

EAST HERTFORDSHIRE DISTRICT COUNCIL

PART II – CONFIDENTIAL

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Meeting: **ASSESSMENT SUB-COMMITTEE**

Date:

RESULTS OF INVESTIGATION INTO A MEMBER'S CONDUCT

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1 Purpose

To bring the result of investigations against Councillor Michael Tindale to this Committee's notice and point out any breaches of the Members Code of Conduct.

2 Recommendations

That the committee determines what course of action it wants to take against Councillor Tindale ("Subject Member") on the basis of submitted results of investigation and the courses of action available.

3 Background

Upon the complaint of Councillor Deborah Clark ("the Complainant") of 5th January 2010 the Committee made a referral for investigation into any potential breaches of the Members Code of Conduct by the Subject Member. This report reveals the results of that investigation.

The Complainant makes several allegations numbered from A to H and then a further unnumbered allegation (referred hereunder as allegation U). The details of these allegations are incorporated in the complaint of the Complainant.

Having considered the above allegations the Committee felt that if those allegations were true and proven, the Subject Member may have potentially breached the Members Code of Conduct which may amount to:

- **failing to treat others with respect;**
 - **bringing the subject member's office or authority into disrepute;**
- and
- **failing to disclose a personal and prejudicial interest in an item of business at a meeting.**

This investigation determines if the Subject Member's conduct, over a period of time, fell under any (or all) of the above three types of breaches of the Members' Code of Conduct.

The conclusion of this investigation is based on the information available in all the documents mentioned hereunder and obtained from Complainant and Subject Member and the Monitoring Officer after interviews.

All evidence in this investigation has been assessed on the balance of probabilities in order to establish if there has (has not) been breaches of the members code of conduct by the Subject Member.

The Subject Member believed that some of the allegations were made out of time and should not be considered as they were over six months old. However, the investigator believes that none of the allegations were time barred.

4 Discussion

The Complainant was interviewed on 25th March 2010 in the Council Offices. She revealed that she was a Conservative Councillor before. She had published her manifesto which was her basis for her election as an independent Councillor. She emphasised that she strived for openness and transparency in the Local Government. She stated she was upset with the fact that she could not retrieve all the information she wanted from the Subject Member and further there were deliberate attempts to suppress the requisite information; through dissuasion, delays, or even providing false information.

It seems clearly that all her allegations emerge from her not being able to retrieve the information she wanted from time to time. She accepted that she was not fully aware of her rights and limitations to obtain all the relevant information from the Council.

The Complainant was specifically asked to elaborate and explain the various allegations she had made against the Subject Member.

Likewise the Subject Member was interviewed on 11th and 25th May 2010.

He was asked a number of questions on each of the allegations made against him.

Generally the Subject Member stated that he was not fully aware of all the exact procedures to be followed in the committees and has always been reliant upon the advice from the officers.

The Subject Member stated that the reports are prepared by the officers and they attach all the supporting/relevant documents to the reports. It would be appropriate for anyone to request detailed and/or procedural information directly from the officers and not the Subject Member.

The Subject Member further stated that the members work for a small financial allowance for the local authority and are not employed on full time basis. He could only happily spend a reasonable amount of time on the business of the local authority but could not afford to work on full time basis.

The Subject Member said that the Complainant and Councillor Nigel Clark had personal vendetta against the Subject Member and did not like him. They had been asking him all the questions not because they wanted to obtain their answers but to put the Subject Member into trouble however they could.

There is, the Subject Member suggests, another reason for this barrage of never ending questions from the Complainant and Councillor N. Clark. It is envisaged that the Complainant and the Subject Member are going to contest the forthcoming Council election against each other and therefore she wants to mar the Subject Member by fair and/or foul means.

The Subject Member said that he did not mind answering any questions so long as they were relevant, within his knowledge, in time, were in the interest of local residents, and were not asked to hinder the smooth running of the Council's business.

The Subject Member stated that if he were to answer all the questions of the Complainant and Councillor Nigel Clark he would not be able to do any of his own or local authority's work. He said that the Complainant does not know the principle of proportionality. Each item in the agenda can only be given a time proportionate to its importance to the local authority.

The Subject Member further states that he has been and would respond to the Complainant's questions when ever he reasonably

can but at times the Complainant would not let go even when the Subject Member clearly could not provide any further assistance.

All the findings hereunder incorporate reasons, aggravating and mitigating factors, which would assist this committee in determining the appropriate course of action.

