

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Standards Committee

16 June 2010

**AUTHOR/S:** Executive Director (Corporate Services) / Legal and Democratic Services Manager

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### LOCAL INVESTIGATIONS, HEARINGS AND REFERENCES MADE TO STANDARDS FOR ENGLAND

#### Purpose

1. To update members on local investigations and hearings, and a case which was referred to Standards for England (SfE) for investigation and has now been completed.
2. On 10 December 2008 the Standards Committee resolved that cases in which no breach of the Code of Conduct has been found or no further action is to be taken should be anonymised for the purposes of reporting back to the Committee and that only in cases where a breach has been found should the relevant member be identified to the Committee; however, one of the cases in which no breach was found received publicity in the local paper both before and after referral to Standards for England, and, with the subject member's permission, the full decision notice is appended.

#### Recommendation

3. That the Standards Committee note the report.

#### Cases

##### **CORCOM 3768-3798-3799 (Hearing Panel, Determination Meeting, 12 April 2010)**

4. Three complaints about the conduct of Councillor Norma Kay of Waterbeach Parish Council were received by the Monitoring Officer in October 2009 and, following consideration by the Local Assessment Panel on 6 November 2009, were referred as one matter for a local investigation. The investigation found that there had been three breaches of the Code of Conduct – bullying, failure to treat others with respect, bringing the parish council or the office of councillor into disrepute – and the matter proceeded to a public hearing on 12 April 2010. During the hearing Councillor Kay resigned from Waterbeach Parish Council and declined offers from the Hearings Panel to postpone the hearing or remain and present her case.
5. Based upon the Investigating Officer's report and documentary evidence, and the responses made by the Investigating Officer's witnesses to the questioning of the Hearing Panel, and in the absence of any further evidence or representations on behalf of Ms Kay beyond the written representations received during the pre-hearing process, the Hearing Panel accepted the findings of fact as set out in the Investigating Officer's report and the reasoning of the Investigating Officer, and found that Ms Kay had breached the following provisions of Waterbeach Parish Council's Code of Conduct:
  - (a) Paragraph 3.1 – "You must treat others with respect"
  - (b) Paragraph 3.2 (b) – "You must not bully any person"

- (c) Paragraph 5 – “You must not conduct yourself in a manner which could reasonably be regarded as bringing your office into disrepute”
6. The Panel was not satisfied that there was sufficient evidence presented to find that Ms Kay had conducted herself in a manner which could reasonably be regarded as bringing Waterbeach Parish Council as a whole into disrepute, as it was considered that an objective member of the public would think that the behaviour reflected badly upon Ms Kay and not upon the rest of Waterbeach Parish Council.
7. Following Ms Kay’s resignation as a Parish Councillor, the Hearing Panel had only one outcome when it has found a breach of the Code of Conduct, and that was to censure the Subject Member for her behaviour.
8. The Hearing Panel made the following statement after announcing their decision: “For the record, had Ms Kay not resigned in this way on the day of the hearing, the Hearing Panel felt that the breaches of the Code of Conduct were of such a serious nature that it would have been minded to impose a sanction of six months’ suspension upon Ms Kay along with a requirement to give a written apology to both Mrs Smart and Mr Stubleby and undergo training on the Code of Conduct.
- “The Panel also wishes to make a recommendation to Waterbeach Parish Council that all councillors on the parish council after the forthcoming election receive training on the Code of Conduct as a priority.”
9. The Hearing Panel’s decision was published in the *Cambridge News* of 24 May 2010, in accordance with the requirements of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 to publish in one or more newspapers circulating in the area of the authorities concerned:
- (a) that the standards committee found that the member who was the subject of the hearing had failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned;
  - (b) the details of the failure;
  - (c) the reasons for the decision reached by the standards committee;
  - (d) the sanction imposed, and
  - (e) that the member concerned may apply for permission to appeal against the finding under the provisions of Part 3 of these Regulations.
10. The cost of the public notice was £918.00 plus VAT.
11. Ms Kay received a copy of the appeals process with the final decision notice, and subsequently appealed the decision of the Hearing Panel. The response from the First-Tier Tribunal (Local Government Standards in England) is attached, and was summarised in the above public notice.
12. Officers acting on behalf of the Hearing Panel made representations to Standards for England about the loophole whereby a subject member may resign from office prior to or during a hearing, even if s/he has already stood for re-election, leaving the Hearing Panel unable to impose a penalty other than censure if a breach is found. Should the Hearing Panel experience such incidents in the future, it has been advised that could also consider:
- (a) At the consideration stage, if it appears that the subject member might resign before a hearing, triggering a by-election / opportunity for co-option or immediately before a regularly-scheduled election, referring the matter directly to the First-Tier Tribunal (Local Government Standards in England), which has

