

REPORT TO	DATE OF MEETING
STANDARDS COMMITTEE HEARING	8 OCTOBER 2009

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SUBJECT	PORTFOLIO	AUTHOR	ITEM
HEARING INTO A COMPLAINT ABOUT COUNCILLOR MARSH	NOT APPLICABLE	DAVID WHELAN	

SUMMARY AND LINK TO CORPORATE PRIORITIES

Following a complaint about the conduct of Councillor Marsh a Standards Assessment Sub-committee decided to refer the complaint for investigation.

The complaint has been investigated by Mr John Stone an independent solicitor appointed by the Monitoring Officer.

The report of the Investigating Officer was referred to a Standards Consideration Sub-committee on the 22nd of July 2009. That Sub-committee decided that a Hearing of the Standards Committee should take place to consider the complaint.

In effect there are two separate complaints contained in the letter of complaint – only one of these two complaints will be dealt with in this hearing.

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 18th of March 2009 a complaint was received regarding the conduct of Councillor Marsh. The complainant was Councillor David Watts. Members will see at Appendix 1 a copy of the complaint.

There are in effect two separate complaints although both are set out in the same letter of complaint.

The first complaint relates to events that allegedly took place on the 17th of March. It is contended that Councillor Marsh was delivering copies of the Council's "Forward" magazine in the Bamber Bridge West Area. Councillor Watts states that included within the delivery of the newspaper was a political leaflet on behalf of the Conservative Party. It is understood that Councillor Marsh was to be paid by the Council for delivering the Forward newspaper.

Councillor Watts states:-"That this leaflet was delivered with Forward leaves this council open to suggestions that the ruling Tory Council is now paying Tory Councillors to deliver Tory leaflets at rate payers' expense. The accusation is further endorsed by the fact that it was (a) delivered to a Labour Councillor's house and (b) the fact that said address is in the middle of the largest estate in Bamber Bridge suggests that well over 200 copies have been despatched."

Following discussions with the chairman, the second complaint will not be looked into at this hearing for procedural reasons.

The provisions of the Code of Conduct which arguably could be relevant to the complaint under consideration (that related to the delivery of a political pamphlet) are:

1. Paragraph 5 – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
2. Paragraph 6(b) – You must, when using or authorising the use by others of the resources of your authority
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes).

2. The Investigation

Following the decision of Standards Assessment Sub-committee on the 6 April 2009 to refer the complaint for investigation, Mr John Stone an independent solicitor was appointed to carry out the investigation.

Members will see at Appendix 2 to the report a copy of Mr Stone's report together with supporting evidence referred to. All comments and evidence relating to the second complaint have been omitted.

Mr Stone's findings – in relation to the first complaint - are:

1. Councillor Marsh is in breach of paragraph 5 of the Code of Conduct in that he brought both his office and authority into disrepute by delivering Forward and a Conservative leaflet together.
2. Councillor Marsh is in breach of paragraph 6(b) of the Code of Conduct in that delivering a political leaflet whilst being paid by the Council constitutes a breach of the Code

3. Background

Councillor Marsh is the borough councillor for the Coupe Green and Gregson Lane Ward. He is a member of the Conservative Party.

Councillor Watts is the borough councillor for Bamber Bridge East ward. He is a member of the Labour 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 3 Councillor Marsh's comments on the investigation report in relation to the complaint that is being dealt at this hearing.

Councillor Marsh now acknowledges that he was in the wrong with regard to the delivery of the "Forward newspaper."

5. Facts that are in dispute

Members are again referred to the written comments from Cllr Marsh attached as Appendix 3 in which he sets out his position in detail.

Councillor Marsh states: "I readily admit to being in the wrong re the delivery of "Forward" newspaper. This was an error of judgement with possibly a bit of mischief thrown in."

"I have already had the ultimate punishment, as far as I am concerned, in so much as I have been sacked by SRBC as a delivery volunteer. I really loved that job (I was the best they had)."

"I still feel though that the complaint could have been handled better without the need for newspaper involvement. I think that was pure spite."

Councillor Marsh also states that the evidence of Councillor Watts was hearsay evidence. He states of Councillor Watts: "Would a more responsible person not have tried to keep things in House?"

Mr John Stone was asked for his comments in relation to his representations.

Mr John Stone states: "I agree Cllr Watts's evidence is largely hearsay. However, Cllr Marsh's admissions to Martin O'Loughlin and myself are not and are sufficient to prove the breach."

Mr John Stone points out: "This is an investigation into the conduct of Cllr Marsh not Cllr Watts."

John Stone further states: "In relation to Cllr Marsh's comment that he was sacked, I understand that the Council has taken a decision that no councillor should deliver Forward, rather than single him out for punishment."

6. Hearing Process

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

The Investigating Officer Mr John Stone will present his case. He is a solicitor. Mr John Stone is not intending to call any witnesses.

The meeting will be chaired by Mr John Holt. 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. Andy Houliker will be the clerk to the meeting.

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(if any) may be questioned by Councillor Marsh and Standards Committee;
4. Councillor Marsh may present evidence regarding the facts in dispute (Councillor Marsh may call witnesses);
5. Councillor Marsh and witnesses(if any) may be questioned by the Investigating Officer and Standards Committee;
6. The Investigating Officer may then make representations as to why he believes that there has been a breach of the Code of Conduct;
7. The Investigating Officer may be questioned by Councillor Marsh and Standards Committee;
8. Councillor Marsh may make representations as to why he believes that there has been no breach
9. Councillor Marsh may be questioned by the Investigating Officer and Standards Committee;
10. The Investigating Officer may then sum up;
11. Councillor Marsh 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 Marsh 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 Marsh 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>If the Standards Committee finds that Councillor Marsh 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.