

Agenda Item No:

Report to: Standards Committee

Date of Meeting: 8 March 2010

Report Title: INVESTIGATION OF COMPLAINT SC.001.09

Report By: Jayne Butters
Borough Solicitor

Purpose of Report

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

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**

Reasons for Recommendations

The Investigating Officer has found breaches 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.

Background

INTRODUCTION

1. The Assessment Sub-Committee on 17 August 2009 referred complaint reference SC.001.09 to me for investigation and for determination by Standards Committee.
2. I appointed Trevor Smith, former Head of Legal Services and Monitoring Officer at Epsom and Ewell Borough Council, as investigating officer on 25 August 2009. 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.
3. His recommendation is that there have been breaches of the Code of Conduct and of the Protocol for Relationships between Members and Officers. Accordingly, the Committee has now to hear the complaint.
4. It is important to note that the complaint concerns Councillor Matthew Lock only. Whilst the investigation makes reference to Simon Corello, who is now a Borough Councillor, he was not a councillor at the time of the complaint and is not the subject of the complaint.

HEARING IN PUBLIC

5. 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. The Councillor has not asked that it should be conducted in private.
6. 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

7. The Complainant, Councillor Andrew Cartwright, alleges that:-

That during the pre- election period running up to the County Council elections on 4 June 2009, Councillor Matthew Lock, Lead Member for Regeneration and Planning, made improper use of Council staff resources in order to support a candidate or candidates for election. The facts alleged include that, as Lead Member, Regeneration and Planning, Hastings Borough Council, on 19 May 2009 he attended a meeting with police and a Council officer, Matt West, following information passed to him by Simon Corello, the Conservative party candidate, that a constituent had complained about street lighting/community safety issues. Councillor Lock was present at the meeting as was Councillor Cartwright, invited as Ward Councillor by Matt West. On 19 May 2009, Councillor Lock wrote a letter to constituents in Clinton Crescent on notepaper headed "Hastings and Rye Conservatives" and signed "Cllr Matthew Lock County Council Lead Member Transport and Environment".

The letter stated as follows:-

“Dear Resident

It has been brought to my attention by your Conservative candidate, Simon Corello, that many residents have concerns over the street lighting in this area.

Today I met with the local police and a council officer and local Borough Councillor in Clinton Crescent to discuss the point raised regarding street lighting. The action we will be taking is as follows

The police will be holding a street surgery for residents to attend to discuss this and any other concerns they may have.

A survey will be sent out to all local residents from a council officer asking for your views so that we can prepare a bid for next years budget to include improvements of lighting in this area.

I would like to urge all residents to take this opportunity to put their concerns forward and I would like to thank Simon Corello for bringing your concerns to my attention.

Yours faithfully

Cllr Matthew Lock
County Council
Lead Member Transport and Environment”

It is further alleged that other staff may have become involved in the preparation of this letter.

THE HEARING PROCEDURE

8. The hearing procedure is attached as Appendix B.
9. Councillor Lock has returned pre-hearing forms submitted to him. He intends to attend the hearing and has indicated that he will not be represented. He disputes some of the findings of the report.
10. Councillor Lock has pointed out that he was not the Lead member with responsibility for Community Safety in May 2009. This has been confirmed and the Investigating Officer has reconsidered the position in light of this but continues to conclude that Councillor Lock was in breach of the Code and Protocol.

MATTERS FOR DECISION BY THE COMMITTEE

11. The Investigating Officer has reached his own findings of fact and on the application of the Code and Protocol. It is now for the Committee to make its own independent evaluation of the evidence and to undertake 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 Protocol and, if so, which paragraph of the Code and Protocol;
 - 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

- 12. The report is comprehensive and considers a number of issues. There would appear to be little or no dispute on the facts but where there is the Committee is to consider which of the two accounts given is more likely on the balance of probabilities.
- 13. It is then necessary to consider whether the established facts amount to a breach of the relevant part of the Code. Whilst the facts themselves may not be in dispute the argument turns on the construction of events and whether the Code is engaged
- 14. The Investigating Office has identified the following as relevant paragraphs of the Code:-
 - a) Paragraph 1(1) - This Code applies to you as a member of an authority."
 - b) Paragraph 2(1)
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);and references to your official capacity are construed accordingly.
 - c) Paragraph 3 (2) d
You must not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
 - d) Paragraph 6 b ii
You must, when using or authorising the use by others of the resources of your authority
 - ii ensure that such resources are not used improperly for political purposes (including party political purposes).
- 15. Mr Smith has also indentified relevant paragraphs of the Protocol for the Relationship between Members and Officers. The Standards Committee has the authority to determine breaches under the Protocol but, unlike the Code of Conduct, does not have power to impose any sanction in case of breach other than censure.
- 16. 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

17. In the event that members find that there has been a breach or breaches of the Code, then consideration has to be given to what sanction, if any, is appropriate. Standards for England 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, which 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”

18. 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 for England of the reasoning behind any seemingly lenient treatment.
19. 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

20. A member has a right of appeal to the First-tier Tribunal (Local Government Standards in England) against an adverse decision of the Standards Committee. The appeal has to be lodged within 28 days of the date when the notification of the outcome of the hearing was sent to the member.

Wards Affected

St. Helens

Area(s) Affected

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Report Template v20.0

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	Yes
Organisational Consequences	Yes

Supporting Documents

Appendix A - Investigating Officer's report with Appendices
Appendix B - Hearing Procedure

Officer to Contact

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