

BROMSGROVE DISTRICT COUNCIL

STANDARDS COMMITTEE

20 MAY 2008

FINAL DETERMINATION OF ALLEGATIONS OF FAILURE TO FOLLOW THE CODE OF CONDUCT (SBE Ref: 20011.07)

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 three respects was referred by the Standards Board for England (“SBE”) to this Council for local determination (SBE Ref: 20011.07).

1.2 The Investigating Officer has made a finding of no failure to follow the Code of Conduct in respect of two of the allegations and a finding of failure to follow the Code of Conduct in respect of one of the allegations. Therefore the Standards Committee has two issues to determine:

1.2.1 the first issue to consider is in respect of the findings of **no failure to follow the Code of Conduct**, when the Committee will be asked to decide whether to accept the Investigating Officer’s findings:

- (i) if the Committee does accept both of those findings, there will be no further action in respect of those findings and the Committee will then proceed to consider 1.2.2 below at its meeting on 20 May 2008;
- (ii) if the Committee decides that there is a case to answer in respect of either or both of the findings of no failure to follow the Code of Conduct, the whole matter will be adjourned to 18 June 2008;

1.2.2 in respect of the one finding of a **failure to follow the Code of Conduct**, to determine the matter and decide whether or not there has been a failure to follow the Code of Conduct, and if so, what if any penalty should be imposed (unless the matter is adjourned to 18 June 2008 in which case the Committee will determine this issue on that day).

1.3 This report is therefore set out in two parts.

2. RECOMMENDATION

In respect of either or both of the findings of no failure to follow the Code of Conduct:

- 2.1 Members are requested to consider the Investigating Officer's report at Appendix 1. The Committee may decide either:
 - 2.1.1 to accept the Investigating Officer's finding of no failure ("a finding of acceptance") in respect of either or both of the allegations; or
 - 2.1.2 that there is a case to answer in respect of either or both of the allegations and that the matter should be considered at a subsequent hearing of the Standards Committee.

In respect of the finding of a failure to follow the Code of Conduct

- 2.2 Members are requested to consider the Investigating Officer's report at Appendix 1. 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 if any penalty should be imposed (unless the matter is adjourned to 18 June 2008 in which case the Committee will determine this issue on that day).

3. BACKGROUND

- 3.1 The SBE referred matter SBE: 20011.07 for local determination. The details of the allegation are contained within the Investigating Officer's report which is appended to this Report.
- 3.2 Members should note that this matter relates to an allegation arising from before the adoption of the current Code of Conduct. A copy of the former Code of Conduct, which should be applied by Members in this case, can be found at Appendix K of the Investigation Officer's report.
- 3.3 Members should also note that the new Standards Committee (England) Regulations 2008 do not apply as the allegation pre-dated their commencement and therefore this matter should be dealt with under the previous regulations.

4. Finding of No Failure to Follow the Code of Conduct

- 4.1 The SBE referred matter SBE: 20011.07 for local determination. The details of the allegation are contained within the Investigating Officer's report at Appendix 1. In respect of the first two allegations, the Investigating Officer has made findings of no failure to comply with the Code of Conduct. These allegations are:

- that at a meeting of the Planning Committee on 16 July 2007 that meeting the Subject Member failed to declare a prejudicial interest in relation to application B/2007/0498; and
- that the Subject Member misused his official position and acted improperly to seek to secure an advantage for a friend.

4.2 The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 provide that the Standards Committee shall consider the Investigating Officer's report and that the Committee may make one of two findings, namely:

- to accept the Investigating Officer's findings of no failure ("a finding of acceptance"); or
- that there is a case to answer and that the matter should be considered at a hearing of the Standards Committee.

4.3 The SBE guidance states that at this stage the Committee should simply consider the report and should not seek to interview witnesses or take representations from the parties or the Investigating Officer. The Committee's role is to decide whether, based on the facts and information set out in the report, it agrees with the findings of the Investigating Officer or whether it believes there is a case to answer.

4.4 The Committee is therefore requested to consider the report at Appendix 1.

4.5 If the Committee makes a finding of acceptance, the Monitoring Officer will arrange for a notice to be published setting out the Committee's finding and reasons for it. The Subject Member is entitled to ask that the notice not be passed to local newspapers.

4.6 If the Committee decides in relation to either allegation that there is a case to answer, a date has been set on Wednesday 18 June 2008 at 10.30am for a separate hearing at which the Committee will be requested to make a final determination on whether the Code of Conduct was breached; a hearing on this date would determine:

- either or both of the two allegations in respect of which the Investigating Officer has made a finding of no failure to follow the Code but in relation to which the Committee decides there is a case to answer;

and

- the allegation in respect of which the Investigating Officer has made a finding of a failure to follow the Code of Conduct.

The usual procedures for a full hearing would then apply.

5. Finding of a Failure to Follow the Code of Conduct

5.1 The Committee will only consider this allegation at its meeting on 20 May 2008 if it makes a finding of acceptance in respect of the two allegations in respect of which the Investigating Officer has found no failure to follow the Code of Conduct.

5.2 The Investigating Officer has made a finding that the Subject Member has failed to follow the Code in respect of one of the allegations referred for local investigation, namely:

- that at a meeting of the Planning Committee on 16 July 2007 the Subject Member failed to correctly declare a personal interest in relation to application B/2007/0498.

5.3 Therefore, in accordance with the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended this allegation has been referred to the Standards Committee for final determination.

Pre-Hearing Process

5.4 In accordance with the SBE guidance a pre-hearing procedure has been followed which has identified that the Subject Member:

- a) does not dispute any findings of fact in the Investigating Officer's Report;
- 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 not 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; and
- g) can attend the hearing.

Procedure for the Hearing

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

Penalties

5.6 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.

5.7 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

5.8 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?
- 5.9 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.

6. FINANCIAL IMPLICATIONS

6.1 None

7. LEGAL IMPLICATIONS

7.1 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.

8. COUNCIL OBJECTIVES

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

9. 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

10. CUSTOMER IMPLICATIONS

None.

11. EQUALITIES AND DIVERSITY IMPLICATIONS

None.

12. OTHER IMPLICATIONS

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
Policy	None
Environmental	None

13. OTHERS CONSULTED ON THE REPORT

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

14. APPENDICES

Appendix 1 Investigating Officer's Report

15. BACKGROUND PAPERS

Standards Board for England guidance on:

- Standards Committee Determinations
- Local Investigations

CONTACT OFFICER

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