



Legal and Democratic Services

6 September 2010

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Dear Councillor

Hearing of the Standards Determination Sub-committee

A meeting of the Standards Assessment Sub-Committee will be held in Committee Room 2 on **Wednesday 15 September 2010, commencing at 10.30am**, to consider the business set out in the following Agenda.

Yours sincerely

Executive Head of Legal and Democratic Services

STANDARDS ASSESSMENT SUB-COMMITTEE MEMBERSHIP

Independent Members:

David Watson (Chairman)

Councillors:

Joan Bradley, David Chapman

AGENDA

1. Declarations of Interest

Members and Officers are invited to make any declarations of personal and/or prejudicial interests that they may have in relation to items on this agenda. The declaration should refer both to the nature of the interest as well as its existence.

Members and Officers may seek advice upon any relevant interest from a Legal Officer prior to the meeting.

2. Hearing Procedure

To note the procedure for the hearing, copy attached as item 2

3. To conduct a hearing and determine the complaint by Councillor Paul Yallop against Councillor Robert Smytherman

To consider a report by the Executive Head of Legal and Democratic Services and Monitoring Officer, copy attached as item 3

4. Exclusion of Press and Public

In the opinion of the Proper Officer the press and public should be excluded from the meeting for consideration the following item. Therefore the meeting is asked to consider passing the following resolution:

'that under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting from the following item of business on the grounds that the item involves the likely disclosure of exempt information as defined in the paragraph of Part 1 of Schedule 12 A to the Act indicated against the item'

Not for Publication – Exempt Information Reports

5. To conduct a hearing and determine the complaint by Councillor Paul Yallop against Councillor Robert Smytherman – exempt annexes

Of agenda item 3 – annex 4 – Representations to be taken into account if a member is found to have failed to follow the Code of Conduct, copy attached as item 5

HEARING OF THE STANDARDS DETERMINATION SUB-COMMITTEE

15 September 2010
at 10.30am

Present: David Watson (Chairman)

Councillors Joan Bradley, Graham Chapman

*Also present: Executive Head of Legal and Democratic Services and Monitoring Officer,
Solicitor (MW) Democratic Services Officer (CCD)*

Councillors: Bob Smytherman, Alan Rice, Robin Rogers, Charles James

Mr John Lovell (representative of the Subject Member)

S/16/10-11 Declaration of Interest

There were no declarations of interest

S/17/10-11 Hearing Procedure

Before the Sub-Committee was a copy of the procedure for the hearing copies of which had been circulated before the meeting and a copy of which is attached to a signed copy of these minutes as item 2. The Chairman of the Committee gave a brief outline of the procedure and confirmed with all parties that it was understood.

RESOLVED: that the Committee note the procedure for the Hearing

S/18/10/11 To conduct a hearing and determine the complaint by Councillor Paul Yallop against Councillor Robert Smytherman

Before the Committee was a report by the Executive Head of Legal and Democratic Services and Monitoring Officer, copies of which had been circulated before the meeting and a copy of which is attached to the signed copy of these minutes as item 3. The report before Members asked the Sub-Committee to hear evidence from both the Subject Member, his representative and the Monitoring Officer. To decide factual evidence on the balance of probabilities and make a determination and, if appropriate, impose sanctions.

The subject of the hearing was a complaint which related to a picture that was on the website of the Subject Member and the use of a four letter word in the caption to that picture. The Complainant alleged that the Subject Member had breached paragraph 3.5 of the Council's Code of Conduct which stated, 'you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

Setting the Scene

The Chairman formally introduced the parties and explained the procedure

Preliminary Procedural Issues

The Monitoring Officer clarified issues relating to the publication of an offensive word in the publicly available report before the Committee. Members were informed that it would be inappropriate not to provide the offensive word in the report because the public would need to understand fully what the complaint related to.

Making Findings of Fact

The Monitoring Officer introduced the report to the Committee. The Committee's attention was drawn to annex 3 of the report in which the Subject Member had laid out disagreements over the findings of fact. It was contended that the Subject Member's assertion that 'the publication of the offending cartoon did not attract media attention without it being drawn to their attention by others' did not represent a dispute over a finding of fact. It was related that the issue was for mitigation and if correct showed that the Member may not have intended such a wide circulation.

The Monitoring Officer addressed the Subject Member's second disagreement relating to the finding of facts; 'Since West Sussex County Council rejected the complaint under the Code of Conduct it seems strange Worthing Borough Council should reach an opposing conclusion'. It was stated that there was no requirement under the Code of Conduct, where two different Standards Sub-Committees consider the same complaint that they should reach the same conclusion. There was a very clear link between the Worthing Borough Council website entry for the Member and the blog and there was clear information on the blog to show that the Member was holding himself out to be acting as a Councillor of the Worthing Borough.

The Chairman of the Committee confirmed with the Subject Member that he was comfortable for comments regarding the media circulation of the cartoon to be considered in mitigation.

The Chairman confirmed that the findings of fact as set out in the investigators report be resolved as unattested. And that it was found that Councillor Smytherman published an item on his website, which was linked to the Council's website and which although the picture itself was not offensive, the caption with it was.

Did the Subject Member fail to follow the Code of Conduct

The Chairman invited the Subject Member and his representative to give relevant reasons why the Committee should decide that the Subject Member had not failed to follow the Code of Conduct.

