

**BROMSGROVE DISTRICT COUNCIL**

**STANDARDS COMMITTEE**

**08 JULY 2011**

**FINAL DETERMINATION HEARING**

**COMPLAINT REF 94/09**

**Subject Member: Mrs. J. D. Luck**

**NOTE: Mrs Luck was a member of the District Council at the time of the alleged breaches of the Code of Conduct but ceased to be a Councillor when her terms of office expired on Monday 09 May 2011**

Responsible Portfolio Holder	Councillor Mark Bullivant
Responsible Head of Service	Claire Felton, Monitoring Officer

**1. SUMMARY**

- 1.1 In September 2009 a complaint was made to the Standards Committee that Mrs Jean Luck (who was a District Councillor at the relevant time) had given information to EON that electricity was being illegally abstracted at the complainant's address. The complaint was considered by the Standards Assessment Sub-Committee and referred for local investigation.
- 1.2 In the course of her investigation the Investigating Officer found out that the Subject Member had spoken to planning officers about planning applications made by the complainant. At the time those conversations took place the Subject Member would have been aware of the Standards investigation. The matter was referred back to the Standards Sub-Assessment Committee in March 2010 which was of the view that potentially there may have been further breaches of the Code of Conduct by the Subject Member. The Standards Assessment Sub-Committee directed that the investigation be expanded to include the involvement of the Subject Member in the planning applications.
- 1.3 The Investigating Officer's report into the complaints was issued on 24 February 2011. The Investigating Officer's report was considered by the Standards Committee on 23 March 2011. The Committee accepted the Investigating Officer's findings of "no breach" in relation the allegation that the Subject Member had brought the authority into disrepute by speaking to EON, and by involving herself in the complainant's planning application. The Committee also accepted the finding of "no breach" in relation to the

issue of the Subject Member having used her position improperly to confer a disadvantage by involving herself in the complainant's planning application.

- 1.4 The remaining two allegations where the Investigating Officer recommended that there had been a failure to follow the Code were referred to the Standards Committee for hearing.
- 1.5 The Subject Member did not stand for re-election in the District Elections in May 2011 and accordingly she ceased to be a member of the authority on 09 May 2011.
- 1.6 The hearing (known as a Final Determination Hearing) is to take place on 08 July 2011. The Committee is therefore requested to determine the two allegations of failure to follow the Code.

## **2. RECOMMENDATION**

- 2.1 Members are requested to consider the Investigating Officer's report attached at Appendix 2 and may reach one of the following decisions:
  - 2.1.1 that the Subject Member has not failed to comply with the relevant Code of Conduct; or
  - 2.1.2 that the Subject Member has failed to comply with the relevant Code of Conduct but that no action needs to be taken; or
  - 2.1.3 that the Subject Member has failed to comply with the relevant Code of Conduct and that a sanction should be imposed. The regulations provide that where a Subject Member has ceased by the date of the Committee meeting the Subject Member to be a Member of the relevant authority, the only sanction available to the Committee is censure.

## **3. BACKGROUND**

### **Complaints**

- 3.1 Following the outcome of the Consideration Meeting on 23 March 2011, the complaints to be decided at the Final Determination Hearing are as follows:-
  - That the Subject Member failed to treat other with respect by reporting the complainant to EON contrary to para 3 of the Code of Conduct.
  - That the Subject Member used her position to confer a disadvantage by reporting the complainant to EON contrary to para 6 of the Code of Conduct.

## **Documents**

- 3.2 A copy of the Bromsgrove District Council Code of Conduct is attached at Appendix 1. The Investigating Officer's report is attached to this report as Appendix 2. Members are asked to note that Appendix 2 includes comments on the report headed as Appendix M. The Schedule of Evidence (referred to as Appendices A to L in the Investigating Officer's report) has been circulated to Members of the Committee and is included as background papers to this report.

