

<b>REPORT TO</b>	<b>DATE OF MEETING</b>
<b>STANDARDS COMMITTEE HEARING</b>	<b>8 MAY 2009</b>

Report template revised February 2007



<b>SUBJECT</b>	<b>PORTFOLIO</b>	<b>AUTHOR</b>	<b>ITEM</b>
<b>HEARING INTO A COMPLAINT ABOUT COUNCILLOR MELVYN GARDNER</b>	<b>NOT APPLICABLE</b>	<b>DAVID WHELAN</b>	

## **SUMMARY AND LINK TO CORPORATE PRIORITIES**

Following a complaint about the conduct of Councillor Melvyn Gardner a Standards Assessment Sub Committee decided to refer the complaint for investigation.

The complaint has been investigated by Mr Ian Curtis the Head of Legal Services at Fylde Borough Council.

The report of the Investigating Officer was referred to a Standards Consideration Sub Committee on the 27<sup>th</sup> of March 2009. That Sub Committee decided that a Hearing of the Standards Committee should take place to consider the complaint.

This report constitutes the pre-hearing process summary as recommended by the Standards Board for England.

It is considered that the administration of the Standards regime impacts on a number of the Corporate priorities – in particular “Efficient, effective and exceptional Council.”

## **RECOMMENDATIONS**

That:-

1. the Committee conducts a hearing in accordance with both legislative requirements and its own procedures
2. the Committee determines whether there has been any breach (or breaches) of the Code of Conduct for Elected Members
3. if the Committee concludes that any breaches have occurred then Members decide on an appropriate sanction (if any).

## **DETAILS AND REASONING**

### **1. The Complaint**

On the 8<sup>th</sup> of September 2008 a complaint (case reference SCMG) was received regarding the conduct of Councillor Melvyn Gardner. The complainant was Wendy Gudger – formerly the

Council's Interim Planning Manager. Members will see at Appendix 1 a copy of the complaint (personal details have been removed from the complaint).

The complaint relates to alleged comments made by Councillor Melvyn Gardner at a planning hearing on the 2<sup>nd</sup> of September 2008 relating to Giller Drive, Penwortham.

The complaint can be summarised as follows:

1. Cllr Melvyn Gardner made unfavourable comments regarding the complainant which was witnessed by colleagues and members of the public during the course of a meeting. The complainant was not present at the said meeting and believes the comments were a slur on her professional reputation.
2. The reputation of the Council has been brought into disrepute as the Councillor has criticised the decision making process.

A number of provisions contained within the Council's Code of Conduct for Elected Members were considered to be potentially relevant to this investigation. Namely:-

1. Paragraph 3.1 – You must treat others with respect;
2. Paragraph 5 – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
3. Paragraph 6(a) – You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

## **2. The Investigation**

Following the decision of Standards Assessment Sub Committee on the 18 September 2008 to refer the complaint for investigation, Mr Ian Curtis Head of Legal Services with Fylde Borough Council was appointed to carry out the investigation.

Members will see at Appendix 2 to the report a copy of Mr Curtis's report.

Mr Curtis's findings are:

1. Councillor Gardner was in breach of paragraph 3.1 of the Code of Conduct in that his comments at the hearing of the 2<sup>nd</sup> of September 2008 constituted an attack on the integrity and professionalism of Ms Wendy Gudger. Saying the things that he said, in the context in which he said them, amounted to treating Ms Gudger with disrespect.
2. Councillor Gardner was not in breach of paragraphs 5 or 6(a) of the Code.

## **3. Background**

It is useful to set out briefly the history of the planning matter in question.

On the 5<sup>th</sup> of September 2007 a meeting of the Planning Committee was presented with an outline planning application for 11 houses to be developed as Giller Drive. Approval of proposed access arrangements for the site was also sought. This application (both the in principle approval and the access arrangements) was granted subject to the developer entering into a section 106 agreement (a planning agreement). The requisite section 106 agreement was subsequently entered into.

On the 26<sup>th</sup> of March 2008 Planning Committee considered the reserved matters application in relation to the proposed development. Many members of the public were in attendance and voiced strong opposition to the proposals. The public raised issues as to whether the outline planning application had actually been granted. Planning officers in attendance at the above meeting were criticised by members of the public.

Some members of Planning Committee were labouring under the misapprehension that only access had been approved at the earlier planning meeting. Officers including a representative of Legal Services advised Committee that outline permission had been granted and that the principle of the development was no longer open for debate. Members chose to refuse the application.

On 2<sup>nd</sup> of September 2008 a planning hearing was held by the Planning Inspectorate to hear the appeal of the developer. Members of the public, Councillors and Officers were present.

On 23<sup>rd</sup> of September 2008 the developer's appeal was upheld and reserved matters, namely layout, scale, appearance and landscaping were approved by the Planning Inspector. The Council was ordered to pay the developer's costs.

#### **4. Facts that are agreed**

As part of the preparation for this hearing (and in accordance with our procedural documents) Legal Services on behalf of the Monitoring Officer have sought to identify with the parties what facts are agreed. Members will see at Appendix 3 Councillor M Gardner's response to the investigation report. Members will note that Councillor M Gardner refers to a number of emails from fellow councillors in his response. Councillor M Gardner may produce copies of these emails at the hearing if Committee agrees.

It is accepted that Councillor Gardner attended the planning hearing relating to the Giller Drive planning application on the 2<sup>nd</sup> of September 2008.

In his investigation report Mr Ian Curtis found that at the planning hearing Councillor M Gardner made the following remarks (or words to substantially the same effect):

"There has been skulduggery here and somebody is covering somebody else's back"

"Wendy Gudger should be here to defend herself"

"This has gone through on the nod"

In his response to the investigation report Councillor Gardner has not denied saying any of these comments

#### **5. Facts that are in dispute**

Councillor M Gardner does not accept that the comments that he made at the planning hearing constituted an attack upon the integrity and professionalism of Ms Gudger or amounted to treating her with disrespect.