Mr Lovell stated that the posting of the cartoon on the Subject Member's website was a poor lack of judgement and any offence caused had been regrettable. The cartoon was removed swiftly once Cllr Smytherman knew that it had caused offence. It was felt by the Subject Member that it was not a substantive breach as the cartoon had not been reproduced on his website to cause offence.

It was contested that the breach was exacerbated by increased public knowledge of the cartoon brought about by media attention. New information was introduced to the

Committee by the Subject Member's representative who purported the evidence indicated that the timing of the complaint was politically motivated.

The Chairman invited the Monitoring Officer to make representations to the Committee.

The Monitoring Officer received the Committee's leave to submit an email from the complainant. The email was submitted in response to new evidence submitted by the Subject Member that was not put forward as part of the pre-hearing process, a copy of the email is attached to a signed copy of these minutes. The email explained the complainant's portfolio responsibility of 'reputation management' and gave evidence that the complainant resorted to making the complaint following attempts to resolve the matter with the Subject Member and his group leader informally. The email stated that there was no truth in the suggestion that the complainant knew of the offensive item a long time before the complaint was made.

The Monitoring Officer stated that the number of people made aware of the breach through the media did not determine the breach and that the breach occurred once the offending material had been published. It was put forward that media dissemination of the offense was a matter for mitigation.

Answering a question the Subject Member confirmed that the cartoon had been placed on his website on 28 May 2008.

The meeting adjourned at 11:00am

The meeting re-convened at 11:20am

The Chairman announced the Sub-Committee's decision as to whether the Subject Member had failed to follow the Code:

The Sub Committee found that Councillor Smytherman published an item on the website and which although the picture itself was not offensive, the caption with it was, as it included a vulgar four letter word.

The Sub-Committee considered that there had been a breach of paragraph 3.5 of the Code in that by publishing the picture and caption on his blog in the public domain Councillor Smytherman had brought his office into disrepute.

S/19/10-11 Exclusion of Press and Public

The Committee resolved to exclude the press and public during discussions on mitigation due to the personal nature of the subjects introduced by the Subject Member. The Chairman confirmed that a non-exempt précis of representations put forward by the Subject Member in mitigation would be read out to the press and public when they were asked to return

RESOLVED: 'that under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting from the following item of business on the grounds that the item involves the likely disclosure of exempt information as defined in the paragraph of Part 1 of Schedule 12 A to the Act.

S/20/10-11 To conduct a hearing and determine the complaint by Councillor Paul Yallop against Councillor Robert Smytherman (continued)

If the Subject Member has failed to follow the code

The Chairman invited the Subject Member and his representative to make any representations regarding mitigation.

The Subject Member and his representative asked that four main points be considered for mitigation

- i) It was purported that the complaint was politically motivated;
- ii) It was purported that the Subject Member had been sufficiently punished enough by media attention and had been humiliated by an opposition letter circulated to 4000 people in his ward, a copy of which is attached to a signed copy of these minutes;
- iii) It was purported that the public did not think his breach had been worthy of punishment as he had been re-elected with a sizeable majority;
- iv) The Subject Member stated that family circumstances had affected his judgement.

A Member pointed to a comment made by the Subject Member on the 14 April 2010 describing the offending document as a 'harmless anti-tory cartoon', the Subject Member was asked what had happened to change his mind about the content of the offensive item.

The Subject Member stated that a negative public reaction and changes to his family circumstances had led the Subject Member to see the error of his ways.

A Member asked if the subject Member had used offensive language previously or since the offending article was published.

The Subject Member stated that he did not use offensive language in daily life and related that the offending item was a reproduction of another author's invention.

The meeting was adjourned at 11.35am

The meeting was re-convened at 12.44pm

The press and public were invited to return to the meeting.

The Chairman recounted to the floor issues put forward by the Subject Member in mitigation of the breach.

The Chairman made an announcement on sanctions to be imposed on the Subject Member:

Consideration of the material facts and evidence including mitigating factors has led the Committee to issue an appropriate sanction of two parts:

1. that the Subject Member be censured;
2. that a letter of apology be written by the Subject Member to Worthing Borough which will be placed on the Worthing Borough Council Website and sent to the

press via a “press release”. The Subject Member will agree the content of the letter with the Chairman of the Standards Committee within seven days of the Hearing.

The Chairman informed the Subject Member he had a right to seek an appeal to the General Regulatory Chamber of the First Tier Tribunal.

Resolved:

- i) The Sub Committee finds that Councillor Smytherman published an item on the website and which although the picture itself was not offensive, the caption with it was, as it included a vulgar four letter word;
- ii) The Sub-Committee considered that there has been a breach of paragraph 3.5 of the Code in that by publishing the picture and caption on his blog in the public domain Councillor Smytherman has brought his office into disrepute;
- iii) That Councillor Smytherman be censured;
- iv) That a letter of apology be written by Councillor Smytherman to Worthing Borough Council which will be placed on the Worthing Borough Council Website and sent to the press via a “press release”. The Subject Member will agree the content of the letter with the Chairman of the Standards Committee within seven days of the Hearing;
- v) That the Standards Committee examine broader issues arising from the case when it next meets in October.

The meeting ended at 12:45pm.