In relation to various allegations the parties' response and findings are as follows: -

ALLEGATION -A

It is about an e-mail sent by the Subject Member to Councillor Nigel Clark on 5th December 2007. This e-mail was in reply to Councillor Nigel Clark's e-mail of the same day. The complainant states that the language used in the Subject Member's above e-mail was rude and further he did not disclose the information requested by Councillor Nigel Clark.

In doing so the Complainant believed the Subject Member:

- failed to treat others with respect and
- had brought his office and the local authority into disrepute.

The Complainant admitted, when questioned, that it would have been less offensive if Subject Member had used the same words orally. She said that the Subject Member should have provided the required information despite the fact that this information could have been retrieved from alternative sources because it was the Subject Member's forward plan.

The Complainant did not provide any explanation as to how the Subject Member could have brought his Office or Local Authority into disrepute through a private e-mail apart from the suggestion that the Subject Member being accountable.

The subject member says that this allegation is some 2.5 years old and he may have used the word 'crap' but he did not recall using it. He stated that it is a commonly used word and in no way to be construed as treating the councillor Nigel Clark with disrespect. The Subject Member believed that there was a limitation period of 6 months in which breaches of the members' code of conduct can be reported. He said that when this letter was written Councillor N. Clark had better relationship with the Subject Member and similar sort of sentences may have been exchanged between both the sides on a number of occasions. The Complainant is using this because of the written records on this occasion. He said that the communication was between two parties and could not have brought the Subject Member's Office or the local authority into disrepute.

Findings

The Subject Member accepted, when shown the letter, that he had used the word 'crap' in one of his letters dated 5th December 2007. It does not seem to treat Councillor Clark with disrespect even when read in context of this whole letter.

It would be difficult to find that the Subject Member had brought his office or the local authority into disrepute as this letter was sent through an e-mail to an individual.

It is difficult to understand as to how the Subject Member in the given circumstances could have, by not disclosing the requested information, would have treated councillor Nigel Clark with disrespect or brought his office or the local authority into disrepute.

It is apparent from the letter of Councillor Nigel Clark of 5th December 2007 that he required from the Subject Member to correct the forward plan, more than requiring any information from him, which may be someone else's job. The Committee will be aware that the same information would have been available from the officers.

Therefore the result of this investigation is that this allegation against the Subject Member is unfounded.

ALLEGATION -B

This allegation relates to the Subject Member having made two contradictory statements between 16th April 2008 and 25th June 2008 and not apologising upon clarification of the right statement.

In doing so the Complainant believed the Subject Member:

- failed to treat others with respect and
- had brought his office and the local authority into disrepute.

The Complainant stated that a simple clarification and correction of his previous statements was not sufficient as an apology would have been acceptance of the fact that Subject Member's statement of 16th April 2008 was flawed.

The Complainant stated that this type of behaviour may not amount to any breach if this was only one incident on its own but the Subject Member had developed a pattern of doing things in the same manner.

In response to this allegation the Subject Member stated that the Complainant or Councillor Nigel Clark had already complained about this allegation to the Monitoring Officer and had been adjudged that there had been no breach to the Members Code of Conduct. It is unreasonable that the Subject Member should be investigated twice for the same matter. The Subject Member further states that this shows the level of vindictiveness of the Complainant against the Subject Member. The subject Member states that by complaining about the

matter which had already been dealt with the complainant has misled the Standards Sub-committee.

The Monitoring Officer confirmed; sending supporting correspondence in this regard; that this allegation was indeed considered before thus would fall outside the scope of this investigation.

However, in her letter of 10th June 2010 to the investigator the Complainant was still under the impression that this allegation had not been dealt with before.

Findings

This allegation is outside the scope of this investigation and therefore there are no findings.

ALLEGATION -C

On 17th May 2009 the Complainant writes to the Subject Member asking answers to her 12 questions she had asked in Full Council of 25th March 2009 in relation to the Causeway deal. She states that the Subject Member had promised that a written answer would be provided to her after the full Council. Instead of providing a written response the Subject Member had dissuaded the complainant that he had not received any questions and then refused to answer, saying they were out of date. The complainant holds that even on 17th May 2009 the above questions were pertinent as the decision to reaffirm the Causeway decisions were pending to be taken in June 2009.

In doing so the Complainant believed the Subject Member:

- failed to treat others with respect and
- had brought his office and the local authority into disrepute.

