



Not for Publication: Appendix 1 to this report has been identified as exempt information by reason of 10.4(7C) of the Access to Information Procedure Rules.

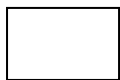
Report of the Assistant Chief Executive (Corporate Governance)

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.