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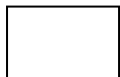
Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee – Hearings Sub-Committee

Date: 17th May 2010

Subject: Case Reference 0809006

Electoral Wards Affected:



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1.0 Background Information

1.1 On 29th July 2008, the Assessment Sub-Committee considered a complaint (Case Reference 0809006), which was referred for investigation. The final investigation report was received on 9th February 2010, which confirmed that the Investigator had found a breach of the following paragraph of the Code:

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

1.2 The Consideration Sub-Committee met on 26th February 2010 to consider the final investigation report (attached at Appendix 1). The matter was referred to the Hearings Sub-Committee for determination.

1.3 Appendices 1, 2, and 3 to this report 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 hearings function to be considered as exempt information. The Hearings Sub-Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The Monitoring Officer has recommended that the final investigation report and additional evidence provided by the subject Member as part of the pre-hearing process should be publicly available, however this is a decision to be made by the Hearings Sub-Committee at Stage 1 of the hearing.

- 1.4 When considering this matter the Hearings 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. Therefore, Members of the Hearings Sub-Committee should be aware that if they choose not to exclude the press and public and to publish Appendices 1, 2, and 3, and then they 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.
- 1.5 However, the Hearings Sub-Committee should note that both the subject Member and the Investigator have confirmed that they do *not* want any part of the hearing to be held in private, or any parts of the relevant documents to be withheld from public inspection.

2.0 Main Issues

Stage 1 – Setting the Scene

- 2.1 The Pre-Hearing Process Summary is attached at Appendix 2. At Stage 1 of the hearing, the Sub-Committee must decide whether to exclude the public from any parts of the hearing and which parts of the agenda are not to be made available for public inspection.

Stage 2 – Preliminary Procedural Issues

- 2.2 At Stage 2 of the hearing, the following preliminary issues must be decided:
- (a) Whether witnesses will be heard at the hearing, and if so, what evidence will be heard from each witness:
- (i) Written statements from the 3 witnesses that the subject Member wishes to call are attached at Appendix 3. These relate to the practice of Plans Panels and in the view of the Monitoring Officer, this point could not previously have been addressed by the subject Member as this issue, which was raised by Mr Tasker's evidence, was not raised in the draft report sent to the subject Member and only appeared in the final report. Therefore, the pre-hearing process was the only opportunity for the subject Member to respond to the point.
 - (ii) Further, since the Pre-Hearing Process Summary was produced, the Investigator has asked to call an additional witness, Councillor Mark Dobson, to give evidence in relation to the normal practice at Plans Panel (East) regarding members of the public speaking at such meetings. The Sub-Committee will therefore need to take a view as to whether the late witness will be permitted.
- (b) Whether the additional evidence provided by the subject Member as part of the pre-hearing process (Appendix 4) will be considered.

- 2.3 The parties will be invited to make representations about any other issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Stage 3 – Making Findings of Fact

- 2.4 The Hearings Sub-Committee must then making findings of fact, in relation to any findings of fact in the Investigator’s report that are not agreed. The findings of fact that are not agreed are set out in paragraph 4 of the Pre-Hearing Process Summary (Appendix 2).

Stage 4 – Did the Subject Member Fail to Follow the Code of Conduct?

- 2.5 The Hearings Sub-Committee must decide whether there has been a breach of the Code of Conduct based on the facts it has found.

Stage 5 – Decision to Apply a Sanction

- 2.6 If the Hearings Sub-Committee makes a finding of breach of the Code of Conduct it must decide what sanction, if any, should be imposed.

Stage 6 – Recommendations to the Authority

- 2.7 The Sub-Committee must also consider whether it wishes to make any recommendations to the authority as a result of this case, with a view to promoting high standards of conduct among Members.

Stage 7 – Making the Findings Public at the Hearing

- 2.8 The Chair will verbally confirm the Hearings Sub-Committee’s decision, with reasons, in public at the end of the hearing.
- 2.9 The hearing must be carried out in accordance with the Hearings Sub-Committee procedure (which forms part of the Standards Committee Procedure Rules), as attached to the Pre-Hearing Process Summary (Appendix 2).

3.0 Implications For Council Policy And Governance

- 3.1 By complying with the Hearings Sub-Committee Procedure and Standards for England guidance, the Sub-Committee can ensure that the hearing is held in a demonstrably fair, independent and politically impartial way. This will help to ensure that members of the public, and members of the authority have confidence in its procedures and findings.

4.0 Legal And Resource Implications

- 4.1 The hearing must be carried out in accordance with the Standards Committee (England) Regulations 2008, and the Sub-Committee must have regard to the statutory guidance provided by Standards for England in relation to Standards Committee Determinations.

5.0 Conclusions

- 5.1 The Consideration Sub-Committee has referred Case Reference 0809006 to the Hearings Sub-Committee for determination. The Hearings Sub-Committee must

follow the Hearings Sub-Committee Procedure and decide whether there has been a breach of the Code of Conduct in respect of the matter referred to it. If the Hearings Sub-Committee makes a finding of breach of the Code of Conduct it must decide what sanction, if any, should be imposed.

6.0 Recommendations

- 6.1 Members of the Hearings Sub-Committee are asked to:
- (a) Decide any preliminary procedural issues;
 - (b) Make findings of fact in relation to the facts that are not agreed;
 - (c) Decide whether there has been a breach of the Code of Conduct;
 - (d) If there is a finding of breach, decide what sanction, if any, should be imposed; and
 - (e) Consider whether they wish to make any recommendations to the authority as a result of this case, with a view to promoting high standards of conduct among Members.

Background documents

Standards Committee (England) Regulations 2008

'Standards Committee Determinations', Standards for England