

## Consideration Sub Committee

A meeting of Consideration Sub Committee was held on Wednesday, 15th April, 2009.

**Present:** Mrs E Chapman (Independent Chair); Mr C V Algie (Parish Representative) and Councillor J Fletcher (Elected Member)

**Officers:** Mr J Nertney (LD); Mrs J Grant (Investigating Officer (LD)) & Mr A Squires (Investigating Officer (LD))

**Also in attendance:** None

**Apologies:** None

**CSC  
1/09**      **Introduction.**

Attendees introduced themselves.

**CSC  
2/09**      **Declarations of Interest**

There were no declarations of interest.

**CSC  
3/09**      **Quorum.**

The Chair confirmed that quorum was established.

**CSC  
4/09**      **Purpose of the meeting and procedure to be followed.**

The purpose and procedure to be followed during the meeting was explained by the Legal Officer. Members were required to consider the Investigation Reports to decide based on the facts in the reports whether they agree that the Code has not been breached or if there is a case to answer. Members were also advised that they could question the Investigating Officer and ask for clarification of any of the points set out in the Investigation Reports.

The Legal Officer referred Members to the three possible decisions that the Sub-Committee could arrive at, following its consideration of the Investigation Reports which were: -

- that it accepted the findings contained in the Investigation Report or,
- that the matter should be considered further at a hearing, or
- that the matter should be referred to the Adjudication Panel for England, if it appeared to be a serious breach of the Code and that the sanctions available to the Standards Committee were insufficient.

**CSC  
5/09**      **Exclusion of the press and public.**

Members agreed that it was not necessary to exclude the press and public during consideration of the Investigation Reports.

**CSC  
6/09**      **Final Report - Reference Under Section 57A(2)(a) of the Local Government Act 2000 to the Monitoring Officer, Stockton-on-Tees Borough Council, Case Reference: SBC7&8.**

The Investigating Officer (Mr Allen Squires) presented his Investigation Report to the Sub-Committee and gave a summary of both SBC7 and SBC8 complaint, which were submitted by Councillor A and Councillor B and related to the behaviour of a member at a planning meeting in September 2008. SBC7 complaint involved three allegations relating to the member's conduct, with SBC8 complaint substantiating one of the allegations of the SBC7 complaint.

Allegation 1 – Councillor A (SBC 7 complainant) alleged that at a planning committee meeting in September 2008, the member became agitated and threw his agenda papers at an Officer as he was leaving the room.

Allegation 2 – Councillor A also alleged that during a comfort break at the same meeting he was informed by Councillor B that the same member was sounding off near the toilet and had used foul and abusive language towards him.

Councillor B (SBC8 complainant) alleged that on approaching the toilets during the comfort break the member was in discussion with members of the public who were objectors to an application of a planning item. On passing, the member used loud foul and abusive language towards him.

Allegation 3 - Councillor A also alleges that the member had met with the Developer prior to the planning committee meeting due to a comment he made to the Developer at the meeting. As a result Councillor A alleged that the member had fettered his discretion, should have informed the planning committee of his meetings with the Developer and should not have participated in the item, nor voted, as he did.

The Investigating Officer advised the Sub-Committee of the documentary evidence he had gathered and the facts gained from the people he had interviewed as part of the investigation. He highlighted the key information from the interviews relating to each allegation and proceeded to explain his reasons for the findings, which were detailed in the Investigation Report and are stated in the Consideration Sub-Committee's decision below.

On the balance of evidence available the Investigating Officer advised the Sub-Committee that:

There had been no breach of paragraph 3 (1) or paragraph 5 of the Code of Conduct with regard to allegation 1.

There had been a breach of paragraph 3 (1) of the Code of Conduct but there had not been a breach of paragraph 5 with regard to allegation 2.

There had been no breach of paragraph 8 (1) (a) of the Code of Conduct; therefore paragraph 9 (1) had also not been breached with regard to allegation 3.

The Sub-Committee discussed the Investigation Report and considered their decision.

The Consideration Sub-Committee's Decision

On the balance of evidence presented, the Sub-Committee accepted the

findings contained in the Investigation Report.

Allegation 1: The Sub-Committee found that the member had thrown the agenda papers onto the desk as a deliberate act but they were not thrown as a personal attack on the Officer. The Sub-Committee agreed that the member's actions were a gesture of his frustration at being displeased at the decision made by the planning committee. The Sub-Committee also accepted that the Investigators finding was supported by the Officer's comments in paragraph 5.17 of the Investigation Report, in that she did not believe the member was being vindictive towards her personally.

The Sub-Committee agreed that the majority of the evidence available suggested the agenda papers were thrown at the desk in front of the Officer and not directly at her. The Sub-Committee also noted that an apology had since been given to the Officer.

On the balance of evidence presented and after taking note of the Standards Board for England guidance stated in the Investigation Report (which identified that 'the threshold for a failure to treat another with respect has to be set at a level that allows for passion and frustration that often accompanies political debate' and that 'A case tribunal or standards committee will need to be persuaded that the misconduct is sufficient to damage the reputation of the members office or authority, opposed simply to damaging the reputation of the individual concerned), the Sub-Committee agreed that the member did not fail to treat the Officer with respect, nor did they find that his actions of throwing the agenda papers onto the desk brought his office or authority into disrepute.

RESOLVED that the findings in the report relating to allegation 1 be accepted, that there had been no breach of paragraph 3 (1) or paragraph 5 of the Code of Conduct.

Allegation 2: The reasons for the Sub-Committee's acceptance of this finding is that although what was actually said is in dispute, the member could not remember exactly what was said to Councillor B however, he recalls saying something about standing on his own two feet and getting a backbone.

