

Consideration Sub Committee

A meeting of Consideration Sub Committee was held on Monday, 25th January, 2010.

Present: Mr F W Hayes (Independent Chair); Mr C V Algie (Parish Representative) and Councillor J Fletcher (Elected Member)

Officers: Mr J Nertney (LD), Mr A W Squires (LD) & Mr R Phillips (Investigating Officer (LD))

Also in attendance: Councillor A Cockerill

Apologies: None

CSC 8/09 Introduction

Attendees introduced themselves.

CSC 9/09 Declarations of Interest

There were no declarations of interest declared at the meeting.

CSC 10/09 Quorum

The Chair confirmed that the meeting was quorate.

CSC 11/09 Purpose of meeting and procedure to be followed

The purpose and procedure to be followed during the meeting was explained by the Legal Adviser. Specifically Sub-Committee members were advised that the meeting was not a hearing and that members were required to consider the Investigation Report. 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 Report.

Members were advised that the Investigating Officer would first present an oral summary of his Investigation Report and then would answer any question raised by members of the Sub-Committee.

The Chair referred members to the three possible decisions that the Sub-Committee could arrive at, following its consideration of the Investigation Report which were: -

- that it accepted the findings contained in the Investigation Report;
- that the matter should be considered further at a hearing of the Hearing Sub-Committee; or
- that the matter should be referred to the Adjudication Panel for England (now First-tier Tribunal (Local Government Standards in England)), if it appeared to be a serious breach of the Code and that the sanctions available to the Standards Committee were insufficient.

CSC 12/09 Exclusion of press and public

Sub-Committee members considered whether it was appropriate to make a

resolution to exclude the press and public during consideration of the Investigation Report. Having regards to the nature of the complaint and the information detailed in the Investigation Report they concluded that it was not necessary. However, the Sub-Committee agreed that the full Investigation Report remain confidential and only a redacted version of the report be made public, in order to prevent the identification of any third parties.

CSC 13/09 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: SBC12.

The Investigating Officer presented his Investigation Report to the Sub-Committee and gave a summary of the complaint. The complaint related to an allegation that a borough council member had:

- failed to treat others with respect (paragraph 3(1) of the Code)
- disclosed information of a confidential nature (paragraph 4(a) of the Code)
- brought their office or authority into disrepute (paragraph 5 of the Code)

The allegations stem from a recording of a conversation held with a constituent, in a constituent's home, on 10 September 2009 that was left in error on the complainant's (officer) voicemail and was subsequently accessed and heard by the complainant. The complainant alleges that during the conversation the member is critical of the complainant's capability and that confidential matters were discussed regarding another constituent when addressing the constituent's concerns.

The Investigating Officer set out the evidence which he had gathered including details of who he had interviewed. He also confirmed that the transcript of the recorded conversation had also been agreed.

On the balance of evidence available the Investigating Officer advised that he had not made a finding that the member had breached the Code of Conduct with regard to any of the allegations.

The Investigating Officer advised that the evidence suggested that the member was acting in his official capacity at the time of the recorded conversation and that a member was not precluded from questioning an officer's capability. However, stated this must be done in a 'correct way and at a proper forum' (reference made to guidance in the Standards Board Case Review 2007) and commented that a constituent's home was not the correct forum.

It was explained that the recorded conversation took place with regard to concerns of a constituent over a tenancy issue and that the complainant had acted promptly to the constituent's concerns prior to the constituent meeting with the member. The Investigating Officer further indicated that the remarks made by the member about the officer's capabilities could be considered as a breach and identified a previous Adjudication Panel for England (APE) decision (Case Ref: 0425) that stated (paragraph 8.14 in the investigation report) throw away remarks made without malicious intent could constitute a breach. However, the Investigating Officer highlighted that the remarks made by the member were not as significant as quoted in APE (Case Ref: 0425); therefore

he had distinguished from this example.

The Investigating Officer also identified the decision in APE (Case Ref 0425) paragraph 8.15 of the Investigation Report)), this supported the line of reasoning that a distinction should be made between single instances of robust and intemperate criticism and repeated occurrences of inappropriate behaviour, in order to determine whether disrespect had occurred. It was confirmed that there had been no similar remarks made by the member prior to or following the recorded conversation regarding the complainant's capabilities; therefore the remarks made had been a single instance. On this basis the Investigating Officer found that no breach had occurred with regard to the allegation of failing to treat others with respect, although accepted it was a borderline decision that was favoured by the decision recently set in APE (Case Ref: 0456).

With regard to the allegation that the member disclosed information of a confidential nature, the Investigating Officer confirmed that the remarks made relating to a restriction on another constituent may have occurred, however indicated that if they had the information would have already been in the public domain; therefore the information was not of a confidential nature and no breach of the Code had occurred.

