

Agenda Item No:

Report to: Standards Committee

Date of Meeting: 13 May 2008

Report Title: INVESTIGATION OF COMPLAINT SBE 20295.07

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Purpose of Report

To present the Investigating Officer's final report for hearing by the Committee

Recommendation(s)

1. Members are requested to determine:-
 - (i) whether the complaint is proved and there is a breach of the Code of Conduct; and, if proved
 - (ii) What sanction it considers appropriate

Reasons for Recommendations

The Committee is required to make these determinations.

Background

1. The Standards Board referred complaint reference 20295.07 to me for investigation and for determination by Standards Committee on 7 December 2007. I advised Standards Committee members of the reference by letter dated 18 December 2007.
2. I appointed David Powell, MA, MBA, FRICS, FRTPI as investigating officer on 20 December 2007. He has undertaken his investigation and has submitted his final report to me for determination by the Committee. His final 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.

Hearing in Public

3. 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 Councillor Scott accordingly. These papers have, therefore, been published in the usual way.

The Complaint

4. The Complainant, Councillor Stephen Springthorpe, alleges that at a meeting of Hastings Borough Council Cabinet on 9 July 2007, Cabinet discussed a number of options relating to changes to local health services. The purpose of the discussion was to indicate to the local Primary Care Trust the Council's preferred option. Councillor Springthorpe alleges that Councillor Scott took part in the discussion and voting on the matter but failed to declare an interest. The Complainant alleges that the interest arose because Councillor Scott's wife works at the Conquest Hospital, which was the specific site under discussion.

The Hearing Procedure

5. The hearing procedure is attached as Appendix 2.
6. As at the date of writing the report the pre-hearing forms have not been returned. The forms give the Councillor the opportunity to challenge the report, indicate whether he wishes to call witnesses, whether he intends to attend and comments on sanctions available to the Committee, should he be found to be in breach of the Code.
7. In the event that Councillor Scott admits the alleged breach, in accordance with the Investigating Officer's findings, the procedure provides that the Committee may proceed to determine that there has been a breach of the Code and pass immediately to consideration of a sanction.

Matters for Decision by the Committee

8. The Investigating Officer has made certain findings. Should Councillor Scott challenge the findings in full or in part, it is for the Committee to do the following:-
 - a) make findings of fact in relation to the allegations;
 - b) consider whether the facts found amount to a breach of the Code and, if so, which paragraph/s of the Code;
 - c) make a finding as to whether there has been a breach of the Code;
 - d) give full reasons for the decision;
 - e) if the finding is that there has been a breach of the Code, to consider what sanction or combination of sanctions might be appropriate;



f) give full reasons for the decision;

g) consider whether there are matters arising out of the hearing which should be communicated to other members of the Council.

Matters for Consideration

9. The factual situation in this complaint would appear to be quite straightforward. If there were to be dispute as to the facts then the Committee should weigh the competing submissions and decide which of the two accounts given is more likely on the balance of probabilities.

10. It is then necessary to consider the relevant paragraphs of the Code and whether the established facts amount to a breach of those paragraphs.

11. The complaint relates to a time before the revised Code was adopted by the Council on 25 July 2007. The correct version of the Code is attached at Appendix 3.

12. The relevant paragraphs of the Code are set out below:-

Paragraph 8 of the Code –

“(1) 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

b. any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;.....

(2) In this paragraph –

a. “relative” means a spouse

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.

13. When considering whether Councillor Scott had a personal interest in relation to the consideration of the various options regarding the provision of maternity services, Members should focus upon the effect of the proposals upon the wellbeing or financial position of :-

- a) his wife as a person employed at the Conquest Hospital:
and
- b) his wife's employer

If the wellbeing or financial position of either might reasonably be regarded as being affected to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, then Councillor Scott has a personal interest.

14 . The usual test then has to be applied as to whether that interest was also prejudicial. As this complaint precedes the revision of the Code, the interest could be prejudicial even if there were no financial implication for the employer and wellbeing only (eg prestige and status) were affected so significantly.

15. Members have the benefit of the Investigating Officer's report and the Investigating own conclusions on the facts, and the application of the Code to those facts. However, Members should not come to the meeting with a predetermined view on the matter but should maintain an open mind.



SANCTIONS

16. 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”

17. 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.

Right of Appeal

18. 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.

Wards Affected

None

Area(s) Affected

None

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	No
Crime and Fear of Crime (Section 17)	No
Risk Management	No
Environmental Issues	No
Economic/Financial Implications	No
Human Rights Act	No
Organisational Consequences	No

Supporting Documents

Appendix 1 - Investigating Officer's final report
Appendix 2 - Hearing procedure
Appendix 3 - Hastings Borough Council Code of Conduct as at 9 July 2007

Officer to Contact

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The appendices to this report could not be published on the website. Copies may be obtained from Elaine Wood, Principal Committee Administrator, tel. 01424 451717 or email ewood@hastings.gov.uk.