

**Agenda Item:**

**Report to:** Standards Committee

**Date:** 14 November 2007

**Report from:** Borough Solicitor

**Title of report:** **INVESTIGATION OF COMPLAINT SBE 18319.07**

**Purpose of report:** To present the Investigating Officer's final report for hearing by the Committee

**Recommendations:** Members are requested to determine:-  

1. Whether the complaint is proved and there is a breach of the Code; and, if proved.
2. What sanction it considers appropriate.

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## 1.0 Introduction

1.1 The Standards Board referred complaint reference SBE18319.07 to me for investigation and for determination by Standards Committee on 18 June 2007.

1.2 I appointed David Powell, MA, MBA, FRICS, FRTPI as investigating officer on 20 June. He has undertaken his investigation and has now submitted his final report to me for determination by the Committee. His report is attached as Appendix 1. His recommendation is that there has been a breach of the Code of Conduct and so the Committee has now to hear the complaint.

## 2.0 Hearing In Public

2.1 As members are aware, the presumption is that these hearings are conducted in public. I have no reason to consider that it would be in the public interest to hold the hearing in private rather than in public and I have advised the Councillor accordingly. He, however, considers that it should be held in private session. He states “the traveller committee was held in low profile because of the reaction of Hastings residents and the travelling community. When asked to serve on this committee, I agreed because the precautions were in place to protect the elected members from being identified. If this is now to be reversed, I consider that the Council has reneged on an agreement that could have consequences on my person and more importantly on my family...”

2.2 As monitoring officer, I am responsible under the Constitution for determining whether papers for consideration should be marked “not for publication. Contains exempt information...”.

2.3 Since 1 March 2006, the classes of information, which may be treated as exempt, have been reduced. Councillor Tucker suggests that information relating to the identity of those members sitting on the advisory panel is subject to a duty of confidentiality, which might make the information exempt subject to the public interest test. I have made enquiry regarding this and am advised that the assurance of confidentiality was given for the duration of the deliberations of the panel. Even assuming that one can satisfy the requirements of a particular class of exempt information, there is an overriding qualification to the non-disclosure, namely that the information is only exempt so long as it is in the public interest to withhold the information rather than to disclose it. The public interest tends to tilt in favour of disclosure and this is in line with the approach under the Freedom of Information Act.

2.4 I have considered Councillor Tucker’s response but have concluded that it is in the public interest to give public access to this information for the following reasons:-

- Standards Board guidance is that matters should be heard in public unless there are overriding reasons of confidentiality and then public access should be given to as much of the proceedings as possible. Under Regulation 6(2) of the Hearings Regulations, Standards Committee has to have regard to Standards Board guidance. Whilst “having regard” is not to follow slavishly, it does raise a presumption in favour of following the Guidance.
- Hearing in public supports the general principles governing member conduct, in particular those of openness and integrity.
- There is nothing in the facts that can be said to be confidential.
- Generally, the reforms of the 2000 Act including the ethical framework, following the Nolan Committee report, envisaged open and transparent decision-making and moved away from decisions made behind closed doors, where the opportunity for improper decision-making is greater.
- The role of the member panel was advisory only in this case and the decision in relation to the sites was made by Cabinet members in public. There has been no evidence that there has been any harassment of those Cabinet members following the Cabinet decision, which was to uphold the Panel recommendation not to consider any of the 3 sites as suitable.
- Whilst feelings ran high at the time when the Panel was deliberating and it would have exposed members to possible lobbying or harassment at that time, had their identity been disclosed, it is considered that, in view of the recommendations upheld by Cabinet and the effluxion of time, that this is no longer the case.

2.5 Whilst the hearing should be in public, Committee may conduct its deliberations in private under Paragraph 7C of Schedule 12 A to the Local Government Act 1972.

### 3.0 The Complaint

3.1 The Complainant, Lord Brett McLean, alleges that Councillor Roy Tucker failed to declare “a personal interest in relation to where his private residence is located to the proximity of the proposed “Sandrock” site” when he sat as a member of a cross-party three member panel advising Cabinet on the suitability of three possible sites as a Traveller Transit Site.

3.2 The Investigating Officer’s report includes reference to a second aspect of the complaint, namely issues relating to the setting up of the Working Group. This is not referred for investigation by the Standards Board, and so members are only to consider the first part of the complaint as set out in 3.1.

#### 4.0 The Hearing Procedure

- 4.1 The hearing procedure is attached as Appendix 2.
- 4.2 Councillor Tucker has not returned pre-hearing forms submitted to him to allow him to make objection to the report, or to indicate that will be calling witnesses.
- 4.3 Councillor Tucker, however, did respond to the stated intention to consider the report in public, in accordance with Standard Board guidance. This is discussed fully under paragraphs 2.1 – 2.5 above.
- 4.4 In the event that Councillor Tucker admits the alleged breach, in accordance with the Investigating Officer's findings, the procedure provides that the Committee may proceed to determine that there is a breach of the Code and then pass immediately to the consideration of a possible sanction.

