

Pre-Hearing Process Summary Report

Authority	Leeds City Council
Member	Withheld pending decision on exemption
Complainant	Withheld pending decision on exemption
Case reference number	SBE 12139.05
Chair of the Standards Committee	Mr M Wilkinson
Monitoring Officer	Ms N Jackson
Investigator	Mr S Turnock
Committee Clerk	Miss A Bowler
Date the pre-hearing process summary was produced	11 th May 2006
Date, time and place of the hearing	25 th May 2006, 8:30am, Committee Room 1, Civic Hall, Leeds, LS1 1UR

1. Summary

The Standards Board for England has referred a complaint in respect of a Councillor of Leeds City Council for local investigation and determination by the Standards Committee.

The complaint contains three separate allegations, as set out in paragraph 2, of which the investigator found that the Councillor had failed to comply with the Leeds City Council Members' Code of Conduct as alleged in the first two counts, but found that the Councillor had not failed to comply with Leeds City Council Members' Code of Conduct as alleged in the final count.

A pre-hearing process has been completed to identify any points of dispute between the Councillor and Mr Turnock's report. The Councillor has not identified any points of dispute. The Councillor does not deny that he failed to comply with the code of conduct, and has submitted a written apology to this effect. Neither party has requested to call any witnesses, although the Member does wish to be supported by a fellow Councillor.

2. The Complaint

This pre-hearing process summary provides a short summary of the complaint. The investigator's final report and bundle of supporting evidence is exempt under Access to Information Procedure Rules 10.4.1 and 10.4.2, pending the Committee's final decision. The final report and evidence is attached at Appendix 2.

The Councillor was the subject of a degree of noise nuisance which led him to seek to register a complaint with the noise nuisance team. The complaint was a personal one and not on behalf of any constituent. The Councillor made it clear on a number of occasions in the course of the conversation that he was a Councillor. There were three alleged breaches of the Code of Conduct, all arising out of a single telephone conversation lasting approximately 5 minutes. These alleged breaches can be summarised as follows:

- (a) It was alleged that the Councillor breached paragraph 2 of the code of conduct by failing to treat the complainant with respect during the telephone call by acting in a rude, hostile and threatening manner.

Mr Turnock concluded that as the Councillor stressed on several occasions during the telephone call that he was a Councillor and would raise complaints in this capacity, he changed the call from one of a purely private nature to one which meant he was acting in an official capacity. Accordingly, the Councillor breached this paragraph of the code of conduct.

- (b) It was alleged that the Councillor breached paragraph 4 of the code of conduct by bringing his office or authority into disrepute.

Mr Turnock concluded that given the previously stated view on the Councillor's conduct in the course of the telephone conversation, the Councillor did breach paragraph 4 of the code of conduct.

- (c) It was alleged that the Councillor breached paragraph 5(a) of the code of conduct by attempting to secure for himself or any other person, an advantage or disadvantage.

Mr Turnock concluded that it is the case that both telephone operators whom the Councillor had spoken to, felt that the Councillor was seeking to use his position to obtain more favourable treatment. The Councillor stressed the fact that he was a Councillor and gave that as a reason why he should not have to give his name and address. Certainly at the time of the second call he should have known that the proper procedure was to supply an address and that a member of the public refusing to give an address would not be dealt with further.

However, having previously concluded that by notifying the staff he was a Councillor he came within the ambit of paragraph 2 of the Code it is consistent to interpret the Councillor's actions as stressing that he was a Councillor to ensure that the matter was dealt with properly, as he saw it. The Councillor was entitled, as a member of the public, to have a noise nuisance complaint dealt with and would have had it dealt with had he simply given his home address. The advantage that it is said he sought was therefore merely to be excused from giving details of his home address to the operator (he did subsequently supply his home address to the noise nuisance team). He could not be accused of seeking to have a complaint dealt with as a Councillor which would not be dealt with for a member of the public. On the balance of probabilities therefore and taking into account the onus to prove the allegation lies with the Investigating Officer it is the view of the Investigating Officer that there has been no breach of paragraph 5 of the Code.

3. Relevant section(s) of the Code of Conduct / Local Code

The following sections of the code of conduct are relevant to the complaint:

- The Leeds City Council Members' Code of Conduct states at paragraph 1 that:
 - a) A member must observe the authority's code of conduct whenever s/he (a) conducts the business of the authority (b) conducts the business of the office to which s/he has been elected or appointed; or (c) acts as a representative of the authority, and references to a member's official capacity shall be construed accordingly.

b) The authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.

- Paragraph 2(b) of the Code states:
'A member must treat others with respect'.
- Paragraph 4 of the Code states :
'A member must not in his or her official capacity, or any other circumstance, conduct himself or herself in a manner which could reasonably be regarded as bringing his or her office or authority into disrepute'.
- Paragraph 5(a) of the Code states :
'A member must not in his or her official capacity, or any other circumstance, use his or her position as a member improperly to confer on or secure for himself or herself or any other person, an advantage or disadvantage'.
- The Relevant Authorities (General Principles) Order 2001 came into force on 6 April 2001 and specifies the principles which are to govern the conduct of members of relevant authorities in England.
- Pursuant to paragraph 3(2) of the Order:
'Only paragraphs 2 and 8 of the Schedule of this Order shall have effect in relation to the activities of a member that are undertaken other than in an official capacity'.
- Principle 2 of the Order states :
'Honesty and Integrity – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour'.

4. The Pre-Hearing Process

Following the Monitoring Officer's receipt of Mr Turnock's report, the Member was sent a series of forms to complete to identify any areas where he disagreed with the content of the report. The Councillor does not dispute any of the findings of fact in Mr Turnock's report.

5. Matters which the Committee must address

Mr Turnock made no adverse findings in respect of allegation (c), and the Councillor has made no comment on those findings. It is open to the Standards Committee to consider these points, and to formally confirm that it concurs with Mr Turnock's findings that the Councillor did not fail to observe the Code of Conduct in respect of these allegations.

During the pre-hearing process both parties requested that the hearing and the final report be kept private. The Local Government (Access to Information)(Variation) Order 2006 defines as exempt information, amongst other categories:

1. Information relating to any individual; and
2. Information which is likely to reveal the identity of an individual.

Those Regulations further provide that information which falls within those categories is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The Committee must consider prior to conducting the hearing, whether or not the public interest in maintaining the exemption outweighs the public interest in not doing so.

6. Findings of fact in the report that are agreed:

All the findings of fact in the report are agreed.

7. Findings of fact in the report that are not agreed:

None of the findings of fact in the report are disputed.

8. Attendance / Witnesses

The Councillor does not dispute any of the facts reported by Mr Turnock. Mr Turnock will be attending the hearing and will not be represented. The Councillor will attend the hearing, and does wish to be represented. Both parties have confirmed that they do not propose to call any witnesses.

9. Procedure for the hearing

The hearing will be conducted in accordance with the Standards Committee Procedure Rules, as attached at Appendix 1 (details of the Hearing itself are outlined from paragraph 9.0).