

REPORT TO	DATE OF MEETING
STANDARDS COMMITTEE HEARING	9 DECEMBER 2009

Report template revised February 2007



SUBJECT	PORTFOLIO	AUTHOR	ITEM
HEARING INTO COMPLAINTS ABOUT COUNCILLORS MARSH AND YATES	NOT APPLICABLE	DAVID WHELAN	4

SUMMARY AND LINK TO CORPORATE PRIORITIES

There are two separate complaints about Councillors Marsh and Yates.

Councillor Watts submitted a complaint about Councillor Marsh. Councillor Sharratt submitted a complaint about Councillor Yates.

As both complaints arise from the same set of facts the Chairman of Standards Committee thought it desirable, in the interests of justice, if the two complaints were dealt with by Standards Committee at the same time. The two councillors concerned have indicated that they have no objection to this course of action. Advice was also sought from the Standards Board who indicated that there were no in principle issues with such a joint hearing – indeed they pointed out that the Adjudication Panel itself sometimes holds joint hearings.

Both complaints were investigated by Mr John Stone an independent investigator appointed by the Monitoring Officer.

The report of the Investigating Officer in relation to Councillor Yates was referred to a Standards Consideration Sub-committee on the 2nd of November 2009. That Sub-committee decided that a Hearing of the Standards Committee should take place to consider the complaint.

The report of the Investigating Officer in relation to Councillor Marsh was referred to a Standards Consideration Sub-committee on the 22nd of July 2009. There were in effect two separate issues raised about Councillor Marsh. That part of the complaint relating to the delivery of political material was dealt with in a Hearing before Standards Committee on the 8th of October 2009. The other part of the complaint was held in abeyance so that it could be dealt with at the same time as the complaint against Councillor Yates if that later complaint was also referred to a Hearing (something which members will note has now happened).

Both complaints arise out of a meeting of Eastern Area Committee on the 20th of January 2009. In particular both complaints relate to an application for a grant from two cricket clubs.

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 the suggested amended procedure (as outlined in the report) for dealing with a joint hearing
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 against Councillor Yates

On the 28 May 2009 a complaint was received relating to the conduct of Councillor Barrie Yates.

The complainant is Councillor Tom Sharratt.

This complaint relates to a meeting of the Eastern Area Committee on the 20th of January 2009. Councillor Sharratt alleges that Councillor Yates failed to declare an interest in a matter that was decided upon at that meeting. The particular item related to a joint application for a grant from Houghton Cricket club and Gregson Lane Cricket Club for a charity cricket match. Councillor Sharratt states that a joint working party was established to pursue this application on behalf of the cricket clubs concerned. Councillor Sharratt alleges that Councillor Yates attended the first meeting of this working party – Councillor Sharratt also alleges that Councillor Yates advised on how much they should apply for. There is some suggestion that Councillor Yates requested a donation to the mayor's charity fund (Councillor Yates was the mayor at the time).

Councillor Sharratt in his letter of complaint states:-“At the meeting of the Eastern Area Committee on January 20 Councillor Yates did not declare his interests in the application – namely, that he had attended the first meeting of the working party, suggested the sum requested, and sought a donation in return. Since I had declared my interest and left the meeting I cannot say how far Councillor Yates participated in consideration of the application and I do not know whether he voted on the matter, but it is clear that he remained in the chair throughout; nor can I say what discussions, if any, he had with his Conservative group colleagues beforehand or how far he influenced their ultimate decision. But in the event the outcome was exactly as he had predicted to the working party last autumn: a grant of £200.”

The full text of the complaint is attached to this report as Appendix 1

The provisions of the Code of Conduct which are considered to be potentially relevant to this complaint are:

1. Paragraph 6(a) – You must not use or attempt to use your position as a member improperly to confer on or secure yourself or any other person, an advantage or disadvantage;
2. Paragraph 9 – where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest;
3. Paragraph 12 (1) ...where you have a prejudicial interest in any business of your authority
 - a. you must withdraw from the room or chamber where a meeting considering the business is being held –

- b. you must not exercise executive functions in relation to that business: and
- c. you must not seek improperly to influence a decision about that business.

2. The Complaint against Councillor Marsh

On the 18th of March a letter of complaint was received relating to the conduct of Councillor Jim Marsh.

The complainant is Councillor David Watts.

There are in effect two separate complaints here.

The first complaint relates to events that took place on the 17th of March. Councillor Marsh was delivering copies of the Council's "Forward" newspaper in the Bamber Bridge West Area. Cllr Watts states that included with 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. This complaint was dealt with at a separate hearing of Standards Committee on the 8th of October. Councillor Marsh was found to have breached the Code of Conduct. He was censured and was instructed to undergo training on the Code.

