

**BROMSGROVE DISTRICT COUNCIL**

**STANDARDS COMMITTEE**

**24TH MAY 2012**

**FINAL DETERMINATION HEARING - COMPLAINT REF: 01/11**

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

**1. SUMMARY**

- 1.1 On 23rd November 2011 the Standards Assessment Sub-Committee considered a complaint made by District Councillor Sean Shannon in relation to District Councillor Del Booth. Councillor Shannon complained that Councillor Booth had breached the Code of Conduct by failing to declare a personal and prejudicial interest at a meeting of the Cabinet on 5th October 2011. The matter under consideration at the meeting was the transfer of land comprising the recreation ground at Housman Close, Charford, Bromsgrove to Bromsgrove District Housing Trust (BDHT). The complaint alleged that Councillor Booth owns land and a dwelling house at 15 Housman Close which overlooks the former play area and that he remained in the room and participated in the discussion about the transfer of the land. Councillor Shannon was of the view that as a result of the Cabinet decision the value of Councillor Booth's property would increase and that therefore he should have declared a personal and prejudicial interest. The Monitoring Officer appointed Mr. Michael Blamire-Brown as the Investigating Officer.
- 1.2 The Investigating Officer's report was issued on 29th February 2012. A copy of the report is attached at Appendix 3. The Schedule of Evidence (referred to as Appendices 1 to 15 in the Investigating Officer's report) has been circulated to Members of the Committee and is included as background papers to this report. The report contains one finding that Councillor Booth failed to follow the Code of Conduct by not declaring a personal interest at the Cabinet meeting on 5th October.
- 1.3 The Standards Committee considered the Investigating Officer's report on 27th April 2012 and decided to refer the complaint to a Final Determination Hearing to take place on 24th May 2012. The Committee is therefore requested to determine the allegation of failure to follow the Code.

**2. RECOMMENDATION**

- 2.1 Members are requested to consider the Investigating Officer's report attached at Appendix 3 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 any one, or any combination, of the following sanctions can be imposed:
  - 2.1.3.1 censure;
  - 2.1.3.2 restriction for a period not exceeding 6 months of the Subject Member's access to the premises of the authority or the Subject Member's use of the resources of the authority, provided that those restrictions are reasonable and proportionate to the nature of the breach and that they do not unduly restrict the Subject Member's ability to perform the functions of a Member;
  - 2.1.3.3 partial suspension of the Subject Member for a period not exceeding 6 months;
  - 2.1.3.4 suspension of the Subject Member for a period not exceeding 6 months;
  - 2.1.3.5 that the Subject Member submits a written apology in a form specified by the Committee;
  - 2.1.3.6 that the Subject Member undertakes such training as the Committee specifies;
  - 2.1.3.7 that the Subject Member participates in such conciliation as the Committee specifies;
  - 2.1.3.8 partial suspension of the Subject Member for a period not exceeding 6 months or until such time as the Subject Member submits a written apology in a form specified by the Committee;
  - 2.1.3.9 partial suspension of the Subject Member for a period not exceeding 6 months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Committee specifies;

- 2.1.3.10 suspension of the Subject Member for a period not exceeding 6 months or until such time as the Subject Member has submitted an apology in a form specified by the Committee; or
- 2.1.3.11 suspension of the Subject Member for a period not exceeding 6 months or until such time as the Subject Member has undertaken such training or has participated in such conciliation as the Committee specifies.

### **Financial Implications**

- 3.1 None

### **Legal Implications**

- 3.2 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.
- 3.3 Members are reminded that at the meeting of the Standards Committee on 27th April 2012 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. Members are asked to note that the Schedule of Evidence contains a limited amount of personal data. Any written material that is published will be redacted to remove the personal data. However, Members are asked to note that personal data cannot be discussed in public session.
- 3.4 The Committee is asked to note that at the time of writing this report the transitional arrangements for the introduction of the revised standards arrangements under the Localism Act 2011 have not been announced or introduced and that therefore the existing process/regulations for complaints are continuing to be followed at this time, save that Standards for England (SfE) as an organisation was formally disbanded on 1st April 2012. The existing sanctions available in the case of a finding of breach continue to apply.

## **Service/Operational Implications**

### **Complaint**

- 3.5 The background to this complaint is summarised at para 1.1 above.
- 3.6 Members will note that the Investigating Officer's findings are set out in paragraph 10 of his report. To summarise the Investigating Officer finds that Councillor Booth failed to comply with paragraph 9 of the Code of Conduct by failing to declare a personal interest in the decision relating to the land at Housman Close at the meeting on 5th October. He further finds that the personal interest did not amount to a prejudicial interest and therefore that Councillor Booth did not fail to follow paragraph 12 of the Code of Conduct which deals with the duty on Members to withdraw from meetings where they hold a prejudicial interest.

### **Documents**

- 3.7 A copy of the Final Determination Hearing Procedure is attached at Appendix 1. A copy of the Bromsgrove District Council Code of Conduct is attached at Appendix 2. The Investigating Officer's report is attached to this report as Appendix 3. The Schedule of Evidence (referred to as Appendices 1 to 15 in the Investigating Officer's report) has been circulated to Members of the Committee and Councillor Booth and is included as background papers to this report.

### **Pre-Hearing Process**

- 3.8 In accordance with the usual process a pre-hearing questionnaire was sent to Councillor Booth. He has responded stating that he will be attending the hearing in person and that there are no areas of the Investigating Officer's report that he intends to challenge. In response to an issue raised by Members at the Consideration Meeting on 27th April, the Investigating Officer has confirmed that there are no additional documents to be disclosed over and above those contained in the Schedule of Evidence. The facts are set out in his report and Members are advised that the Investigating Officer will be in attendance on 24th May to respond to any questions and give any clarification that is needed regarding his findings.

### **Procedure for the Hearing**

- 3.9 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**

- 3.10 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

- 3.11 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

- 3.12 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.
- 3.13 The former Adjudication Panel for England (whose functions were subsequently transferred to the First-tier Tribunal (Local Government Standards in England) produced advice for its own case tribunals which SfE suggested should be considered by Standards Committees. This advised 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. Although SfE has been disbanded Members are advised that it would be good practice for the previous guidance to continue be taken into consideration when considering the issue of any sanction.
- 3.14 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

3.15 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

3.16 The Committee should announce its decision at the end of the hearing and 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.

### **Customer/ Equalities and Diversity Implications**

3.17 The Subject Member and the complainant will be notified of the outcome of the Final Determination Meeting and where appropriate a notice will be issued in accordance with the regulations.

### **4. RISK MANAGEMENT**

The Council is required to perform the statutory functions in relation to Standards as required under the legislation referred to at 3.2. The Chief Executive and the Monitoring Officer work closely with the Leaders of all political groups to ensure where possible that effective working relationships with all Members can be maintained and from time to time it is necessary for specific measures to be introduced to enable this to continue effectively. All three Statutory Officers meet on a monthly basis to assess the risks associated with this and to ensure that any local issues are managed effectively and that support is given to all Members of the Council where appropriate

### **5. APPENDICES**

Appendix 1 Final Determination Hearing Procedure  
Appendix 2 Code of Conduct for Bromsgrove District Council  
Appendix 3 Investigating Officer's report dated 29th February 2012

### **6. BACKGROUND PAPERS**

Schedule of Evidence (Appendices 1 to 15 of Investigating Officer's Report)

### **7. KEY**

N/a

### **CONTACT OFFICER**

Name: Claire Felton  
Email: c.felton@bromsgroveandredditch.gov.uk  
Tel: (01527) 881429