

## **Wiltshire Council**

### **Standards Committee**

**23 November 2011**

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### **Outcome of Standards Hearing Sub Committee - Case reference WC08/05**

#### **Purpose of Report**

1. To report the outcome of the Standards Hearing Sub-Committee held on 17 March 2011 to consider an allegation of breaches of the Code of Conduct for Members.

#### **Background**

2. On 14 October 2008 the Monitoring Officer for Kennet District Council received a complaint from Councillor Dobson concerning the alleged conduct of Councillor Dow, a member of Marlborough Town Council.
3. The complaint alleged that Councillor Dow's behaviour over a period of time breached paragraph 3(1) and paragraph 3(2) (b) of the Code of Conduct namely:
  - 3(1)-treating others with respect
  - 3(2)You must not (b) - bully any person
4. The complaint was assessed by the Standards Assessment Sub-Committee of Kennet District Council on 24 November 2008 and it was decided that no further action should be taken.
5. The Monitoring Officer of Kennet District Council received an appeal on the 23<sup>rd</sup> December 2008, made by Councillor Dobson against the decision to take no further action. The appeal was not considered by Kennet District Council's Standards Committee before its responsibilities were transferred to Wiltshire Council on the 1<sup>st</sup> April 2009.
6. Under the provisions of the Local Government (Structural Changes)(Further Transitional and Supplementary Provisions and Miscellaneous Amendments) Regulations 2009 the appeal was considered by a Standards Review Sub-Committee of Wiltshire Council on the 23<sup>rd</sup> June 2009. The Sub-Committee allowed the appeal and decided to pass the complaint to Wiltshire Council's Monitoring Officer for investigation.

7. On 5 August 2009 the Monitoring Officer delegated his investigatory powers to Mr Roger Wiltshire, Ethical Governance Officer, pursuant to section 82A of the Local Government Act 2000.
8. The investigator's report dated 15 November 2010 found -
  - That there had been a breach of paragraph 3(1) of the Code of Conduct, (failure to treat with respect).
  - That there had been a breach of paragraph 3(2)(b) of the Code of Conduct, (there had been bullying behaviour)
9. The Consideration Sub-Committee of the Standards Committee of Wiltshire Council met on 14 December 2010 and having considered the Investigating Officer's report and findings, in accordance with Regulation 17 (1) (b) of the Standards Committee (England) Regulations 2008, decided to refer the allegations above to the Hearing Sub-Committee of the Standards Committee for determination. The Consideration Sub-Committee was satisfied that the matter was suitable for local determination.
10. The Hearing Sub-Committee of the Standards Committee of Wiltshire Council met on the 17<sup>th</sup> March 2011 and their decision is attached as appendix A.
11. The Chairman and members of the Sub-Committee may wish to comment on the hearing at the meeting.

#### **Main considerations for the Committee.**

12. This case was referred for investigation on 23 June 2009 and the final report was issued on 15 November 2010. There was initial delay as a result of establishing the new Governance team following local government reorganisation. Further delay was due to the fact that the investigation was complex, involving allegations covering a series of meetings and consideration as to whether a course of conduct over time amounted to a breach.
13. The Standards Committee has since set a target time of 6 months from the Assessment Sub Committee's referral of a complaint for investigation to the completion of the investigation and issuing a final report. It is acknowledged that the delay in this case was unacceptable.
14. The final report was issued on 15 November 2010 and the Standards Hearing Sub Committee met on 17 March 2011. The Standards Committee has since set a target of three months from the issuing of the final report to the conclusion of a determination Sub Committee hearing.

15. The pre-hearing process that has to be undertaken within the three month target leaves little room for delay and difficulties may arise when arranging the hearing date e.g. availability of a suitable venue, availability of staff, committee members, the subject member and any witnesses. This was particularly relevant in this case where the member indicated that she would be bringing a number of witnesses and also raised two preliminary points for which legal advice was required.
16. The two preliminary points raised by the member were:
- a. The validity of the Review Sub-Committee's decision to refer this matter to the Monitoring Officer for investigation.
  - b. The subject member's right to a fair and public hearing within a reasonable time under Article 6 of the Human Rights Act.
17. The Hearings Sub-Committee considered these two preliminary points prior to commencing a full hearing because if the member was successful in her submissions on either ground then to proceed to a hearing would have been unlawful and capable of successful challenge.
18. After taking legal advice the Sub-Committee determined that the decision of the Review Sub-Committee was valid. However the Sub-Committee determined on the second point that having regard to the substantial delay between the complaint being made and the hearing the continuation of the hearing would be a breach of the member's Article 6 right to a fair and public hearing within a reasonable time.

## **Proposals**

19. The Standards Committee is asked to note the outcome of this matter.

**Ian Gibbons**

**Monitoring Officer**

Report author:

Frank Cain  
Head of Legal Services and Deputy Monitoring Officer

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