It is not clear from the evidence submitted if the Complainant had actually asked the same questions in the Full Council as she writes in her letter of 17th May 2009. The questions asked in this letter are 12 in number whereas the complainant states in her complaint that she had asked only ten questions from the Full Council. The Complainant had stated in the interview that this matter was to be reconsidered as initially the committee had not considered the Vat implications. When asked that the questions were not focussed on the Subject Member why the Complainant or Councillor had been insisting to ask the questions from him only why not try an alternative source; she responded that she did not have any personal vendetta against the Subject Member. She generally found even others in the Local Authority not very helpful to reveal any required information.

The Subject Member states that these questions were not questions and they were not addressed to him. They were required to be answered by the leader. The subject Member states that when he had started to answer the questions in the meeting the Complainant had

complained, why the Subject Member was answering the questions when they were asked from the leader and this is incorporated in the minutes of 25th March 2009. The Subject Member states that this complaint should be excluded because it is out of time and it relates to a matter which is 18 months old. The Subject Member further stated that the Complainant should have asked the questions during the meeting when the matter was under consideration so that, if required, members could vote on the matter. There was hardly any point in asking questions on a matter after the decision in the meeting.

Findings

The questions asked do not require straight forward relay of information that was readily available to the Subject Member. The executive that took the decision is accountable to full council and local residents. Their decisions are subject to further scrutiny from the Scrutiny and Review Committee and the auditors. It seems that the type of questions asked in the letter of 17th May 2009 would be felt too onerous by any member in carrying out their duties. In the circumstances it would be normal to note hesitation or irritation in replying to any recipient of such questions, and it cannot be taken as disrespect to the Complainant. By not being able to answer the said questions the Subject Member has not brought his office or local authority into disrepute.

Besides not being able to answer the Complainant's questions there is no further evidence (under this allegation) that can be construed for the Subject Member to treat the complainant with disrespect or to bring his office or the local authority into disrepute.

Therefore the result of this investigation is that this allegation against the Subject Member is unfounded.

ALLEGATION -D

This complaint also relates to the Full Council of 25th March 2009. The Complainant alleges that the Subject Member had deliberately either mislead the Council stating that there was some information available to the Subject Member which he did not make available to the Full Council or in alternative he had included all the information in the supporting papers of the report and yet stated that there was further information which provided compelling reasons for the move from Causeway to Wallfields.

On 1st April 2009 the Subject Member states in his letter to the Complainant, "its all (relevant information for Full Council of 25th March 2009) in the papers provided to the Council. The Complainant states that in doing so:

- the Subject Member has brought his office and East Hertfordshire Council into disrepute.

During interview that Complainant stated that the Subject Member had informed her immediately after the committee that there was no further information. If there was any sensitive information this could have been provided in part-2. The Complainant believed that the Subject Member and the Leader had the privilege of this additional information but the majority of other members did not. Therefore the members took the decision without pertinent information. The Complainant states in her complaint that the members were not aware that there would be an additional cost of around £1 million to move to Wallfields.

In his response the Subject Member states that the officers write reports and attach supporting documents to these reports. His job was to present the papers. He reiterated that he had no more information than what was available in the requisite report and its attachments. He said he could not exactly recall the context in which he used the phrase, "below the water line " but there were several meetings and discussions with the consultants before the committee. "Below the water line" information was the information that was exchanged verbally and not in writing during the said discussions. The Subject Member said, "There was nothing, I did not declare. The Complainant has used the phrase, "below the waterline", maliciously against me". Further he states that the Complainant had reported this decision to the auditors. The auditors had found the Council's decision right and the Complainant's complaint has been found to be untrue.

The Subject Member said, "I never said, there was information which compels to do the deal." He said that there were a number of options before the Council in the report and most suitable one was picked. The Subject Member had no idea of which option will be picked by the Council.

Findings

Besides above there was no further evidence available in this regard. It is difficult to envisage as to how the Subject Member would have brought his office or the local authority into dispute.

Therefore the result of this investigation is that this allegation against the Subject Member is unfounded.

ALLEGATION -E

On 21st April 2009 Councillor Nigel Clark writes to the Subject Member asking for information about the option appraisals in relation to the assets carried out by the external consultants. Councillor Clark informs in this letter to the Subject Member that he had promised to do so. There is no further evidence to supplement such promise. In his reply dated 23rd April 2009 the Subject Member denies such promise and states that all the information was included in the papers at the time.

The matter should have ended there but it did not. Councillor Nigel Clark writes to the Subject Member again on 23rd April and then on 3rd May 2009 for this information. The Subject Member replies to Councillor Nigel Clark on 5th May 2009 giving some sort of explanation for the Council's decision in this matter but no further information. In probably retaliation of which Councillor Nigel Clark writes to the Subject Member, "Your (Subject Member's) nervousness in answering a straight question is noted". With this remark the Subject Member seems upset and then writes back on 6th May 2009 to Councillor Nigel Clark a letter which is to be assessed if it is written in breach of the Members code of conduct.