## **Pre-Hearing Process**

- 3.3 Standards for England (SfE) advises that a pre-hearing process should be followed before a Final Determination Hearing to try to allow matters at the hearing to be dealt with more fairly and economically by alerting the parties to possible areas of difficulty and, if possible, allowing them to be resolved before the hearing itself. A questionnaire was sent to the Subject Member to identify:

- if the Subject Member disagrees with any of the findings of fact in the investigation report, and if so whether they are likely to be relevant to the issues to be determined;
- whether evidence about those disagreements will need to be heard during the hearing;
- decide whether there are any parts of the hearing that are likely to be held in private;
- any factors the Subject Member would wish the Standards Committee to take into account if it finds that the Subject Member has failed to follow the Code of Conduct;
- whether the Subject Member will be represented at the hearing;
- whether the Subject Member intend to call any witnesses; and
- whether any special arrangements need to be made.

- 3.4 At the time of writing this report the Subject Member has not returned the questionnaire and it is not known whether she intends to participate in the hearing. Standards for England guidance is that the process for complaints must be fully completed by Councils even in those cases where by the time of the Final Determination Hearing the Subject Member is no longer a member of the authority.

## **4. KEY ISSUES**

### **Procedure for the Hearing**

- 4.1 As referred to above, the procedure to be followed at the hearing is attached as Appendix 1 of the report.

### **Non-attendance of the Subject Member**

- 4.2 SfE guidance is that the Committee may consider the report in the Subject Member's absence if the Subject Member does not attend the hearing. If the Committee is satisfied with the Subject Member's reason(s) for not being able to attend the hearing, it should arrange for the hearing to be held on another date.

### **Determining the Complaint**

- 4.3 SfE guidance is that the hearing is a formal meeting of the Council and not a court of law. Evidence is not given under oath but the Committee is required to decide factual evidence on the balance of probabilities. The Committee should work in a demonstrably fair, independent and politically impartial way.

### **Sanctions**

- 4.4 If the Committee finds that a Subject Member has failed to comply with the Code of Conduct the sanctions which it may apply are set out in paragraph 2. Members are asked to note that Mrs Luck is no longer a Councillor. This means that if the Committee find that the Code of Conduct has been breached the only sanction that can be imposed is censure. None of the other usual sanctions will be available. The second option open to the Committee is that they can make a finding that the Code of Conduct has been breached but decide not to impose any sanction.
- 4.5 Whilst recognising that the only sanction available is as set out in 4.4 above, the Committee should be aware of the general guidance to be applied when considering sanctions and accordingly this is set out in paragraphs 4.6 to 4.8.
- 4.6 The Adjudication Panel for England has produced advice for its own case tribunals which the SfE suggests should be considered by Standards Committees. This advises that in deciding what action to take, the tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus the action taken by the Committee should be designed both to discourage or prevent the particular Subject Member from any future non-compliance and also to discourage similar action by others. Tribunals should take account of the actual consequences which have followed as a result of the Subject Member's actions while at the same time bearing in mind what the possible consequences might have been even if they did not come about.

4.7 SfE guidance provides that when deciding on a sanction the Committee should ensure that it is reasonable and proportionate to the Subject Member's behaviour. Before deciding what sanction to issue, the Committee should consider the following questions, along with any other relevant circumstances:

- What was the Subject Member's intention? Did the Subject Member know that he was failing to follow the Code of Conduct?
- Did the Subject Member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result of failing to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the Subject Member accept they were at fault?
- Did the Subject Member apologise to the relevant people?
- Has the Subject Member previously been warned or reprimanded for similar misconduct?
- Has the Subject Member failed to follow the Code of Conduct before?
- Is the Subject Member likely to do the same thing again?
- How will the sanction be carried out? For example who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a Subject Member has repeatedly or blatantly misused the relevant authority's information technology resources, the Committee may consider withdrawing those resources from the Subject Member.

