

Agenda Item:

Report to: STANDARDS COMMITTEE

Date: 7 December 2006

Report from: Borough Solicitor and Monitoring Officer

Title of report: OFF DUTY AND THE CODE OF CONDUCT

Purpose of report: To advise members of the implications of the High Court decision in the Livingstone case

Recommendation: To note the report.

INTRODUCTION

1. Members may be aware of the recent decision in the High Court on a standards case which attracted considerable media attention.
2. The facts of the case can be stated briefly. At the end of the evening, as Mayor Ken Livingstone was leaving a reception at City Hall, he was approached by an Evening Standard reporter, who tried to engage the Mayor in conversation. The Mayor declined and when the reporter persisted he asked the reporter whether he had been a German war criminal. The reporter replied that he was Jewish and was offended by the remark. The Mayor persisted and suggested that the reporter might have been a concentration camp guard.
3. The Mayor's reaction was later explained as the result of a long standing dispute between the Mayor and the newspaper group which owns the Evening Standard.
4. The Mayor refused to apologise and complaint was made to the Standards Board and the tribunal held that the code was applicable to the Mayor even though he was not at the time fulfilling his official duties, and that he had failed to follow the provisions of the code by conducting himself in a manner that could be regarded as bringing his office or authority into disrepute. He was suspended for 4 weeks.

HIGH COURT DECISION

5. The Mayor appealed to the High Court who decided that:-
 - Members can be "off duty". Section 52 Local Government Act 2000 requires members to make a declaration that they will observe the Code of Conduct "in performing their functions". The Code purports to go further than this and states that paragraph 4 (conducting oneself in a manner which could reasonably be regarded as bringing his/her office or authority into disrepute) applies when the member is or is not acting in an official capacity. The Court held that the duty to observe the Code only applied when the member was performing a function as a member.
 - Conduct that brings the member into disrepute does not necessarily bring his/her office or authority into disrepute. There has to be a distinction between conduct which reflects badly on the person as an individual and that which reflects on the person as a member of the authority.
 - Had there been a breach of the Code, suspension from office for 4 weeks would have been excessive.

SIGNIFICANCE OF THE DECISION

6. Until and unless the legislation is changed, the Code only applies when a member is acting in an official capacity. However, members need to be mindful of situations when, whilst clearly off-duty, they might be seen to be using their position inappropriately. For example, a member might visit a restaurant with family or friends and find that there are no tables available, unless reserved. If that member were to remind the Maitre D' of his position on the Council in order to assist with a table, that would be a likely breach of the Code.
7. Even conviction for serious offences eg shoplifting or drunk driving would not contravene the Code, if the offence were committed whilst the member was off duty. The position, therefore, remains as it was before adoption of the Code, that a member convicted of an offence is not disqualifiable unless a sentence of imprisonment (whether or not suspended) of 3 months or more is imposed -or that the conduct results in the Councillor's bankruptcy and disqualification, or that the conduct results in a disqualification for electoral offences (Section 80 Local Government Act 1972). We will have to wait to see whether the Government takes the opportunity of a new local government bill to plug this gap.
8. Even if acting in an official capacity, conduct which might reflect badly on the member as an individual does not necessarily mean that the office of Councillor is brought into disrepute.

Equalities & Community Cohesiveness	<input type="checkbox"/>
Crime and Fear of Crime (Section 17)	<input type="checkbox"/>
Risk Management	<input type="checkbox"/>
Environmental issues	<input type="checkbox"/>
Economic / Financial implications	<input type="checkbox"/>
Human Rights Act	<input type="checkbox"/>
Organisational Consequences	<input type="checkbox"/>

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