

CHESHIRE EAST COUNCIL

AUDIT AND GOVERNANCE

STANDARDS HEARING AD-HOC SUB-COMMITTEE

Date of meeting: 14 November 2012
Report of: Borough Solicitor and Monitoring Officer
Title: Allegation of a Breach of the Model Code of Conduct
(Complaints CEC/2011/06 and CEC/2011/08)

1. Purpose of the Report

- 1.1 To enable the Hearing Sub-Committee to consider the Investigating Officer's report and to determine what action, if any should be taken.

2. Decision Required

- 2.1 The Sub-Committee is invited to consider the Investigating Officer's report in accordance with the hearing procedure and relevant legislation/guidelines in force at the time and determine whether or not there has been a breach of the Model Code of Conduct.

3. Introduction

- 3.1 This hearing arises out of allegations made by the Complainant Mrs Alex Stubbs (Complaint number CEC/2011/06) and Mrs Erica Partridge and Mrs Alex Stubbs (Complaint Number CEC/2011/08) that the Subject Member, Councillor Gary McCormack of Bunbury Parish Council had breached the Model Code of Conduct, as adopted by that Council. The details of each case are set out in the report of the Investigating Officer attached.
- 3.2 The Sub-Committee has full powers delegated to it by the Audit and Governance 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 Audit and Governance Standards Appeals Panel.
- 3.3 The Sub-Committee is asked to note that the complaints were made and the investigation conducted under the provisions of the Local Government Act 2000 and the Standards (England) Regulations 2008. This legislation was repealed and replaced with the Localism Act 2011 under which the Investigator's report was first considered and this hearing will be conducted.
- 3.4 A copy of Cheshire East Council's Code of Conduct Complaints Procedure, adopted by Council on 19 July 2012 is also appended to the report (paragraphs 24 to 29 apply).

4. Hearing Procedure

- 4.1 The hearing procedure to be followed will be circulated at the meeting.

5. Complaint and Investigator's Report

- 5.1 The Clerk to Bunbury Parish Council, Mrs Alex Stubbs submitted a complaint in November 2011 which asserted that Councillor Gary McCormack had breached paragraph 3(2)(b) the Model Code of Conduct by way of the derogatory tone used in an email sent by him to the Clerk on 16 October 2011.
- 5.2 A second complaint was received on 23 November 2011 from the Clerk to Bunbury Parish Council, Mrs Alex Stubbs on behalf of the Chairman of the Parish Council, Councillor Erica Partridge which asserted that four members of Bunbury Parish Council, namely Councillor Jill Waits, Councillor Sally Beard, Councillor David Ellis and Councillor Gary McCormack had breached the Code of Conduct.
- 5.3 This report deals with the Investigator's findings in respect of Councillor Gary McCormack only. The complaints against Councillors Waits, Beard and Ellis are the subject of separate reports.
- 5.4 The Complainants assert that the Subject Member may have breached the following paragraphs of the Code of Conduct:

<u>Complaint</u>	<u>Paragraph</u>	<u>Conduct</u>
CEC/2011/06	3 (2) (b)	You must not bully any person
CEC/2011/08	3 (1)	You must treat others with respect
	3 (2) (b)	You must not bully any person
	3(2) (d)	You must not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority
	4(a)	You must not disclose information given to you in confidence.....

- 5.5 As both complaints appeared to relate to linked or overlapping issues, the Assessment Sub-Committee of the Standards Committee considered the complaints as part of the same report on 24 January 2012; its decision being to refer matters to the Monitoring Officer for investigation.
- 5.6 Mr Mike Dudfield was appointed to conduct the investigation. As his report was received by Council on 30 July 2012, it was submitted for consideration to the Monitoring Officer in consultation with an Independent Person (appointed by Council in accordance with the Localism Act 2011), in accordance with the Council's procedure adopted by Council on 19 July 2012.
- 5.7 Although the investigation had been conducted in accordance with previous legislation, the findings available to the Monitoring Officer and the Independent Person were the same as those which had applied before the changeover i.e. where the Investigating Officer's findings were of no breach, two possible options were available; an acceptance of no breach or to convene a hearing. However, where the finding was that a breach had occurred, the option of acceptance of no breach was not available.

- 5.8 Having taken into account the report's contents, together with the relevant Guidance, the Monitoring Officer and Independent Person decided that they concurred with the conclusions of the Investigating Officer in that –
- a) In respect of the first complaint, the Subject Member had failed to comply with paragraph **3(1)** of the Model Code of Conduct;
 - b) In respect of the first complaint, that there had been no failure to comply with paragraph **3(2)(b)** of the Model Code of Conduct; and
 - c) In respect of the second complaint there had been no failure to comply with paragraphs **3(1), 3(2)(b), 3(2)(d) and 4(a)** of the Model Code of Conduct

and that a hearing should be convened to consider the matter at (a) above.

- 5.9 No further action will be taken in respect of the paragraphs listed in paragraphs 5.8(b) and 5.8(c) above. The Sub-Committee is only required to determine the allegation in respect of the paragraph listed in 5.8(a).

6. Parties attending the Hearing

- 6.1 The Subject Member has confirmed that he will not be present at the meeting but has requested that a short statement be read out on his behalf. The Monitoring Officer has agreed to this request.
- 6.2 The Complainants have been notified of the date of the hearing but have intimated that they do not wish to be present. There is no power to compel any 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 The Sub-Committee needs to determine whether or not it is satisfied that a breach of the Model Code of Conduct has occurred in respect of paragraph 3(1) of the Code.

8. Decision and Sanctions

- 8.1 If, having considered the matter, the Sub-Committee finds that the Subject Member has not breached the Model Code of Conduct, no further action will be taken.
- 8.2 If a breach is found, the Member's Parish Council is the body to determine what, if any sanction should be applied.
- 8.3 The sanctions available to the Sub-Committee are -
- (1) Formal censure e.g. through a motion;
 - (2) Send a formal letter to the Member;
 - (3) Recommend a course of action to the Members' Group Leader/ Town/Council;
 - (4) Report findings to Council/Town or Parish Council for information;
 - (5) Issue a press release of its findings in respect of the Member's conduct.

8.4 The Hearing Sub-Committee has no power to suspend or disqualify a Member or to withdraw allowances.

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