The Investigating Officer highlighted that a high standard is required to be met with regards to a member bringing their office or authority into disrepute and stated that having considered the evidence available he felt that the remarks made by the member did not meet this standard and were more likely to have affected the member's personal reputation rather than bring their office or authority into disrepute; therefore no breach of the Code had occurred.

The Sub-Committee questioned the Investigating Officer on the content of his report and in particular asked for clarification concerning whether the member had intended to leave the voicemail message. In response the Investigating Officer stated that he felt it was isolated incident and not a conscious act.

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

The Consideration Sub-Committee's Decision:

The Sub-Committee accepted the findings contained in the Investigation Report and agreed that the member had not failed to treat others (officer) with respect, disclosed information of a confidential nature or brought their office or authority into disrepute.

The Sub-Committee accepted the finding that the member had not intended to leave the message on the complainant's voicemail system.

The Sub-Committee acknowledged from the reference to the Standards Board Case Review 2007 in the investigation report at paragraphs 8.5 & 8.6 that members were able to challenge officer's performance; however this must be done in the 'correct way and at a proper forum'. The Sub-Committee therefore agreed that a constituent's home is not a proper forum to make such remarks regarding the complainant's capabilities and such concerns could have been addressed with the complainant's Senior Manager.

This was further supported by paragraph 8.8 of the investigation report, which referred to The Adjudication Panel for England (APE) (Case Ref: 0429-0434), which identifies 'circumstances in which the behaviour occurred' are relevant to assessing whether the behaviour is disrespectful.

The Sub-Committee further noted APE decision (Case Ref: 0425) stated at paragraph 8.14 in the Investigation Report which indicated that throw away remarks made without malicious intent could constitute a breach. However, the Committee agreed with the Investigating Officer that the remarks made by the member regarding the complainant's capabilities were not as significant as quoted in APE decision (Case Ref: 0425).

The Sub-Committee acknowledged that the remarks made by the member must have upset the complainant (officer) and noted that they should have been made in a 'correct way and at a proper forum' but agreed with the Investigating Officer's findings at paragraph 8.15 of the Investigation Report. This paragraph assessed the criticism of the complainant's capabilities on an APE decision (Case Ref: 0456), which supported the line of reasoning that a distinction should be made between single instances of robust and intemperate criticism and repeated occurrences of inappropriate behaviour, in order to determine whether disrespect had occurred. The evidence presented to the Sub-Committee through the investigation report and the investigator's oral submissions indicated there had been no similar remarks made by the member prior to or following the recorded conversation regarding the complainant's capabilities; therefore the remarks had been a single instance. On this basis the Sub-Committee agreed with the Investigating officer's finding of no breach, although accepted it was a borderline decision that was favoured by the decision recently set in APE decision (Case Ref: 0456).

On the balance of evidence presented and after taking note of the guidance included at paragraphs 8.5, 8.6, 8.8, 8.14 and 8.15 of the investigation report, the Sub-Committee agreed that the member had not failed to treat the complainant with respect.

The Sub-Committee made a finding of acceptance in relation to the Investigation Report on the allegation that the member had not disclosed information of a confidential nature. The Sub-Committee agreed that the conversation that took place between the member and the constituent regarding a potential restriction on another constituent was not classified as confidential information, as such details, if proven, would have been the subject of a judgement by a criminal court and would have already been in the public domain.

On the balance of evidence presented, the Sub-Committee agreed that the member had not disclosed information of a confidential nature.

The Sub-Committee made a finding of acceptance in relation to the Investigation Report on the allegation that the member had not brought his office or authority into disrepute. The Sub-Committee noted the guidance stated in the Investigation Report at paragraphs 8.25 & 8.26 and agreed with the Investigating Officer that the remarks made by the member had little or no effect upon their office or authority, although they may have affected their own

personal reputation.

On the balance of evidence presented, the Committee agreed the member did not bring their office or authority into disrepute.

The Sub-Committee's decisions regarding the two recommendations in the Investigation Report are that it does not consider it possible to support the recommendation at paragraph 10.1 but accepts the recommendation at paragraph 10.2:

- The Sub-Committee felt that it was beyond their jurisdiction to implement mandatory training for Members on the Code of Conduct, as stated in paragraph 10.1 of the investigation report. However it noted that this is an issue that has previously been before the authority's Standards Committee and one which may need to be addressed. The Sub-Committee also noted that the Monitoring Officer consider the possibility of member training on the requirements for treating others with respect.
- The Sub-Committee agreed with the recommendation stated at paragraph 10.2 of the investigation report, in that a direction should be given to the Monitoring Officer to write to the constituent (who took part in the recorded conversation) to inform her of the Code of Conduct complaint and the outcome, to ensure she is aware that the officer (complainant) acted appropriately and professionally in dealing with her concerns.

RESOLVED that the findings in the report, that there had been no breach of Paragraph 3(1), 4(a) or 5 of the Code of Conduct, be accepted.