal gain (for either him or herself or some other person) at the public expense by exploiting his or her membership of the body subject to the Code of Conduct.
 2. The Respondent has deliberately sought to misuse his or her position in order to disadvantage some other person.
 3. The Respondent has deliberately failed to abide by the Code of Conduct, for example as a protest against the legislative scheme of which the Code forms part.
 4. Members of local authorities are expected to uphold the law. Where the Code has been deliberately breached to reflect the Respondent's opposition to the principles underlying the legislation, the Case Tribunal is likely to think of a disqualification of one year.
 5. There have been repeated breaches of the Code of Conduct by the Respondent.
 6. The Respondent has misused power or public assets for political gain.
 7. The Respondent has misused council property.
 8. The Respondent has committed a criminal offence punishable by a sentence of three months or more imprisonment.
 9. There may be other factors not listed above which also merit disqualification. Nor will disqualification always be appropriate even if the listed factors are present.
- 3.10 The Principal Judge (or his Deputy) is likely to agree to accept references for matters which are of a kind which would merit disqualification.
- 3.11 In the event that the Consideration Sub-Committee decides that the case may merit a sanction of disqualification or suspension of more than six months, it can decide to refer the matter to the First-Tier Tribunal (Local Government Standards in England) for determination subject to the Principal Judge's agreement. If the Principal Judge decides not to accept the referral, the case will be referred to the Hearings Sub-Committee for local determination.

Recommendations to the Authority

- 3.12 The Consideration Sub-Committee will have an opportunity to make recommendations to the Authority on matters arising from the complete final report at the conclusion of the Hearings Sub-Committee meeting, and therefore is not being asked to make such recommendations as part of this report.

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 her investigation, the investigator has concluded that there was not a failure to comply with the Members' Code of Conduct by the subject Member during the first of the alleged incidents. Therefore the Consideration Sub-Committee must decide whether to accept the investigator's finding of no failure, or refer the matter to a hearing.
- 6.2 The investigator has also concluded that there was a failure to comply with the Members' Code of Conduct by the subject Member during the second of the alleged incidents. In accordance with the relevant Regulations and Standards for England's guidance, as the investigation report has found that there has been a failure to comply with the Code a hearing must take place, unless the Consideration Sub-Committee decides that the matter should be referred to the First-Tier Tribunal (Local Government Standards in England) for determination.

7.0 Recommendations

- 7.1 The Consideration Sub-Committee must decide whether:

(a) In relation to the first allegation:

- 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) In relation to the second allegation:

- 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 (subject to the agreement of the Principal Judge or his Deputy).