The second complaint (which is to be dealt with at this Hearing) relates to the same meeting of the Eastern Area committee that Councillor Sharratt refers to in his complaint about Councillor Yates. Again the issue at stake relates to the request from Gregson Lane Cricket Club (and Houghton Cricket Club) for financial assistance towards funding a local community event. This was to be held on Monday 4 May 2009. Councillor Marsh declared an interest (non-prejudicial) as he had been asked to umpire a cricket match as part of the local event.

Councillor Watts states in relation to this second complaint: "I now understand that at the Area Committee 20.01.09 Cllr Marsh, who declared a non-prejudicial interest in minute 48 as he had been asked to umpire the cricket match should have, in fact, declared a prejudicial interest as it transpires he was aware of the same confidential information as Cllr. Sharratt who left the meeting during discussion of that item."

A copy of the letter of complaint is attached to this report as Appendix 2 (those parts of the letter relating to the complaint centred on the delivery of political material have been deleted)

A copy of the minutes of Eastern Area Committee on the 20th of January 2009 is attached to this report as Appendix 3.

The provisions of the Code of Conduct which arguably could be relevant to this complaint are:

1. 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. Paragraph 12 (1) ...where you have a prejudicial interest in any business of your authority
 - (a) you must withdraw from the room or chamber where a meeting considering the business is being held –
 - (b) you must not exercise executive functions in relation to that business: and
 - (c) you must not seek improperly to influence a decision about that business.

3. The Investigation in relation to Councillor Yates

Following the decision of Standards Assessment Sub-committee on the 17 June 2009 to refer the complaint for investigation, Mr John Stone an independent investigator was appointed to carry out the investigation.

Members will see at Appendix 4 to the report a copy of Mr Stone's final report together with the supporting evidence referred to.

Both the complainant and Cllr Yates have seen this report – indeed both had the opportunity to comment on the report in draft form.

Mr Stone's findings are:

1. Councillor Yates is in breach of paragraphs 6(a) of the Code of Conduct in that by failing to make a declaration of any interest, failing to declare a prejudicial interest and failing to leave the room when the application for a donation from the cricket clubs in question was considered at Eastern Area Committee he used his position improperly to secure an advantage for another
2. Councillor Yates failed to declare a personal interest at the Eastern Area Committee meeting in relation to the said application by the cricket clubs for a donation contrary to paragraph 9 of the Code of Conduct
3. Councillor Yates had a prejudicial interest at the Eastern Area Committee meeting in relation to the said application by the cricket clubs for a donation. However, Councillor Yates failed to declare that interest – he stayed in the room, took part in the debate and voted thus acting contrary to paragraph 12 of the Code of Conduct
4. Councillor Yates did not solicit a donation to his Charity fund (paragraph 6 of the Code of Conduct).

4. The Investigation in relation to Councillor Marsh

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

Members will see at Appendix 5 to the report a copy of Mr Stone's report together with the supporting evidence referred to. Those parts of Mr Stone's report relating to the other complaint against Councillor Marsh (the one relating to the delivery of political material) have been deleted from the report.

Mr Stone's findings are:

1. Councillor Marsh is in breach of paragraph 6(a) of the Code of Conduct. I quote from the investigation report: "I find that by failing to make a full declaration of his interest, failing to declare a prejudicial interest and failing to leave the room Cllr Marsh did use his position improperly to secure an advantage for another." However, Mr Stone goes on to state: "I think his wrongdoing is better reflected by paragraph 12 [1]."
2. Councillor Marsh is in breach of paragraph 12(1) of the Code of Conduct. I quote from the investigation report: "... I find that he also had a prejudicial interest and was obliged to leave the meeting as Cllr Sharratt had done (albeit for a wholly different reason)."

5. Background

Councillor Yates is the borough councillor for the Samlesbury and Walton Ward. He is a member of the Conservative Party. He is the Chairman of Eastern Area Committee.

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

Councillor Watts (the complainant about Councillor Marsh) is the borough councillor for the Bamber Bridge East Ward. He is a member of the Labour Party.

Councillor Sharratt (the complainant about Councillor Yates) is the borough councillor for the Coupe Green and Gregson Lane Ward. He is a member of the Idle Toad Party.

6. 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.

Councillor Yates

Councillor Yates disputes the report and findings of Mr John Stone. He does state though (see Appendix 7): "I do agree that I was in the Old Oak public house on the 13th of January and that I was asked to give advice as a councillor and I gave that advice openly and freely as I would do any member of the public."

Councillor Marsh

Councillor Marsh does not accept the report of Mr John Stone.

Members will see at Appendix 6 to this report the comments of Councillor Marsh on Mr John Stone's report as it relates to this particular complaint.

7. Facts that are in dispute

Councillor Yates

Councillor Yates is disputing the report of Mr John Stone.

