

BROMSGROVE DISTRICT COUNCIL

STANDARDS COMMITTEE

23RD NOVEMBER 2007

FINAL DETERMINATION OF ALLEGATIONS OF FAILURE TO FOLLOW THE CODE OF CONDUCT (SBE Ref: 17770.07)

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| Responsible Portfolio Holder | Councillor Roger Smith |
| Responsible Head of Service | Claire Felton, Monitoring Officer |

1. SUMMARY

- 1.1 An allegation that a Member of Bromsgrove District Council has breached the Code of Conduct in two respects was referred by the Standards Board for England (“SBE”) to this Council for local determination (SBE Ref: 17770.07).

2. RECOMMENDATION

The Committee is requested to determine the matter and decide whether or not there has been a failure to follow the Code of Conduct, and if so, what penalty should be imposed.

3. BACKGROUND

- 3.1 The SBE has referred to the Council for local determination an allegation that a Member of Bromsgrove District Council (“the Subject Member”) has failed to follow the Code of Conduct in two respects. The Monitoring Officer has appointed an Investigating Officer who has investigated the allegation. The Investigating Officer’s report is at Appendix 1.
- 3.2 The Investigating Officer has made a finding that the Subject Member has failed to follow the Code in respect of both aspects of the allegation.
- 3.3 Therefore, in accordance with the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended the allegation has been referred to the Standards Committee for final determination.

Pre-Hearing Process

- 3.4 In accordance with the SBE guidance a pre-hearing procedure has been followed which has identified that the Subject Member:
- a) disputes findings of fact in the Investigating Officer’s Report; these are set out in Appendix 2;

- b) does not wish to be represented at the hearing by a solicitor, barrister or other person;
- c) wishes to give evidence to the Committee in person;
- d) does wish to call witnesses to give evidence;
- e) does not wish any part of the hearing to be held in private – the final determination will therefore be a public hearing;
- f) does not wish any part of the Investigating Officer's report or other relevant documents to be withheld from the public;
- g) can attend the hearing.

Procedure for the Hearing

3.5 The procedure for the hearing is set out in the agenda papers.

Penalties

3.6 If the Committee finds that the Subject Member has failed to follow the Code of Conduct and that he should be penalised, it may do any one or a combination of the following:

- censure the Subject Member;
- restrict the Subject Member's access to the resources of the relevant authority for up to three months, which could include limiting his or her access to the premises of the relevant authority;
- suspend or partly suspend the Subject Member for up to three months; or
- suspend or partly suspend the Subject Member for up to three months on the condition that the suspension or partial suspension will end if the Subject Member apologises in writing, receives any training, or takes part in any conciliation that the Committee orders; conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the Committee.

3.7 Suspension or partial suspension will normally start immediately after the Committee has made its decision. However, if the Standards Committee chooses, the penalty may start at any time up to six months following its decision. This may be appropriate if the penalty would otherwise have little effect on the member, for example, in the case of a suspension or partial suspension, if there are no authority or Committee meetings which the Subject member would normally attend in the period following the conclusion of the hearing.

Deciding a penalty

3.8 When deciding a penalty, the Standards Committee should make sure that it is reasonable and in proportion to the Subject Member's behaviour. Before deciding what penalty to set, the SBE advises that the Standards Committee should consider the following questions, along with any other relevant circumstances:

- What was the Subject Member's intention? Did he or she know that he or she was failing to follow the Code of Conduct?
- Did the Subject Member get advice from officers before the incident? Was that advice acted on 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?
- How serious was the incident?
- Does the Subject Member accept he was 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?

3.9 Standards Board Guidance suggests that suspension may be appropriate for more serious cases, such as those involving:

- bullying officers;
- trying to gain an advantage or disadvantage for themselves or others; or
- dishonesty or breaches of trust.

Penalties involving restricting access to an authority's premises or equipment should not unnecessarily restrict a member's ability to carry out his or his responsibilities as an elected representative or co-opted member.

4. FINANCIAL IMPLICATIONS

4.1 None

5. LEGAL IMPLICATIONS

5.1 The Local Government Act 2000 ss60-67 provide the statutory framework for the investigation of complaints against Members. The Local Procedure (Code of Conduct) Regulations 2002, Local Authority (Code of Conduct) (Local Determination) Regulations 2003 and the Local Authority (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 govern the conduct of these proceedings.

6. COUNCIL OBJECTIVES

6.1 Improvement – it is vital for the reputation and credibility of the Council that complaints against elected Members are seen to be robustly investigated.

7. RISK MANAGEMENT

The main risk associated with the details included in this report is loss of reputation. This risk is being managed as follows:

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

8. CUSTOMER IMPLICATIONS

8.1 None.

9. EQUALITIES AND DIVERSITY IMPLICATIONS

9.1 None.

10. OTHER IMPLICATIONS

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| Procurement Issues | None |
| Personnel Implications | None |
| Governance/Performance Management | Adherence to the Code of Conduct is a key element of sound governance |
| Community Safety including Section 17 of Crime and Disorder Act 1998 | None |

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| Policy | None |
| Environmental | None |

11. **OTHERS CONSULTED ON THE REPORT**

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| Portfolio Holder | No |
| Chief Executive | No |
| Corporate Director (Services) | No |
| Assistant Chief Executive | No |
| Head of Service | No |
| Head of Financial Services | No |
| Head of Legal, Equalities & Democratic Services | Yes |
| Head of Organisational Development & HR | No |
| Corporate Procurement Team | No |

12. **APPENDICES**

Appendix 1 Investigating Officer's Report
Appendix 2 Schedule of Disputed Facts

13. **BACKGROUND PAPERS**

Standards Board for England guidance on:

- Standards Committee Determinations
- Local Investigations

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