

**Agenda Item No:**

**Report to:** Standards Committee

**Date of Meeting:** 12 March 2009

**Report Title:** INVESTIGATION OF COMPLAINT SC.003.08

**Report By:** Jayne Butters  
Borough Solicitor

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### **Purpose of Report**

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

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### **Recommendation(s)**

- 1. to determine whether the complaint is proved and there is a breach of the Code of Conduct; and, if proved**
- 2. to determine what sanction is considered appropriate**

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### **Reasons for Recommendations**

The Investigating Officer has found a breach of the Code of Conduct and so the Committee is required to undertake a hearing of the complaint and to make a determination or determinations as set out in the recommendations.

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## Background

### INTRODUCTION

1. The Assessment Sub-Committee on 12 August 2008 referred complaint reference SC.003.08 to me for investigation and for determination by Standards Committee.
2. I appointed Trevor Smith, former Head of Legal Services and Monitoring Officer at the London Borough of Epsom and Ewell, as investigating officer on 3 September 2008. 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 A. 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 the Councillor accordingly.
4. 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.

### THE COMPLAINT

5. The Complainant, Tim Cookson, Borough Planning Officer, alleges that:-

On 16 April 2008 Councillor Palmer circulated an e-mail to local residents that made derogatory references about the Complainant and undermine his authority. The e-mail was copied to the Complainant by one of the recipients of the e-mail at his e-mail address. It is alleged that certain comments in that e-mail showed a serious disregard and disrespect to him and fellow professional planning advisors within the Council, that they were offensive and undermined his authority. The Complainant considered that the comments were aggravated by the fact that Councillor Palmer was a member of Planning Committee at the time, where reports by the Borough Planning Officer are presented to the Committee to make recommendations in relation to planning and related applications which are the subject of consideration.

### THE HEARING PROCEDURE

6. The hearing procedure is attached as Appendix B.
7. Councillor Palmer has returned pre-hearing forms submitted to her. The only form completed is Form D Arrangements for the Standards Committee hearing. In this she states that she is not attending as she has holiday booked from 9 - 27 March, though this was not disclosed when the Committee Administrator was consulting on dates for the hearing. Councillor Palmer also indicates that she does not wish any part of the hearing to be held in private or any part of the documents to be withheld from public inspection. She includes a "Statement to Standards Committee - 12th

March 2009". I take this as an indication that she wishes the Committee to conduct the hearing in her absence. I have asked her to confirm this.

8. Councillor Palmer has not taken the opportunity to dispute any of the Investigating Officer's findings on the forms provided and has provided her statement, which seems to amount to an explanation of how she perceived the position at the time but also an acceptance of the findings. If this is a correct interpretation, then the procedure is that the Committee can proceed straight to consideration of a sanction. For the avoidance of doubt, I have asked Councillor Palmer to confirm that my understanding is correct.
9. Councillor Palmer's papers are attached as Appendix C.

### **MATTERS FOR DECISION BY THE COMMITTEE**

10. The findings of the Investigating Officer are just that and, in the event that Councillor Palmer denies the allegation, it is incumbent upon the Committee, having heard all representations made to it, to:-
  - 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 of the Code;
  - c) Make a finding as to whether there has been a breach of the Code;
  - d) Give full reasons for their decisions;
  - e) If their 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 their decision.
  - g) To consider whether there are matters arising out of the hearing which should be communicated to other members of the Council.

### **CONSIDERATIONS BY MEMBERS**

11. Whilst the report is comprehensive and considers a number of issues, the facts of the case are quite 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.
12. It is then necessary to consider whether the established facts amount to a breach of the relevant part of the Code.
13. The Investigating Office has identified the following as relevant paragraphs of the Code:-
  - a) Paragraph 2(1)  
Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you
    - a. conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
    - b. act, claim to act or give the impression you are acting as a representative of your authority,and references to your official capacity are construed accordingly.

b) Paragraph 2(2)

Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

c) Paragraph 3.(1)

You must treat others with respect.

(2) You must not

b. bully any person;

d) Paragraph 5

You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

14. Members have the benefit of the Investigating Officer's full and detailed 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. Members should not come to the meeting with a predetermined view on the matter but should maintain an open mind.

## SANCTIONS

15. 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)"

16. Members may consider sanctions ranging from a reprimand to suspension from office for a maximum of 6 months. The purpose of the sanction is not primarily punitive, but rather to make it more likely 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.
17. The sanctions or combination of sanctions available to a Standards Committee are as follows:-
  - a) censure of that member;
  - b) restriction for a period not exceeding six months of that member's access to the premises of the authority or that member's use of the resources of the authority, provided that those restrictions meet both the following requirements:
    - i) They are reasonable and proportionate to the nature of the breach.
    - ii) They do not unduly restrict the person's ability to perform the functions of a member;
  - c) partial suspension of that member for a period not exceeding six months;
  - d) suspension of that member for a period not exceeding six months;
  - e) that the member submits a written apology in a form specified by the Standards Committee;
  - f) that the member undertakes such training as the Standards Committee specifies;
  - g) that the member participates in such conciliation as the Standards Committee specifies.

## 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.

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### Wards Affected

Old Hastings

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### Area(s) Affected

None

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### Policy Implications

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

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|---------------------------------------|-----|
| 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                      | Yes |
| Organisational Consequences           | Yes |

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### Supporting Documents

Appendix A - Investigating Officer's report with Appendices  
Appendix B - Hearing Procedure  
Appendix C - Councillor Palmer's papers

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### Officer to Contact

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The appendices to the Investigating Officer's report and Appendix C to the Borough Solicitors Report are not available electronically. If you require a copy please contact Elaine Wood, Principal Committee Administrator, tel. 01424 451717 or email ewood@hastings.gov.uk.