In this regard Members will see attached:

1. Appendix 7 – Letter from Councillor Yates also signed by Councillor Marsh, Mr Les Simpson, Mr Paul Abbott and Mr Greg Gorrell;
2. Appendix 8 – Letter from Councillor Yates dated the 8th of October 2009.

Members will note that Councillor Yates denies that he was part of a committee that organised the charity cricket match in question. Accordingly Councillor Yates denies that he should have declared any interest at the Eastern Area Committee of the 20th of January.

Councillor Yates expresses a desire to question both Mr John Stone and Councillor Sharratt. He also indicates that he will calling Mr Les Simpson to give evidence on his behalf.

Councillor Marsh

Councillor Marsh states (see Appendix 6 for the full text): "I declared an interest because I was umpiring. The Chairman said I need not leave the meeting." Councillor Marsh further states: "What's the point of having a Chairman if I am supposed to ignore him."

Councillor Marsh also states: "If I have transgressed in the matter of the cricket match, it was wholly unintentional."

8. Additional Documentation

Members will also see attached:

1. Appendix 9 – Transcript of Interview with Councillor Marsh (those parts of the transcript relating to the other complaint about him have been deleted);
2. Appendix 10 – Agenda/Note of meeting that took place in the Old Oak Public House on the 13th of January 2009
3. Appendix 11 – Letter of the 9th of April 2009 from Councillor Sharratt about Councillor Marsh
4. Appendix 12 – Statement of Stuart Cross (Gregson Lane Cricket Club) and supporting letter (this is referred to in the report of Mr John Stone)
5. Appendix 13 – Statement of Mr G Gorrell
6. Appendix 14 – Statement of Mr L Simpson
7. Appendix 15 – Comments of Mr John Stone in relation to the statement of Mr L Simpson

9. Official Capacity

The Code of Conduct for Elected Members only applies to a councillor when he is acting in his official capacity.

Official capacity is defined in paragraph 2(1) of the Code of Conduct. This states: "...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); or (b) act, claim to act or give the impression you are acting as a representative of your authority..."

Committee will need to consider this issue when deciding on whether Councillors Marsh and Yates have breached the Code of Conduct.

10. Hearing Process

In accordance with our procedure Councillors Marsh and Yates are entitled to be represented by a solicitor or a barrister. They may call witnesses. It is understood that Councillor Yates will be calling Mr Les Simpson to give evidence – Mr Simpson was involved with the organisation of the cricket match in question.

The Investigating Officer Mr John Stone will present his case in relation to both cases. The Investigating Officer will be calling Councillor Sharratt 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. Dave Lee will be the clerk to the meeting.

The following procedure is proposed which has been adapted for a joint Hearing:-

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 Councillors Yates, Marsh and Standards Committee;
4. Councillor Yates may present evidence regarding the facts in dispute (Councillor Yates may call witnesses);

5. Councillor Yates and witnesses may be questioned by the Investigating Officer and Standards Committee (Cllr Marsh may also ask questions);
6. Councillor Marsh may present evidence regarding the facts in dispute (Councillor Marsh may call witnesses);
7. Councillor Marsh and witnesses may be questioned by the Investigating Officer and Standards Committee (Cllr Yates may also ask questions);
8. The Investigating Officer may then make representations as to why he believes that there have been breaches of the Code of Conduct;
9. The Investigating Officer may be questioned by Councillors Yates , Marsh and Standards Committee;
10. Councillor Yates may make representations as to why he believes that there has been no breach
11. Councillor Yates may be questioned by the Investigating Officer and Standards Committee (Councillor Marsh may also ask questions)
12. Councillor Marsh may make representations as to why he believes that there has been no breach
13. Councillor Marsh may be questioned by the Investigating Officer and Standards Committee (Councillor Yates may also ask questions);
14. The Investigating Officer may then sum up;
15. Councillor Yates may then sum up;
16. Councillor Marsh may then sum up
17. The Chairman of Standards Committee will then establish whether there are any outstanding issues – whether any further clarification is required;
18. Standards Committee will then conduct its deliberations in private as to its findings of facts and as to whether there have been any breaches of the Code of Conduct;
19. The Chairman of Standards Committee will then advise all parties of the conclusions reached by Standards Committee;
20. If the Standards Committee has decided that any breach of the Code of Conduct has taken place then the Investigating officer and Councillor Yates and Marsh , as appropriate, may then make representations as to what would be an appropriate sanction in the circumstances
21. 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.
22. 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 Councillors Marsh and Yates have breached the Code of Conduct they may apply in writing to the President of the Adjudication Panel for England for

permission to appeal that finding. The President must receive the 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 Councillors Marsh and Yates have failed to comply with the Code of Conduct, then the Councillors 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.