

REPORT TO	DATE OF MEETING
STANDARDS COMMITTEE HEARING	28 AUGUST 2009

Report template revised February 2007



SUBJECT	PORTFOLIO	AUTHOR	ITEM
HEARING INTO A COMPLAINT ABOUT COUNCILLOR THOMAS E SHARRATT	NOT APPLICABLE	DAVID WHELAN	5

SUMMARY AND LINK TO CORPORATE PRIORITIES

Following a complaint about the conduct of Councillor T.E Sharratt a Standards Review Sub-committee decided to refer the complaint for investigation.

The complaint has been investigated by Ms Kay Gray the Council's Principal Solicitor.

The report of the Investigating Officer was referred to a Standards Consideration Sub-committee on the 22nd of June 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 conduct a hearing in accordance with both legislative requirements and its own procedures
2. the Committee determine whether there has been any breach (or breaches) of the Code of Conduct for Elected Members
3. if the Committee conclude that any breaches have occurred then Members decide on an appropriate sanction (if any).

DETAILS AND REASONING

1. The Complaint

On the 3rd of December 2008 a complaint was received regarding the conduct of Councillor T.E Sharratt. The complainant was Councillor Jim Marsh. Members will see at Appendix 1 a copy of the complaint.

The factual basis of this complaint is relatively straightforward.

Cllr Marsh states: "In the latest issue of his (*referring to Cllr Sharratt*) magazine 'The Idle Toad' he has described me as a 'defecator'. In the previous edition he said that 'I had left to join the Tories' which, as any senior member of SRBC will tell you, is a lie. I have put up with his nasty comments in his self-laudatory publication previously, but this time he has gone too far."

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.

2. The Investigation

Following the decision of Standards Review Sub-committee on the 27 January 2009 to refer the complaint for investigation, Ms Kay Gray the Council's Principal Solicitor was appointed to carry out the investigation.

Members will see at Appendix 2 to the report a copy of Ms Gray's report.

Members will also see:

1. Notes of Interview with Councillor Marsh (Appendix 3);
2. Notes of Interview with Councillor Sharratt (Appendix 4);
3. Copy of the relevant extract from the Idle Toad – Spring 2008 edition No 341 (Appendix 5);
4. Copy of the relevant extract from the Idle Toad – Autumn 2008 edition no 343 (Appendix 6).

Ms Gray's findings are:

1. Councillor T.E. Sharratt is in breach of paragraph 3.1 of the Code of Conduct in respect of the use of the word "defecator" in the article "Not a Real Tory" as his comments were of a personal nature and appeared to be made in an attempt to discredit Councillor Marsh's character.
2. Councillor T.E. Sharratt is not in breach of paragraph 3.1 of the Code of Conduct in respect of the contents of article "The Toad is dead – Long Live the Toad."
3. Councillor T.E Sharratt is in breach of paragraph 5 of the Code of Conduct in respect of the article "Not a Real Tory" and the use of the word "defecator." Ms Gray states in her report: "The publication of such an article personally calling another Councillor is not behaviour I would expect of someone holding public office."

3. Background

Councillor Sharratt is the borough councillor for the Coupe Green and Gregson Lane Ward. He is also a County Councillor. He is currently the only representative of the Idle Toad Party on South Ribble Borough Council.

Councillor Marsh was formerly a member of the Idle Toad Party. Councillor Marsh was elected to the borough council as a representative of the Idle Toad Party on 14th of October 2004 and ended his affiliation with the Idle Toad Party on 13th of February 2007. Councillor Marsh subsequently joined the Conservative Party.

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 7 Councillor Sharratt's response to the investigation report.

Councillor Sharratt is the editor of "The Idle Toad" magazine. Councillor Sharratt has accepted in interview that he wrote the article "Not a Real Tory." Councillor Sharratt stated in his taped interview that this article did refer to Councillor Marsh. Councillor Sharratt in his taped interview states that he cannot recall the earlier article "The Toad is dead – Long Live the Toad" but he does believe that he wrote it.