- the power to disqualify the member, which would prevent the member from taking office if co-opted or re-elected in an election or by-election; or
- (b) At the determination stage, adjourning the public hearing until after the election, by-election or co-option.

13. Monitoring Officer across the country have considered that there could be grounds for considering that the conduct of other Parish Councillors brought their authority into disrepute if they had co-opted a member after that member's resignation to avoid sanction for breaching of the Code of Conduct.

**CORCOM 3825-3842-3843 (Local Assessment, 15 December 2009)**

14. Three complaints were made to the Monitoring Officer in November and December 2009 about the conduct of Councillor Mark Howell, Housing Portfolio Holder, alleging that he had breached the following provisions of South Cambridgeshire District Council's Code of Conduct:

- (a) Paragraph 3.1 – "You must treat others with respect"  
(b) Paragraph 3.2 (b) – "You must not bully any person"  
(c) Paragraph 5 – "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office into disrepute"

15. As the complaint involved a senior member of the District Council's administration, the Local Assessment Panel made no finding, but referred the matter directly to Standards for England. Standards for England subsequently decided to investigate the matter and the Ethical Standards Officer found that Councillor Howell had not breached any part of the Code of Conduct.

16. The full decision notice from Standards for England is attached.

**CORCOM 3886 and CORCOM 3946 (Hearing Panel, Consideration Meeting, 9 June 2010)**

17. These two cases, relating to parish council matters, were considered by the Local Assessment Panel in February and March 2010 respectively, and both were referred to the Monitoring Officer for local investigation. The Investigating Officer's final reports have been received and presented at a consideration meeting of the Hearing Panel on 9 June 2010. The outcome of this meeting will be reported orally at the Standards Committee meeting on 16 June 2010.
18. When an Investigating Officer has found a breach of the Code of Conduct, the Hearing Panel must refer that matter either to a local hearing or to the First-Tier Tribunal (Local Government Standards in England) for determination.
19. When an Investigating Officer has not found a breach of the Code of Conduct, the Hearing Panel must determine whether or not it agrees with the Investigating Officer's findings. If it disagrees and believes that there potentially was a breach of the Code of Conduct, the Hearing Panel must refer the matter either to a local hearing or to the First-Tier Tribunal (Local Government Standards in England) for determination.
20. If the Hearing Panel agrees that no breach was found, a copy of this decision is sent to the subject member(s), complainant(s) and, if relevant, the parish clerk(s) of any council(s) involved. With the agreement of the subject member(s), a public notice of the Investigating Officer's findings and the decision of the Hearing Panel would be published in one or more local newspapers circulating in the area concerned; however, the subject member(s) can decline any publicity of the matter and no such notice would be published.

**CORCOM 4058 and CORCOM 4099 (Local Assessment Panel, 1 April 2010)**

21. These two cases, relating to parish council matters, were considered by the Local Assessment Panel on 1 April 2010, and both were referred to the Monitoring Officer for local investigation. The draft report for CORCOM 4058 has now been issued to the relevant parties and the draft report for CORCOM 4099 will be issued shortly. Once finalised, both reports will be presented to the Hearing Panel for consideration.

**Background Papers:** the following background papers were used in the preparation of this report:

Standards Committee Local Hearing Panel Decision Notice CORCOM 3768-3798-3799

First-Tier Tribunal (Local Government Standards in England) Decision  
Standards for England Decision Notice SBE08976-KJ1ZF; SBE08977-UMW2B;  
SBE08978-E06DW

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