By writing such a letter it is alleged that:

- the Subject Member has treated others with disrespect.

The Complainant stated during interview that the Subject Member "had been dancing around not giving proper answer" and therefore it was appropriate to write to him that he was nervous. There was no disrespect to the Subject Member in writing to him that he was nervous in answering Councillor Nigel Clark's questions.

The Subject Member stated that this allegation is more than a year old and thus should be treated as out of time. The Complainant did not complain at the time when this letter was written to Councillor Nigel Clark. He said that there were a number of significant decisions going through in his portfolio at the time. He tried to answer all the Complainant's and Councillor N. Clark's questions as best as possible. "Both of them used to mock the (Subject Member's) answers and all their questions were laced with criticism and sniping". When asked what did the Subject Member meant when he wrote, "I can suggest where you put that note as well", the Subject Member replied, "I meant put it in the bin, not going to answer." However the Subject Member accepted that generally what he wrote could be considered rude and should not have written to Councillor Clark. He also regretted that he wrote that particular sentence.

In relation to Councillor N. Clark's sentence, "Your nervousness in answering a straight question is noted", the Subject Member said, "I took this as personal criticism and it was uncalled for". The Subject Member stated that his above remark was partly in reaction to what was written to him by Councillor N. Clark.

Findings

There had been a number of letters exchanged between the Complainant, Councillor Nigel Clark and the Subject Member before the Subject Member wrote his letter of 6th May 2009. The letters requiring information from the Subject Member are agitating, irritating

and putting an undue pressure upon the Subject Member but that does not excuse anyone to retaliate and write back rude responses. It seems that the wording used could be construed as rude and in breach of the members' code of conduct. However, one cannot overlook the circumstances in which it was written.

Therefore the result of this investigation is that the Subject Member did on this occasion treated Councillor Nigel Clark with disrespect which is due to some element of provocation from Councillor N. Clark.

ALLEGATION -F

This allegation relates to Full Council dated 30th September 2009. Councillor Nigel Clark sought explanation from the Subject Member in relation to the proposed £1 million investment at Wallfields in response to which the Subject Member said, "he reserved the right to ignore Councillor Clark". The Complainant states that in doing so:

- the Subject Member has treated others with disrespect.
- the Subject Member has brought his office and East Hertfordshire Council into disrepute.

The Complainant states the Councillor Nigel Clark wanted information from the Subject Member who was a portfolio holder and he was denying it.

In the response the Subject Member said that the Complainant and Councillor N. Clark are fond of complaining and they have complained about other members before. Their allegations are vexatious. He said that the Complainant has been herself chairperson of audit. She is aware of the additional costs to the local authority due to her unnecessary complaints, "and this not appropriate use of the public money and the Council's resources."

Findings

Minutes of Full Council on 30th September 2009 runs, "Councillor N Clark also questioned why an independent whole life cost appraisal had not been carried out... , he suggested that the C3W programme should be halted immediately and an external review of the decision taken to date be undertaken." In response to this the Subject Member had said that he reserved the right to ignore Councillor N Clark.

The above paragraph is not simply a question; in addition it is a suggestion, a criticism and a direction. At this stage when the matter was before the Full Council all relevant and necessary groundwork would have been completed by the officers and members.

The Subject Member is member of the majority party who would be accountable individually and collectively to the electorate for any anomalies and/or wrongdoings.

In addition it is also worth noting that the members ought to have some degree of freedom of speech in such meetings so that they can have their say without fear of being challenged on anything they say and the manner in which they say.

It does not appear on this occasion that the Subject Member's above words, in particular, "he reserves right to ignore Councillor" in any way were said to treat Councillor N Clark with disrespect or that he brought his office or the local authority into disrepute.

Therefore the result of this investigation is that this allegation against the Subject Member is unfounded.

ALLEGATION -G

Through a letter, in the form of a notice, on 29th November 2009 Councillor Nigel Clark had asked twenty questions from the Subject Member about a contract worth £250,000 with Capita which was to be considered in the Full Council on 8th December 2009. Councillor Nigel Clark further stated therein that if his questions were not answered he would ask them in the Full Council. This was followed by a further letter from Councillor Nigel Clark requiring the Subject Member to bring the letter of 29th November 2009 to the Full Council.

