

BROMSGROVE DISTRICT COUNCIL

STANDARDS COMMITTEE HEARING

FULL WRITTEN DECISION

Reference number 94/09

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| Member subject to allegation | Mrs. J. D. Luck |
| Investigating Officer | Mrs. V. Brown |
| Date of report: | 24 February 2011 |
| Name of Member's representative: | N/A |
| Relevant authority concerned: | Bromsgrove District Council |
| Date of the hearing: | 08 July 2011 |
| Names of Standards Committee members: | |
| | Chairman: Mr. N. A. Burke Mr. J. Cypher Mr. I. A. Hodgetts Councillor Luke Mallett Councillor Mrs. M. Sherrey |
| Standards Committee Legal Adviser: | Mrs. S. Sellers |
| Committee Services Officer: | Ms. D. Parker-Jones |

Referral for investigation and subject matter of complaint

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 on 09 December 2009 and referred for local investigation. The Monitoring Officer appointed Mrs. V. Brown as the Investigating Officer.

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 considered again by the Standards Sub-Assessment Committee on 31 March 2010. The Standards Assessment Sub-Committee directed that the investigation be expanded to include the involvement of the Subject Member in the planning applications.

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 to 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 an advantage by involving herself in the complainant's planning application.

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.

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.

Summary of the Allegation

That Mrs. Luck failed to comply with the Code of Conduct for Bromsgrove District Council as follows:-

- By failing to treat others with respect by reporting the complainant to EON contrary to para 3 of the Code of Conduct.
- By using her position to confer a disadvantage by reporting the complainant to EON contrary to para 6 of the Code of Conduct.

Preliminary Issues

The Standards Committee had decided at the hearing on 31 March 2011 to lift the exemption on the complaint being considered in private session. Accordingly the committee reports and the Investigating Officers reports were released into the public domain with the papers being redacted to remove any personal information.

The Standards Committee considered a request made by the complainant that her name be excluded from the papers and that they should not be identified during the hearing. Having retired to take legal advice the Committee agreed to the request by the complainant. Legal advice was given that the normal test is for there to be a presumption in favour of hearings taking place in public to promote transparency. However, there can be exceptions to this and in this case the complainant was not asking for the hearing to be held in private but that their name be kept confidential.

The Standards Committee was advised that Mrs. Luck had been informed of the hearing date but contacted the Ethical Standards Officer to say that she would not be attending. The Committee did not identify any need to adjourn the hearing and decided to proceed in the absence of the Subject Member.

Findings of fact

The facts set out in paragraphs 4.1 to 4.58 of the Investigating Officer's Report were undisputed and were therefore adopted by the Committee as the facts of the matter. The Committee further noted that although Mrs. Luck was no longer an elected member as she had not stood for re-election in May 2011, at the time of the events in question she had been a Councillor with many years of experience.

Summary of submissions by the Investigating Officer

Mrs. Brown confirmed that the contents of her report were correct and accurate. She explained the reasoning she had applied in reaching her conclusions that based on the facts Mrs. Luck has breached the Code of Conduct.

Summary of submissions by the Subject Member

Mrs. Luck was not present and had not submitted any representations in writing.

Finding as to whether the Subject Member had failed to follow the Code including reasons

The Standard Committee found that Mrs. Jean Luck had failed to follow the Code of Conduct as regards treating others with respect (para 3) and using her position to confer a disadvantage (para 6).

The reasons for the Committee's decision were as follows:-

- At the time Mrs. Luck made the phone call to Eon to report the activities at the complainant's address she was clearly acting in her capacity as a Councillor. This is evidenced by the records disclosed by Eon.
- Mrs. Luck failed to treat the complainant with respect. The Committee noted that there was an imbalance of relationships as between Mrs. Luck and neighbour "A" and Mrs. Luck and the complainant. Mrs. Luck placed undue weight on the information she had been told about the complainant by neighbour "A". She assumed that the complainant was acting wrongfully without making any further enquiries or speaking to the complainant directly. Mrs. Luck carried out her ward member role in this matter in a way that was not balanced or fair to the complainant. Her actions resulted in the complainant being investigated by Eon for unlawful abstraction of electricity when in reality the complainant had not done anything wrong.
- As an experienced Councillor Mrs. Luck should have realised that reporting a safety hazard to Eon would have been acceptable but passing on information about an individual that she had taken as hearsay from a neighbour was not appropriate and in doing so she overstepped what was acceptable in her role as ward councillor.
- Based on the way in which Mrs. Luck chose to act in relation to the information from neighbour "A" the Committee finds that Mrs. Luck did not treat the complainant with respect and that Mrs. Luck used her position to confer a disadvantage.

The Sanctions imposed and reasons for them

The Committee was advised by the Legal Officer that due to Mrs. Luck no longer being a Councillor the options as to sanction were either to take no action or to censure Mrs. Luck. The Committee was also referred to the Standards for England guidance in deciding what penalty to impose.

Having taken into account the facts of the case and the Standards for England guidance the Committee decided that Mrs Luck be censured for breaching the Code of Conduct.

In considering the penalty the Committee had regard to the following:

- The fact that Mrs. Luck has been a Councillor for many years and has contributed to the community.
- The fact that on this occasion as an experienced Councillor Mrs. Luck should have realised that reporting hearsay to the Eon was not acceptable.

Recommendations to the authority

The Committee recommended to the authority as follows:-

That in light of the outcome of the case that the Members of the Council should be reminded of the importance of treating all their ward members with respect when dealing with case work and of the need to ensure that they always respond to requests for help in a balanced and fair way.

The Committee was also advised of a forthcoming training session for Members on the Role of the Ward Councillor and it was confirmed that a further reminder for the training session would be sent to all Members of the Council.

Right of Appeal

A Member subject to a Standards Committee finding has the right to apply in writing to the First-tier Tribunal of the General Regulatory Chamber (Local Government Standards in England) for permission to appeal the Standards Committee's finding.

A request for permission to appeal has to be made to the First-tier Tribunal within 28 days of the Member's receipt of the Standards Committee's full written decision.

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Chairman of the Standards Committee

Dated: