

Agenda item:



Walsall Council

Standards Committee

6 April 2009

Case Law Update

Summary of Report

To provide members with case summaries of a few recently decided cases to encourage debate and facilitate learning.

Recommendations

- (1) That the content of the report be noted;
- (2) That the Monitoring Officer circulates the report to all elected members.

Resource considerations:

Financial:

None arising from this report.

Legal:

None arising from this report.

Staffing:

None arising from this report.

Citizen impact:

None arising from this report.

Community Safety:

None arising from this report.

Environmental impact:

None arising from this report.

Performance and risk management:**Risk:**

None arising from this report.

Performance Management:

None arising from this report.

Equality implications

This report complies fully with the Council's policies on equality and diversity.

Consultation

None

Background papers

All published

Signed:

**Assistant Director of Legal
and Constitutional Services**

Date: 17 March 2009

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Background

The Local Government Act 2000 (the Act) introduced the mandatory Code of Conduct for elected members (the Code) which was revised in May 2007.

Up until May 2008, complaints of alleged breaches of the Code were made to the Standards Board for England (SBE) which were investigated either by an Ethical Standards Officer (ESO) or if the complaint is referred for local investigation, by someone appointed on behalf of the Monitoring Officer.

The more serious breaches of the Code are heard and determined by the Adjudication Panel for England, who subsequently publish their decisions on their website. This not only indirectly comprises part of the sanction that is imposed on the member but also provides an excellent channel for the education of all stakeholders who have an interest in the Code either by being subject to its provisions or who are involved in advising on its application. Cases are decided on a daily basis and decisions can be viewed at either www.standardsboard.gov.uk or www.adjudicationPanel.co.uk.

From May 2008 onwards, this procedure changed with all complaints of alleged breaches of the Code of Conduct now sent to the Standards Committee for local determination.

Four recent decisions are attached for member's information.

Case Study 1

Councillor Mike Storey – Liverpool City Council

The complainant alleged that Councillor Storey met privately with Councillor Warren Bradley and Mr Lee Forde on 18 November 2007 in order to conspire against Jason Harborow with a view to removing him from his position as Chief Executive of The Culture Company. The Ethical Standards Officer investigated whether by his conduct Councillor Storey failed to treat Jason Harborow with respect.

Councillor Storey strongly denied the allegation, stating that when he was invited to Councillor Bradley's home to meet Lee Forde he thought it was going to be a purely social occasion. Councillor Storey said that he left the meeting "a bit gob smacked" as a result of what he considered to be Lee Forde's clear agenda to raise matters that would have been more appropriately put to the Council's Chief Executive.

The Ethical Standards Officer considered that when Councillor Storey was invited to meet with Councillor Bradley and Lee Forde on 18 November 2007, he could

reasonably have expected the findings of the Mathew Street Investigation to be raised. Indeed during the meeting Councillor Storey expressed his sympathy with Lee Forde at the way he had been portrayed in the Mathew Street Investigation report.

Both Councillor Bradley and Councillor Storey denied seeking evidence against Jason Harborow from Lee Forde. Given the conflicting accounts of the meeting it was not possible to conclude exactly what was said, however, it is relevant that even in Lee Forde's account of the meeting there is no evidence that Councillor Storey personally made any reference to Jason Harborow or sought any information that could have been used against Jason Harborow in the future. The Ethical Standards Officer was therefore not satisfied that Councillor Storey tried to conspire against Jason Harborow at the meeting on 18 November 2007. During the course of the above investigation, the Ethical Standards Officer was provided with evidence that Councillor Storey had potentially disclosed confidential information about Jason Harborow's health concerns to a local reporter in June 2007 without having consent to do so. Using powers given to the Ethical Standards Officer under Section 59 (1) (b) of The Local Government Act, 2000 she extended her investigation to establish whether Councillor Storey had breached the Code of Conduct in this respect.

The Ethical Standards Officer found that on 28 June 2007, Councillor Storey was informed that Jason Harborow had recently suffered health problems and that Councillor Storey was provided with additional information about that which he should have been aware was confidential in nature.

The next day a local reporter telephoned Councillor Storey and asked him to comment on an anonymous tip-off his newspaper had received concerning Jason Harborow's health. On the evidence available, the Ethical Standards Officer concluded that Councillor Storey did confirm the information about Jason Harborow's health with the reporter and told him that if he wanted further information he would have to contact the Council's Chief Executive.

The Ethical Standards Officer considered that the information disclosed by Councillor Storey was confidential. The fact that genuinely confidential information has already been disclosed, as in the case of the tip-off given to the reporter, does not excuse a subsequent disclosure by a Councillor. Councillor Storey showed an error of judgement in disclosing confidential information relating to the welfare of Jason Harborow with a local journalist. It is not part of Councillor Storey's responsibility to comment on personal information relating to an employee of the Council. The Ethical Standards Officer, therefore, considered that Councillor Storey failed to comply with the Code.

The allegations in this case relate to paragraph 3 (1) of the Code of Conduct, 2001 and 3 (a) of the Code of Conduct, 2007.

Paragraph 3 (1) of the Code of Conduct, 2007 states that a member must “treat others with respect”.

Paragraph 3 (a) of the Code of Conduct, 2001 states that a member must “not disclose information given to him in confidence by anyone or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it or unless he is required by law to do so”.

Coming to her findings, the Ethical Standards Officer has recognised that the journalist was already aware of the confidential information subsequently confirmed by Councillor Storey and that in disclosing the limited amount of information he had, Councillor Storey did not enable the journalist to make the matter more public. Furthermore the Ethical Standards Officer has taken into account that at the time Councillor Storey recognised his error of judgement and apologised to Jason Harborow for the distress this matter caused him and the effect Councillor Storey’s actions could have on the integrity of his office.

