

CHESHIRE EAST COUNCIL

STANDARDS HEARING SUB-COMMITTEE

Date of meeting: 20 September 2011
Report of: Borough Solicitor/Monitoring Officer
Title: Allegation of a Breach of the Code of Conduct
(Complaint CEC/2010/02)

1. Purpose of the Report

- 1.1 To enable the Sub-Committee to consider the Investigating Officer's report referred by the Hearing Consideration Sub-Committee under Regulation 17(1)(b) of the Standards Committee Regulations 2008.

2. Recommendations

- 2.1 The Sub-Committee is invited to consider –
- (i) Whether it is in the public interest for the hearing to take place in public or private, the appendices to this report to be made available to the public in the event that it is determined that it should be held in public; and
 - (ii) The Investigating Officer's report in accordance with the Standards Committee's Hearing procedure and the relevant legislation and guidelines and determine whether or not there has been a breach of the Code of Conduct, and if so, the appropriate sanction which should be applied.

3. Introduction

- 3.1 This hearing arises out of an allegation made by the Complainant (Complaint number CEC/2010/02) that the Subject Member breached the Code of Conduct in that he failed to treat others with respect. The details of the case are set out in the report of the Investigating Officer (Agenda item 6).
- 3.2 The Sub-Committee has full powers delegated to it by the Standards Committee to determine this complaint and must deliver its verbal decision on the day of the hearing; to be followed by a written decision. In the event of an adverse finding the Subject Member may appeal to the First-tier Tribunal.

4. Hearing Procedure

- 4.1 The hearing procedure to be followed is attached at Agenda item 2 and has been extracted from the Standards for England Determinations Guidance 2010 (Appendix 2).

5. Complaint and Investigators Report

- 5.1 A complaint was made on 21 May 2010 by the Complainant who asserted that the Subject Member had breached Paragraph 3(1) of the Code of Conduct in that he had "*failed to treat others with respect*". The Assessment Sub-Committee considered the complaint on 13 July 2010 and decided to refer the matter to the Monitoring Officer for investigation.

- 5.2 Jonathan Goolden of Wilkin Chapman Goolden, Solicitors was appointed to conduct the investigation and his report was submitted for consideration to the Hearings Sub Committee on 18 March 2011. Mr Goolden concluded that the Subject Member had breached the Code of Conduct.
- 5.3 In accordance with Regulation 17 of the Standards Committee (England) Regulations 2008 ("the Regulations"), the Sub-Committee was required (a) to determine that a hearing should be held, or (b) refer the matter to the First-Tier Tribunal, as the investigation had concluded that there had been a breach of the Code of Conduct. Referral to the First-Tier Tribunal would only be appropriate if it was determined that the action available against the Member would be insufficient if a finding of breach was made, and that the First-Tier Tribunal had agreed to accept the referral.
- 5.4 Having taken into account the report's contents and Members' obligations under the Regulations, together with relevant Guidance issued by Standards for England, the Sub-Committee concluded that a local hearing was sufficient.

6. Parties attending the Hearing

- 6.1 The Subject Member has confirmed that he will be in attendance at the meeting. He has also confirmed that he wishes to call a witness (who is the affected party) and that he will be represented by Mr M Asquith of Counsel.
- 6.2 It should be noted that the Complainant and the affected party have been asked if they will be present at the hearing but both have indicated that they will not. There is no power to compel either party to attend.
- 6.3 The Investigating Officer will be in attendance but does not intend to call any witnesses.

7. Matters for Determination

7.1 Confidentiality of Proceedings

- 7.1.1 The Sub Committee will need to consider whether or not the hearing should be held in public. Currently, the documents attached to the agenda have been marked as restricted as they contain information about named individuals which is being presented for consideration under Regulation 18 of the Standards Committee (England) Regulations 2008.
- 7.1.2 In considering whether or not to hold the hearing in public, the Sub Committee will wish to consider whether the public interest in transparency and openness outweighs the public interest in withholding the information and may wish to consider representations from the Subject Member and the Investigating Officer on this point.
- 7.1.3 The Sub-Committee is asked to note that the Subject Member has requested that the hearing be held in private.

7.2 Findings of Fact

- 7.2.1 On 24 May 2011, the Chairman of the Consideration Sub-Committee gave direction that, in preparation for the hearing, the Investigating Officer should prepare a draft Statement of Fact, for agreement with the Subject Member's representative.
- 7.2.2 The Subject Member has had sight of the Investigator's report and has been invited to consider the Investigating Officer's draft statement of facts. At the time of preparation of this report, the draft statement has not been agreed by or on behalf of the Subject Member.

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