The Complainant alleges that the Subject member refused to answer the above questions considering them threatening. The Complainant holds that in doing so:

- the Subject Member has treated others with disrespect.
- the Subject Member has brought his office and East Hertfordshire Council into disrepute.

The Complainant states in her interview, "No one seems to answer our questions, even the officers; sometimes we have to ask under the Freedom of Information Act. We have not exposed the Council but if the press came during the (Full) Council then we would".

The Subject Member said he felt that questions of Councillor N. Clark were threatening. When asked why he felt that the questions were threatening, he replied that there were repeated threats embedded in the letters, suggesting that if he did not answer the questions they will be asked in the Full Council. Besides he stated, "the questions were not proportionate that is why I did not answer."

Findings

The letter of Councillor N. Clark does not simply incorporate questions; in addition therein there are suggestions, criticisms and directions. As stated earlier the Councillors do not have unlimited amount of time to keep going over one item for an unlimited amount of time. I would appear that Councillor N. Clark could have asked the said questions in a better way by restricting them to pure limited number of pertinent questions.

It would be difficult for the Subject Member to answer all the questions himself and it is believed that the Complainant being a Councillor for some time would have known that.

Besides not being able to answer Councillor N. Clark's questions there is no further evidence (under this allegation) that can be construed for the Subject Member to treat the complainant with disrespect or to bring his office or the local authority into disrepute.

Therefore the result of this investigation is that this allegation against the Subject Member is unfounded.

ALLEGATION -H

On 15th December 2009 the Subject Member issued a press release, "The Causeway (deal) was not an option; we were faced with a £1.7 million bill to bring the building up to scratch and its not economical to spend that sort of money on a building we don't own..." allegedly implying the council avoided costs of £1.7 million by selling the Causeway offices.

The Complainant holds that by issuing the above press release, which was incorrect:

- the Subject Member has brought his office and East Hertfordshire Council into disrepute.

When questioned that Complainant stated that the Subject Member may have only written in response to the news which was already in the Newspaper but what he wrote was not correct, and therefore he did bring his office and the East Hertfordshire Council into disrepute. The Complainant stated that the Subject Member does not do his homework. He is not a detailed person. He may have relied on the advice from the officers. The Complainant said, "We do not have a specific agenda to hassle him but he has to disclose the information we ask as he is a portfolio holder. He should be able to answer our questions but he refuses. We believe that the only power we have is to expose the Council but they are trying to exclude us from such information. We have been excluded from the main governance committees"

The Subject Member is still of the view that the above deal had saved the Council around £1.7 million. The Complainant had asked similar

questions on this matter a number of times and had been answered appropriately. The figures shown in the reports were simplified figures which would be easily understandable by the public. He said the actual liability of the Council was around £80 million to Handersons for full term of the lease. The deal was agreed in total. If the Council had asked for a lower amount of dilapidations then Handersons would have asked for hire amount for surrendering the lease resulting in the same financial result for the Council. Besides, the deal was put before the committee after seeking legal advice from a Counsel. The Subject Member said that he was still comfortable with the decision.

Findings

If the press release is read as above it in isolation of any other information it still does not convey that the Council was making savings of £1.7 million by not spending the refurbishing costs. Instead it suggests that the Council does not think it is appropriate to spend that sort of money on a building that it does not own. There does not seem to be any claim of savings in this statement and therefore it could not be misleading. Besides, there has been no known legal challenge to the validity of above deal. Therefore the Subject has not brought his office or the local authority into disrepute.

Therefore the result of this investigation is that this allegation against the Subject Member is unfounded.

ALLEGATION -U

It is alleged that on 23rd October 2007 the Subject Member declared a personal and prejudicial interest in that he declared that the Scottish Widows Plc ("SWIP") were East Hertfordshire District Council's fund managers and clients of the Subject Member's company, namely Directors Deals Limited. He did the same in September 2008 but he failed to declare his personal and prejudicial interests in relation to SWIP during the Executive meetings of February 2008 and February 2009. Further the Subject Member submitted a paper to the Executive in October 2009 including a matters relating to the SWIP. He did not declare any personal or prejudicial interest.

It was alleged that the Subject Member was therefore in breach of the Members' Code of Conduct.

It would be appropriate first to establish whether or not the Subject Member had a personal and/or prejudicial interest in SWIP during the alleged meetings before working out whether or not he failed to declare the said interests in breach of the members' code of conduct.