The Ethical Standards Officer has therefore found that no further action need to be taken with regard to these matters.

Case Study 2

Councillor Atiq Malik – London Borough of Brent.

It was alleged that the member failed to treat others with respect and brought his office or authority into disrepute.

The complainant alleged that Councillor Malik received a letter, addressed to the complainant and written by the Monitoring Officer of the London Borough of Brent, via a third party and that he published and distributed it among members of the public in the complainants ward.

The Ethical Standards Officer took into account evidence from the council officer who gave Councillor Malik a copy of the letter.

Councillor Malik did not dispute that he received a copy of the letter from the officer and that he intended to discuss it with his group leader. However, he denied providing a copy to any other party and stated that he played no part in distributing the letter to a number of residents of the Kanton ward in the London Borough of Brent.

The allegations in this case relate to paragraphs 3 and 5 of the Code of Conduct.

Paragraph 3 states that members “must treat others with respect”.

Paragraph 5 states that “a member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute”.

The Ethical Standards Officer expressed surprise that, given the content of the letter, Councillor Malik did not inform the Monitoring Officer as soon as he had received it. However, there was no evidence to suggest that Councillor Malik had been involved in the letter's subsequent distribution and the Ethical Standards Officer was unable to conclude that Councillor Malik had breached the Code of Conduct.

Case Study 3

Councillor Marilyn Aston – London Borough of Harrow.

It was alleged that the Councillor failed to treat others with respect, brought their office or authority into disrepute and failed to withdraw from a meeting in which they had a prejudicial interest.

The complainant alleged that Councillor Aston took part in a decision about a planning application relating to a college, after previously telling residents that she was not prepared to stop the college's redevelopment. It was alleged that this failed to comply with the London Borough of Harrow's planning protocols and brought Councillor Aston's office and authority into disrepute. The complainants further alleged that Councillor Aston, as the Chair of the Planning Committee, behaved disrespectfully to them during the committee meeting, by allowing the committee to restrict those back bench Councillors who were allowed to speak by allowing the planning applicants to speak for longer than agreed and by failing to pay attention to objectors.

The complainants also alleged that Councillor Aston had a conflict of interest with regard to the college's planning application and should not have participated in the decision. They alleged the interest arose because Councillor Ashton's husband is the leader of the Council and the Council stands to benefit from central government funding available for the college redevelopment.

The complainants also questioned the Council's planning process and raised the legal issue of predetermination. However, these matters are not covered by the Member's Code of Conduct and so the Ethical Standards Officer did not consider them.

Councillor Ashton agreed that she had expressed her predisposition in favour of the local college redevelopment, in line with her Council's policy. However, she stated that she had also made it clear that she had not made up her mind on how she would vote on any of the college's applications and would decide based on

each one's merit. She also believed she had treated the applicants and objectors fairly and equally when chairing the Planning Meeting and had not ignored the objectors. She spoke to the Planning Officer while objectors were speaking only to ask him to deal with relevant points being made in due course. She said that the Committee had restricted the number of back bench councillors allowed to speak because it had voted in favour of her proposal to give the objectors twice the usual time allotted to make representations and this was the best way of managing the time effectively.

Councillor Ashton did not believe that any conflict of interest arose from her marriage to the council's leader as neither she or her husband had any financial or other interest as individuals in relation to the college or its land.

The transcript of the meeting, which was recorded confirmed that Councillor Ashton had said her vote for or against the planning applications would be unbiased and cast on the planning merits of each one. The Ethical Standards Officer found no evidence that Councillor Ashton breached the Council's planning protocols when she took part in the relevant committee decisions, or that she had brought her office or authority into disrepute.

The Committee Clerk and Legal Officer present at the meeting confirmed that Councillor Ashton had proposed that the committee voted on the objectors being given double the normal time to speak. The officers had not seen the college's applicant given any extra time to speak and they did not agree with the complainant's claim that Councillor Ashton had failed to pay attention to the objectors in the meeting or been disrespectful to anyone present.

The allegations in this case relate to paragraphs 3 (1), 5 and 12 of the Code of Conduct.

Under the Code of Conduct, Councillor Ashton's husband being the council leader did not give her a personal or prejudicial interest in the college's planning application as her wellbeing could not be reasonably regarded as being affected by the planning applications beyond that of other council tax payers and residents.

The Ethical Standards Officer therefore found no evidence that Councillor Ashton had breached the Code of Conduct.

Case Study 4

Councillor Norman Owen – Salford City Council.

It was alleged that the Councillor failed to treat others with respect, compromised the impartiality of a council employee and brought their office or authority into disrepute.

The Ethical Standards Officer found that the member breached the Code of Conduct but that no further action was necessary.

The complainant alleged that Councillor Owen had made two comments, in a local newspaper article he had written, which she considered unacceptable.

The Ethical Standards Officer took the view that one comment contained within Councillor Owen's article amounted to a failure to treat Salford City Council's Chief Executive with respect and that Councillor Owen had therefore breached the Code of Conduct. She did not, however, consider that his comments were serious enough to have brought his office or authority into disrepute.

The allegations in this case related to paragraphs 3 (1), 3 (2) (d) and 5 of the Code of Conduct.

The Ethical Standards Officer took into account Councillor Owen's acknowledgement that his article had been poorly drafted in places and accepted his assurance that no malice had been intended. The Ethical Standards Officer also took into account that Councillor Owen had expressed regret over his choice of words and any offence they had caused.

The Ethical Standards Officer concluded that no further action was necessary.