The full position of Councillor M Gardner is set out at Appendix 3.

Councillor M Gardner's has stated that at the Planning committee meeting of the 5<sup>th</sup> of September 2007 members understood that the only issue being deciding upon in relation to the Giller Drive application was access.

Councillor M Gardner has also specifically stated: "At the Appeal, members of the public were criticising Ms Gudger. That is why I stated she should have been there to defend herself and the Council. With respect to the officer who presented the case for the Council, I believe that Ms Gudger and a solicitor should have represented the Council, as they could have presented the case more effectively."

## 6. Hearing Process

Members will see at Appendix 4 to this report the Committee's agreed Hearing Procedure.

In accordance with our procedure Councillor Melvyn Gardner is entitled to be represented by a solicitor or a barrister. In this instance Councillor Michael Green will represent him – Councillor Green is a Solicitor.

The Investigating Officer Mr Ian Curtis will present his case. He is a solicitor.

The Investigating Officer may call the following witnesses: 1 Mr John Dalton – the Head of Planning and Housing; 2 Mr Stephen Brown – Team Leader/Development Control; 3 Mr Alan Green – Enforcement Officer.

Councillor Gardner will be calling the following witnesses: 1. Mrs M Preston of 6 Giller Drive, Penwortham; 2. Mr Ian Scott of 3 Giller Drive, Penwortham.

The meeting will be chaired by Mr Russell Atkinson. The Council's Monitoring Officer John Dakin will be in attendance to assist the Standards Committee and the Council's Legal Services Manager David Whelan will be there to assist with any legal matters. Carol Eddleston will be the clerk to the meeting. Maureen Wood – the Council's Head of Corporate Governance will also be in attendance.

The procedure to follow in outline will be:

1. The Investigating Officer presents any evidence to the facts in dispute (the Investigating Officer may call witnesses);
2. The Investigating Officer and witnesses may be questioned by Councillor M Gardner and/or his representative and Standards Committee;
3. Councillor M Gardner and his representative may present evidence regarding the facts in dispute (Councillor M Gardner may call witnesses);
4. Councillor M Gardner and witnesses may be questioned by the Investigating Officer and Standards Committee;
5. The Investigating Officer may then make representations as to why he believes that there has been a breach of the Code of Conduct;
6. The Investigating Officer may be questioned by Councillor M Gardner and/or his representative and Standards Committee;
7. Councillor M Gardner and his representative may make representations as to why he (they) believe that there has been no breach
8. Councillor Gardner and his representative may be questioned by the Investigating Officer and Standards Committee;
9. The Investigating Officer may then sum up;
10. Councillor M Gardner and/or his representative may then sum up
11. Standards Committee will then conduct its deliberations in private as to its findings of facts and as to whether there has been a breach of the Code of Conduct;

12. The Chairman of Standards Committee will then advise both parties of the conclusions reached by Standards Committee;
13. If the Standards Committee has decided that any breach of the Code of Conduct has taken place then the Investigating officer and Councillor M Gardner and/or his representative may then make representations as to what would be an appropriate sanction in the circumstances
14. The Standards Committee will then consider in private whether to impose a sanction and, if so, what sanction to impose and when that sanction should take effect.
15. The Chairman will then announce the decision of Standards Committee as to sanction.

Subsequent to the hearing the Council must arrange for a summary of the decision and reasons for it to be published in at least one local newspaper that is independent of the Council.

If Committee find that Councillor Melvyn Gardner has breached the Code of Conduct he may apply in writing to the President of the Adjudication Panel for England for permission to appeal that finding. The President must receive the member's written application within 21 days of receiving written notice of the Standards Committee's decision.

## **WIDER IMPLICATIONS**

In the preparation of this report, consideration has been given to the impact of its proposals in all the areas listed below, and the table shows any implications in respect of each of these.

<b>FINANCIAL</b>	There are no financial implications.
<b>LEGAL</b>	<p>The Council is under a legal duty to comply with both the Local Government and Public Involvement in Health Act 2007 and the regulations that have been published further to it. Further the Council must also have regard to the guidance that has been published by the Standards Board.</p> <p>The Council must have regard to its own procedures that were agreed by Standards Committee in 2008; however, Standards Committee may choose to amend its procedures if appropriate in the circumstances.</p> <p>Members should note that a standards committee is not a court of law. It does not hear evidence under oath. It needs to make its decision on the balance of probabilities.</p> <p>If the Standards Committee finds that Councillor Gardner has failed to comply with the Code of Conduct, then the Councillor will have the right to seek permission to appeal that decision by sending a notice in writing to the Adjudication panel for England.</p> <p>A failure to follow correct procedures could lead to any decision made being challenged by judicial review proceedings.</p>

<b>RISK</b>	A failure to comply with the requirements of this Act and to deal with Standards issues in an effective way could lead to the Council's reputation being damaged and tarnished. We must ensure that the public continue to have confidence in the way the Council conducts its business.
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<b>OTHER (see below)</b>	
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<i>Asset Management</i>	<i>Corporate Plans and Policies</i>	<i>Efficiency Savings</i>	<i>Equality, Diversity and Community Cohesion</i>
<i>Freedom of Information/ Data Protection</i>	<i>Health and Safety</i>	<i>Human Rights Act 1998</i>	<i>Implementing Electronic Government</i>
<i>Respect Agenda</i>	<i>Staffing</i>	<i>Sustainability</i>	<i>Training and Development</i>

**BACKGROUND DOCUMENTS**

The Council's Code of Conduct for Elected Members.

The Standards Committee (England) Regulations.