Cllr Sharratt states in his detailed letter (Appendix 7):

"In response to the second complaint, my diary records that Councillor Marsh resigned from the Idle Toad on Tuesday, 13 February 2007. He first sat with the Conservative group at the council meeting on Wednesday, February 21 – just eight days later. With a gap of just eight days between his resignation from the Idle Toad and his first appearance with the Conservatives it does not seem unreasonable to suggest that he resigned to join the Tories." Members should note that in relation to this particular issue Ms Gray has found that Cllr Sharratt is not in breach of the Code of Conduct. To quote from paragraph 7.9 of Ms Gray's report: "I have to say that I sympathise with the views of Councillor Sharratt when he states that his comments regarding a Councillor leaving to join the Tories is political banter although there is no doubt that harm has occurred to Councillor Marsh as a result of these comments."

5. Facts that are in dispute

Members are again referred to the letter from Cllr Sharratt attached as Appendix 7 in which he sets out his position in detail.

To quote from this letter:

"In response to the first complaint, that I described him as a 'defecator', there is a simple explanation: it was a misprint. The word I intended to use was 'defector' – that is, someone who abandons one council group to join another. Since the two words are so similar an errant letter 'a' crept in. Unfortunately I did not notice the mistake before publication, and I have already written correction for the next issue of the Idle Toad."

Councillor Sharratt has queried the motives of Councillor Marsh in bringing the complaint. Councillor Sharratt considers that this complaint was politically motivated. He refers to Councillor Marsh's desire to see Councillor Yates displace him as County councillor for South Ribble Rural East in the June 2009 elections. He also considers that another motive for the complaint was to hinder the production of the Idle Toad.

To conclude Councillor Sharratt refutes any suggestion that he is in breach of the Code of Conduct. Members are advised to give careful consideration to the contents of Councillor Sharratt's detailed letter.

6. Hearing Process

Members will see at Appendix 8 to this report the Committee's agreed Hearing Procedure.

In accordance with our procedure Councillor T E Sharratt is entitled to be represented by a solicitor or a barrister. In this instance Cllr Sharratt has indicated that he will present his own case. He has indicated that he will not be calling any witnesses.

The Investigating Officer MS K Gray will present her case. She is a solicitor.

The Investigating Officer may call Cllr Marsh as a witness.

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 Legal Services Manager will summarise the report and the relevant issues;
2. The Investigating Officer presents any evidence to the facts in dispute (the Investigating Officer may call witnesses);
3. The Investigating Officer and witnesses may be questioned by Councillor Sharratt and Standards Committee;
4. Councillor Sharratt may present evidence regarding the facts in dispute (Councillor Sharratt may call witnesses);
5. Councillor Sharratt and witnesses may be questioned by the Investigating Officer and Standards Committee;
6. The Investigating Officer may then make representations as to why she believes that there has been a breach of the Code of Conduct;
7. The Investigating Officer may be questioned by Councillor Sharratt and Standards Committee;
8. Councillor Sharratt may make representations as to why he believes that there has been no breach
9. Councillor Sharratt may be questioned by the Investigating Officer and Standards Committee;
10. The Investigating Officer may then sum up;
11. Councillor Sharratt may then sum up;
12. The Chairman of Standards Committee will then establish whether there are any outstanding issues – whether any further clarification is required;
13. 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;
14. The Chairman of Standards Committee will then advise both parties of the conclusions reached by Standards Committee;
15. If the Standards Committee has decided that any breach of the Code of Conduct has taken place then the Investigating officer and Councillor Sharratt may then make representations as to what would be an appropriate sanction in the circumstances
16. 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.
17. 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 the Standards Committee finds that Councillor Sharratt 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.

FINANCIAL	There are no financial implications.		
LEGAL	<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>It is for the Standards Committee to make findings of fact. 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>Councillor Sharratt in correspondence has referred to the double jeopardy rule. This is not relevant as :1 as we speak there have been no findings of fact against Councillor Sharratt – the hearing will be the first occasion in which a decision as to the facts will be made; 2 the double jeopardy rule is essentially a concept known to criminal law.</p> <p>If the Standards Committee finds that Councillor Sharratt 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>		
RISK	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.		
OTHER (see below)			
<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.