#### 5.0 Matters for Decision By The Committee

- 5.1 The findings of the Investigating Officer are just that and, in the event that Councillor Tucker denies the allegation, it is incumbent upon the Committee, having heard all representations made to it, to:-
- Make findings of fact in relation to the allegations;
  - Consider whether the facts found amount to a breach of the Code and, if so, which paragraph of the Code;
  - Make a finding as to whether there has been a breach of the Code;
  - Give full reasons for their decisions;
  - If their finding is that there has been a breach of the Code, to consider what sanction or combination of sanctions might be appropriate.
  - Give full reasons for their decision.
  - To consider whether there are matters arising out of the hearing which should be communicated to other members of the Council.

#### 6.0 Considerations by Members

- 6.1 The facts of this case are straightforward and there does not appear to be any dispute in relation to the facts. However, if that were to be the case, the Committee is to consider which of the two accounts given is more likely on the balance of probabilities.
- 6.2 It is then necessary to consider whether the established facts amount to a breach of the relevant part of the Code. It is to be noted that the

complaint relates to an alleged breach of the Code before it was revised by Council on 25 July 2007. The correct version of the Code for this purpose is attached as Appendix 3.

6.3 The relevant paragraphs of the Code are as follows:-

- Paragraph 8 of the Code – “A member must regard himself or herself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself or herself, a relative or a friend or....”
- Paragraph 9 – (1) A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- Paragraph 10 - (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.
- Paragraph 12 - (1) Subject to sub-paragraph (2) below, a member with a prejudicial interest in any matter must-
  - (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he or she has obtained a dispensation from the authority's standard's committee;
  - (b) .....; and
  - (c) not seek improperly to influence a decision about that matter.
- Paragraph 13 defines “meeting” for the purposes of the Code.

6.4 Members have the benefit of the Investigating Officer’s report and the Investigating Officer makes certain findings. However, it is incumbent upon members to reach their own conclusions on the facts, and the application of the Code to those facts. It may be that members will, having considered the matter fully, agree with the Investigating Officers findings. On the other hand, whether, for example, a personal interest exists, according to the Code definition, may be a matter of judgement of fact and degree, when considering well-being. It is possible that

debate in Committee will raise points which have not been considered by the Investigating Officer, which could affect the decision whether or not the Councillor had a personal interest at all. Members should not come to the meeting with a predetermined view on the matter but should maintain an open mind.

## 7.0 Sanctions

7.1 In the event that members find that there has been a breach of the Code, then consideration has to be given to what sanction, if any, is appropriate. The Standards Board has issued the following guidance on local determinations and the consideration of sanctions:-

“When deciding a penalty, the Standards Committee should make sure that it is reasonable and in proportion to the member’s behaviour. Before deciding what penalty to set, the Standards Committee should consider the following questions, along with any other relevant circumstances.

What was the member’s intention? Did the member know that he or she was failing to follow the Code of Conduct?

- Did the 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 member accept he or she was at fault?
- Did the member apologise to the relevant people?
- Has the member previously been warned or reprimanded for similar misconduct?
- Has the member failed to follow the Code of Conduct before?
- Is the member likely to do the same thing again?

So, for example, if a member has repeatedly or blatantly misused the authority’s information technology resources, the Standards Committee may consider withdrawing those resources from the member.

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 her responsibilities as an elected representative or co-opted member.

There may be other factors, specific to the local environment, that the Standards Committee may also consider relevant when deciding what penalty to set.

When deciding on an appropriate penalty, the Standards Committee may want to consider decisions made by other Standards Committees and case tribunals drawn from The Adjudication Panel for England that deal with similar types of cases. To help Standards Committees, we will put appropriate summaries of Standards Committee decisions on our website at [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)

7.2 Members may consider sanctions ranging from a reprimand to suspension from office for a maximum of 3 months. The purpose of the sanction is not primarily punitive, but rather that the member observes the Code in the future. Training on the Code may be appropriate in some cases. The Committee may, on occasion, consider that no sanction is necessary. Members will need to give reasons for such a decision as they would for the imposition of a sanction. This is necessary to promote public confidence in the process and to inform the Standards Board of the reasoning behind any seemingly lenient treatment.

#### 8.0 Right of Appeal

8.1 A member has a right of appeal to the Adjudication Panel against an adverse decision of the Standards Committee. The appeal has to be lodged within 21 days of the date of notification of the outcome of the hearing.

#### 9.0 Policy Implications

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| Equalities & Community Cohesiveness  |   |
| Crime and Fear of Crime (Section 17) |   |
| Risk Management                      |   |
| Environmental issues                 |   |
| Economic / Financial implications    |   |
| Human Rights Act                     | X |
| Organisational Consequences          | X |

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*Appendix 1 to this report is not available electronically. A hard copy may be obtained from Elaine Wood, Principal Cttee Administrator, Tel. 01424 451717*