Part 2 of the Council's Constitution deals and defines the members' interests. The personal interest is defined under Paragraph 8 and the relevant provisions are contained under sub-paragraphs 8 (1) (a) (iii)

and 8(1)(b) (i). Sub-paragraph 8 (1) (a) (iii) states, “ (1)You have personal interest in any business of your authority where - (a) it relates to or is likely to affect- ... (iii) any employment or business carried out by you.” Sub-paragraph 8(1)(b) (i) states, “(1)You have personal interest in any business of your authority where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position ... to a greater extent than majority of – (i).. other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.”

The disclosure of personal interests is dealt with under paragraph 9 of the Council’s constitution and its relevant part runs, “Sub-paragraph 9(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent. Further Sub-paragraph 9(4) runs, “Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.”

The Subject Member stated during his interview that his firm deals with an equity investors’ team of SWIP which is located in Edinburgh, providing them with data that has no connection with the Council. His firm charges for such a service and the payment comes from another company called State Street rather than SWIP. The revenue so collected is about 4% of the total annual revenue of the Subject Member’s organisation.

The Subject Member further states that the Council’s business is looked after by SWIP’s fixed interest team which is located in London and he has no connection or communication with the fixed interest team.

The Subject Member stated that all the three meetings where he did not declare his interest were just to note the performance of the Council’s investment with SWIP. There was no decision taken on these meetings and the Subject Member could not influence any decisions taken by the Council. He had such a remote connection with SWIP that he did not consider the decisions taken during the above said meetings did affect his business, and therefore he did not have any personal interest that had to be declared during the above meetings. His income from indirect dealing with SWIP were so low that no one could reasonably consider that it would affect his own financial position or well-being to a greater extent than other tax payers. The Subject Member firmly believed that he did not have any personal interest to declare.

Findings

The Subject Member owned Directors Deals Company that supplied data to SWIP in which the Council had invested money on fixed interest basis. SWIP was using Directors Deals' data to invest its money. The data so supplied does not seem to have bearing on the Council's income or the selection/rejection of SWIP for its investment. The connection in the Director Deals and the Council looks too remote to be considered as of any personal interest affecting the Subject Member's business under Sub-paragraph 8 (1) (a) (iii). Further bearing in mind that only 4% of the Directors Deals' business comes from SWIP annually and all three meetings in question were purely to note the performance of the Council's investments it is hard to accept under Sub-paragraph 8(1) (b) (i) that the Subject Member had a personal interest which affected his well-being or financial position to a greater extent than majority of other council tax payers. It looks that the Subject Member did not have a personal interest. If the Subject Member did not have personal interest he could not have had a prejudicial interest.

Even if the Subject Member did have a personal interest in the matters before the requisite meeting it is convincing to note that he did not consider at the time that he did have any personal interest. Sub-paragraph 9(4) of the constitution clarifies that the Subject Member had only to declare his interest if he knew (or ought to have known) at the time that he did have a personal interest in the matters discussed in the requisite meetings. In the circumstances it seems that the Member did not have to declare his personal interest in the alleged meetings.

Therefore the result of this investigation is that this allegation against the Subject Member is unfounded.

5 Summary

The Complainant has made nine allegations where the Assessment Sub-committee felt that if the allegations were proven the Subject Member could have breached the Members' Code of Conduct.

It came to light during investigations that Councillor N. Clark had complained earlier against the Subject Member in relation to allegation B and the Subject Member had been cleared of this allegation.

The outcome of this investigation is that the Subject Member has not breached any part of the members' code of conduct under allegations A, C, D, F, H and U. However, it seems that under allegation E the Subject Member was in breach of the members' code of conduct, in that he treated others with disrespect. The Committee is reminded that there were mitigating circumstances for the Subject Member's such behaviour.

The Complainant mentioned during her interview that the Subject Member may have breached the Members' Code of Conduct

cumulatively if not under the individual allegations and alleged that there is an apparent pattern of behaviour developing which tantamount to the breach of the Members' Code of Conduct.

The findings of this investigation do not see any established pattern of behaviour of the Subject Member which could amount to breach of the Members' Code of Conduct.

6 Courses of action available

If the committee accepts the findings of this investigation then only under allegation E it would need to pick up one or a combination of more than one sanction from the range of sanctions available under its powers, or in alternative the committee might decide that it does not need to take any further action.

Any sentence that the committee decides to impose should be reasonable and proportionate in the circumstances.

In cases of **Maldon District Council-v- Councillor Mariam Lewis** (Case Number SBE0441) and **Dersingham Parish Council -v- Councillor John Houston** (Case Number SBE22177.08) which look akin to this case the Standards Board did not recommend any sanctions against the councillors involved.