#### **Aggravating and mitigating factors when deciding sanctions**

4.8 The Adjudication Panel for England has published guidance on aggravating and mitigating factors it takes into account when assessing an appropriate sanction and these include:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the Code of Conduct, particularly when formed after taking appropriate advice;
- A Member's previous record of good service;
- Substantiated evidence that the Member's actions have been affected by ill-health;
- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the Member;
- Compliance with the Code since the events giving rise to the determination;

- Actions which may have involved a breach of the Code may nevertheless have had some beneficial effect for the public;
- Dishonesty;
- Continuing to deny the facts despite clear contrary evidence;
- Seeking unfairly to blame other people;
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code;
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

## **Decision**

- 4.9 The Committee should announce its decision at the end of the hearing and SfE advises that it is good practice to make a short written decision available on the day of the hearing. The Committee must give its full written decision to the relevant parties as soon as possible after the hearing, in most cases this should be within 2 weeks of the hearing. The Committee must arrange for a summary of the decision and reasons for it to be published in at least one newspaper circulating in the area of the authority involved. If the Committee finds that the Subject Member did not fail to follow the Code of Conduct the Subject Member is entitled to decide that no summary of the decision should be passed to local newspapers.

## **5 FINANCIAL IMPLICATIONS**

None

## **6. LEGAL IMPLICATIONS**

- 6.1 The Local Government Act 2000 introduced primary legislation to enable the implementation of a Members' Code of Conduct, and this was amended by the Local Government and Public Involvement in Health Act 2007 (LGPIHA 2007) insofar as it related to the application of the Members' Code of Conduct to their private lives. The local assessment regime was introduced by the LGPIHA 2007, and further expanded in the Standards Committee (England) Regulations 2008 which also set out the rules and procedures governing the investigation and determination of complaints.
- 6.2 Members are reminded that at the last meeting of the Standards Committee on 23 March 2011 consideration was given to whether the complaint should remain confidential under Section 100 I of the Local Government Act 1972, as amended. The decision was made to lift the exemption on publicising this matter. However, Members will still need to be mindful not to disclose any personal information into the public domain. Whilst the Investigating Officers report does not contain any personal information, the Schedule of Evidence does contain some personal data. This would affect the ability of the Committee to discuss the Schedule of

Evidence in public session. Were members to wishing to discuss the documents in the Schedule of Evidence in detail at the hearing, then that part of the meeting would have to be held in closed session.

**7. POLICY IMPLICATIONS**

N/a

**8. COUNCIL OBJECTIVES**

N/a

**9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS**

9.1 The main risk associated with the details included in this report is:

- Risk of challenge to Council decisions.

9.2 This risk is being managed as follows:

- Risk Register: Legal, Equalities and Democratic Services  
Key Objective Ref No: 3  
Key Objective: Effective ethical governance

**10. CUSTOMER IMPLICATIONS**

None identified

**11. EQUALITIES AND DIVERSITY IMPLICATIONS**

None identified

**12. VALUE FOR MONEY IMPLICATIONS**

None identified

**13. CLIMATE CHANGE AND CARBON IMPLICATIONS**

None identified

**14. HUMAN RESOURCES IMPLICATIONS**

None identified

**15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS**

None identified

**16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF THE CRIME AND DISORDER ACT**

None identified

**17. HEALTH INEQUALITIES IMPLICATIONS**

None identified

**18. LESSONS LEARNT**

Not applicable

**19. COMMUNITY AND STAKEHOLDER ENGAGEMENT**

None identified

**20. OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	No
Chief Executive	No
Executive Director (s151 officer)	No
Executive Director – Leisure, cultural, Environmental and Community Services	No
Executive Director – Planning & Regeneration, Regulatory and Housing Services	No
Head of Service	Yes
Head of Resources	No
Head of Legal & Democratic Services	Yes
Corporate Procurement Team	No

**21. WARDS AFFECTED**

All wards



**22. APPENDICES**

Appendix 1	Code of Conduct for Bromsgrove District Council
Appendix 2	Investigating Officer's report dated 24 Feb 2011

**23. BACKGROUND PAPERS**

Schedule of Evidence (Appendices A to L of Investigating Officer's Report)

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