

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.