BACKGROUND DOCUMENTS

1 Complaint

Complaint Form, Letter dated 17th January 2010, Letter dated 4th February 2010 from Chris Cooper to the Complainant and her manifesto leaflet.

Minutes of the Full Council of 16th April 2008.

Minutes of the Full Council of 14th May 2008.

Summary of Assessment Sub-committee's decision of 5th February 2010.

Decision Notice Referral for Investigation.

2 Allegations

A Letter dated 5th December 2009 from Councillor N. Clark to the Subject Member.

Letter dated 5th December 2009 from the subject member 209 from the Subject Member to Councillor N. Clark

B Extract from minutes of Full Council on 25th June 2008.

Extracts from minutes of Full Council on 16th April 2008.

Extracts from minutes of Full Council on 14th May 2008.

Letter dated 20th May 2010 from the Monitoring Officer to the Investigator.

Letter dated 16th May 2008 from the Subject Member to the Monitoring Officer.

Letter dated 21st May 2008 from Councillor N. Clark to the Monitoring Officer.

Letter dated 21st May 2008 from the Monitoring Officer to Councillor N. Clark.

Letter dated 15th May 2008 from Councillor N. Clark to the Monitoring Officer.

Letter dated 16th May 200 from the Subject Member to the Monitoring Officer.

Letter dated 15th May 2008 from Councillor N. Clark to the Subject Member.

Minutes of the Asset Management Sub Group meeting of 28th January 2008.

Letter dated 20th May 2010 from the Monitoring Officer along with other correspondence confirming that this allegation had been dealt with before.

Letter of 10th June 2010 from the Complainant to the investigator.

C Letter dated 18th May 2009 from the Subject Member to the Complainant.

Letter dated 17th May 2009 from the Complainant to the Subject Member.

D Letter dated 1st April 2009 from the Subject Member to the Complainant.

Letter dated 31st March 2009 from the Complainant to the Subject Member.

Extracts from draft report to the Executive meeting of 9th January 2009.

Letter dated 17th January 2010 from the complainant to Mr Jeff Hughes.

Recommendations brought to June Full Council by the Subject Member.

Extracts from minutes of Full Council of 25th March 2009.

Letter dated 20th May 2009 from the Subject Member to the Complainant.

Letter dated 18th May 2009 from the Complainant to the Subject Member.

E Letter dated 6th May 2009 from the subject member 209 from the Subject Member to Councillor N. Clark.

Letter dated 6th May 2009 from Councillor N. Clark to the Subject Member.

Letter dated 5th May 2009 from the Subject Member to Councillor N. Clark.

Letters(2) dated 3rd May 2009 from Councillor N. Clark to the Subject Member.

Letter dated 3rd May 2009 from the Subject Member to Councillor N. Clark.

Latter dated 23rd April 2009 from Councillor N. Clark to the Subject Member.

Letter dated 23rd April 2009 from the Subject Member to Councillor N. Clark.

Latter dated 23rd April 2009 from Councillor N. Clark to the Subject Member.

Latter dated 21st April 2009 from Councillor N. Clark to the Subject Member.

- F Extract from minutes of Full Council on 30th September 2009
- G Latter dated 9th December 2009 from Councillor N. Clark to the Subject Member.
Latter dated 7th December 2009 from Councillor N. Clark to the Subject Member.
Latter dated 29th November 2009 from Councillor N. Clark to the Subject Member.
- H Extract from Longmore's summary of Agreement with Henderson. Press release (Small Move Means Big Changes).
- U Part of the Council's constitution comprising members' code of conduct.
Letter dated 11th September 2009 from the Subject Member.
Letter dated 26th May 2010 from the Monitoring Officer along with the Subject Member's Notice of Registrable Interests.
- 3 General**
Letter dated 28th February 2008 from the Complainant to the Subject Member.
Letter dated 9th September 2008 from the Complainant to the Subject Member.
Case Summary – Maldon District Council –v- Councillor Miriam Lewis (06.08.2009).
Case Summary – Essex County Court –v- Lord Hanningfield (10.11.2009).
Case Summary – Dersingham Parish Council –v- Councillor John Houston (10.03.2009).

Case Summary - Maldon District Council

Case no. SBE04401
Member(s): Councillor Miriam Lewis
Date received: 10 Feb 2009
Date completed: 06 Aug 2009

Allegation:

The member failed to treat others with respect and brought his office or authority into disrepute.

Standards Board outcome:

The ethical standards officer found that no action needs to be taken.

Case Summary

The complainant, a council officer, alleged that Councillor Miriam Lewis had failed to treat him with respect in a number of emails, and that her behaviour was inappropriate when sending him emails and in conversations with other officers.