It was confirmed by the member that "an aside" did happen with Councillor B and although there is no direct corroboration of what was said between them, Councillor A and an Officer did confirm that Councillor B had advised them of the incident immediately after it had occurred when he re-entered the room.

The Sub-Committee agreed with the Investigator that the member was acting in an official capacity at the time of the incident but accepted this was to be determined by the Standards Committee's Hearing Sub-Committee.

The Sub-Committee noted that the planning item prior to this incident was contentious and gave rise to a heated debate and that there was a commotion during the comfort break. It was at this point that the member spoke to the Councillor B and although there is some dispute as to what was actually said it was noted that the investigating officer had found that Councillor B had been treated with disrespect. The inference was that the Councillor B was acting on behalf of another person and did not have the strength of character to act for himself, which the investigating officer found to be disrespectful. It was also

noted that the member has not apologised to Councillor B.

On the balance of evidence presented, the Sub-Committee agreed that the sanctions available to the Standards Committee were sufficient and that the matter should be referred to the Standards Committee's Hearing Sub-Committee for determination. The Sub-Committee considered the guidance at paragraph 3.4 (relating to bringing your office or authority in to disrepute) of the Investigation Report and made a finding of acceptance that the member had not brought his office or authority into disrepute when speaking to Councillor B, as there was no evidence that the conversation had been witnessed by any person other than the member and Councillor B.

RESOLVED that the findings in the report relating to allegation 2 be accepted, that there had been a breach of paragraph 3 (1) of the Code of Conduct but there had not been a breach of paragraph 5.

Allegation 3: The reasons for the Sub-Committee's acceptance of this finding is that the Sub-Committee found that fettering discretion and pre-determination is not covered by the Members' Code of Conduct, it is a Planning Code of Conduct matter; therefore no judgment could be made on this issue.

The member concerned had declared a personal interest "due to his involvement with the football club by way of providing support and assistance." The Sub-Committee agreed that this did not amount to a personal interest in the item under discussion. The Sub-Committee further accepted that the member was not a member of the football club, nor is he in a position of general control or management of it. The decision on this planning item did not affect his, his family's or relevant persons well being or financial position to a greater extent than the majority of other council taxpayers.

The member is also a Town Councillor. However, the report to the planning committee stated that no response to the application was received from the Town Council. The item itself did not concern the Town Council therefore the Sub-Committee agreed the member did not have an interest to declare as a result of being a Town Councillor.

On the balance of evidence presented, the Sub-Committee agreed the member did not have a personal interest in the item under discussion; therefore there was no prejudicial interest to declare.

RESOLVED that the findings in the report be accepted, that had been no breach of paragraph 8 (1) (a) of the Code of Conduct; therefore paragraph 9 (1) had also not been breached.

**CSC  
7/09**

**Final Report - Reference Under Section 57A(2)(a) of the Local Government Act 2000 to the Monitoring Officer, Stockton-on-Tees Borough Council, Case Reference: SBC9.**

The Investigating Officer (Mrs J Grant) presented her Investigation Report to the Sub-Committee and gave a summary of the complaint. The complainant alleged that a member had brought her office into disrepute by refusing to move a vehicle that was causing an obstruction and when asked to do so replied with a torrent of expletives. It is also alleged that the member has harassed the

complainant over a period of 18 months by sending her hostile Solicitors letters relating to the use of a drive and an alleged encroachment on to that drive.

The Investigating Officer set out the evidence which she had gathered including details of the people she had interviewed. She stated that her investigation concentrated on whether the Code actually applied, rather than continuing to establish the facts of alleged conduct complained of.

The Investigating Officer stated that there was no evidence to suggest that the member has claimed to act, or given the impression that she has acted as a representative of the Council when dealing with the matters complained of (i.e. refusing to move a vehicle that was causing an obstruction, the use of a drive or an alleged encroachment onto that drive).

The Investigating Officer confirmed that Councillors are required to comply with the Code of Conduct when they are conducting the business of their authority or where they act, claim to act or give the impression that they are acting as a representative of the authority. The matters complained of were private matters and the member was not acting in her official capacity as a Councillor; therefore the Code of Conduct did not apply to these issues.

No judgement was made by the Investigating Officer as to whether the alleged conduct actually occurred.

The Investigating Officer also made a recommendation that a review of the assessment criteria is carried out, with a view to adding a further reason for non-referral, where there is no suggestion that the member is acting in an official capacity. It was also recommended that further training is given to Standards Committee members on the application of the Code and the limited circumstances that it may apply to conduct in a non official capacity.

On the balance of evidence available the Investigating Officer advised that she had not made a finding that the member had breached the Code of Conduct with regards to failing to treat others with respect (Paragraph 3 (1)), bullying the complainant (Paragraph 3 (2) (b)) or intimidated the complainant (Paragraph 3 (2) (c) (i)), as assessed by the Assessment Sub-Committee.

The Sub-Committee discussed the Investigation Report and considered their decision.

#### The Consideration Sub-Committee's Decision

On the balance of evidence presented, the Sub-Committee accepted the findings contained in the Investigation Report.

The reason for the Sub-Committee's acceptance of the Investigation Report is that there was no evidence to suggest that the member has claimed to act, or given the impression that she has acted as a representative of the Council when dealing with the matters complained of; therefore she was not acting in her official capacity of a Councillor. The Sub-Committee agreed the matters complained of were private matters.

The Sub-Committee also accepted that no judgement was made as to whether

the alleged conduct actually occurred.

For the above reasons the Sub-Committee agreed that the member had not failed to treat others with respect; nor had she bullied or intimidated the complainant with regards to the Code of Conduct.

RESOLVED that the findings in the report, that there had been no breach of Paragraph 3 (1), 3 (2) (b), or 3 (2) (c) (i) of the Code of Conduct, be accepted.