The ethical standards officer took into account that Councillor Lewis had been involved in an incident with a council officer in August 2008 that had upset her greatly. She was also concerned about aspects of the disciplinary action and subsequent hearing that took place.

The ethical standards officer considered that while Councillor Lewis had engaged in frank and robust exchanges in most of her contact with the complainant and other officers, she had not failed to comply with the Code of Conduct.

However, Councillor Lewis sent the complainant one email on 13 November 2008 in which her language was inappropriate and sarcastic. The ethical standards officer considered that with this email, Councillor Lewis had breached the Code of Conduct by failing to treat the complainant with respect. The ethical standards officer did not feel that the conduct was bullying in nature.

The ethical standards officer found that no action needed to be taken in this case, taking into account the considerable stress, anxiety and frustration Councillor Lewis had felt from the time the original incident took place to the conclusion of the matter.

Relevant paragraphs of the Code of Conduct

The allegations in this case relate to paragraphs 3(1) and 3(2) of the Code of Conduct.

Paragraph 3(1) states that members "must treat others with respect".

Paragraph 3(2) states that members "must not bully any person".

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Case Summary - Dersingham Parish Council

Case no. SBE22177.08
Member(s): Councillor John Houston
Date received: 17 Oct 2008
Date completed: 10 Mar 2009

Allegation:

The member failed to treat others with respect and brought their office or authority into disrepute.

Standards Board outcome:

The ethical standards officer found that no further action needs to be taken.

Case Summary

On 1 February 2007, a hearing of a panel of Kings Lynn and West Norfolk Borough Council's standards committee considered an allegation that Councillor Houston had failed to treat a member of another council, referred to here as Councillor X, with respect. The allegation was that Councillor Houston had called Councillor X 'a lying cow' at a Dersingham Parish Council meeting on 22 August 2005. The panel concluded that Councillor Houston had breached the Code of Conduct and required Councillor Houston to apologise to Councillor X in writing and submit that apology to the panel for approval within 28 days of receiving their decision.

The complainant alleged that Councillor Houston did not appeal against the committee's decision, posted to him on 7 February 2007, or the sanction imposed, but that he did not write an apology either within the 28 days allocated or subsequently.

Between 19 February and 15 May 2007, Councillor Houston entered into a long email correspondence with the council's monitoring officer, in which he sought guidance on composing an apology and on what the implications of making such an apology might be. Councillor Houston stated that he believed Councillor X had been disrespectful to people at a meeting prior to the council meeting on 22 August 2005, and that she had lied at the 22 August meeting which had led him to respond as he did. He did not want to submit to the standards committee any proposed wording for an apology until he had received the advice he had requested, as he was concerned that submitting an apology, even under duress, might prejudice the complaint he was considering making about Councillor X and the conduct which led to him calling her 'a lying cow.'

On 1 May 2007, Councillor Houston sought advice from the Standards Board for England on the implications of apologising. The Standards Board told him on 8 May 2007 that it could not advise him on this matter and suggested he seek independent legal advice.

The ethical standards officer noted that although Councillor Houston had requested an extension of the time in which he was required to apologise, the committee did not grant one. Therefore, assuming that Councillor Houston received the decision notice on or about 8 February 2007, he was in breach of the sanction imposed on him by 8 March 2007. The ethical standards officer also noted that Councillor Houston has not apologised to Councillor X at any time since then.

The ethical standards officer considered that to operate effectively and to retain public confidence in the

maintenance of high ethical standards in local government, members must either accept a standards committee's finding and comply with its sanction, or exercise their statutory right of appeal against it. It was the ethical standards officer's view that by failing to comply with the sanction, he was disrespectful to the members of the standards committee involved and had breached the Code of Conduct.

The ethical standards officer also considered that Councillor Houston had given the impression that he treated the procedure with indifference, or even contempt, and that this conduct adversely affected his reputation by implying that he did not have a proper respect and regard for the standards committee's jurisdiction. Therefore she considered that he had brought his office into disrepute by failing to comply with the sanction.

In coming to her finding, the ethical standards officer took into account the time that had elapsed between the incident and the allegation. Her opinion was that, were Councillor Houston to write an apology to Councillor X at this stage, it would have little value and would be unlikely to be accepted as sincere or regretful by Councillor X. With this in mind, the ethical standards officer found that no further action needs to be taken.

Relevant paragraphs of the Code of Conduct

The allegations in this case relate to paragraphs 3(1) and 5 of the Code of Conduct.

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