

# Standards Committee AGENDA

**DATE:** Tuesday 13 September 2011

**TIME:** 7.30 pm

**VENUE:** Committee Room 5,  
Harrow Civic Centre

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**MEMBERSHIP** (Quorum 2 Councillors and 1 Independent Person)

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**Chairman:** Dr J Kirkland

**Councillors:**

Mano Dharmarajah  
Brian Gate  
Victoria Silver

Paul Osborn  
Simon Williams

**Independent Persons:** Mr James Coyle  
Mr Derek Lawrence (VC)

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**Reserve Members:**

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- |                |                   |
|----------------|-------------------|
| 1. Mitzi Green | 1. Chris Mote     |
| 2. Asad Omar   | 2. Richard Romain |
| 3. Nana Asante | 3. John Nickolay  |

**Contact:** Vishal Seegoolam, Senior Democratic Services Officer  
Tel: 020 8424 1883 E-mail: [vishal.seegoolam@harrow.gov.uk](mailto:vishal.seegoolam@harrow.gov.uk)

# **AGENDA - PART I**

## **1. ATTENDANCE BY RESERVE MEMBERS**

To note the attendance at this meeting of any duly appointed Reserve Members.

Reserve Members may attend meetings:-

- (i) to take the place of an ordinary Member for whom they are a reserve;
- (ii) where the ordinary Member will be absent for the whole of the meeting; and
- (iii) the meeting notes at the start of the meeting at the item 'Reserves' that the Reserve Member is or will be attending as a reserve;
- (iv) if a Reserve Member whose intention to attend has been noted arrives after the commencement of the meeting, then that Reserve Member can only act as a Member from the start of the next item of business on the agenda after his/her arrival.

## **2. DECLARATIONS OF INTEREST**

To receive declarations of personal or prejudicial interests, arising from business to be transacted at this meeting, from:

- (a) all Members of the Committee, Sub Committee, Panel or Forum;
- (b) all other Members present in any part of the room or chamber.

## **3. MINUTES (Pages 1 - 6)**

That the minutes of the meeting held on 16 June 2011 be taken as read and signed as a correct record.

## **4. PUBLIC QUESTIONS**

To receive questions (if any) from local residents/organisations under the provisions of Committee Procedure Rule 17 (Part 4B of the Constitution).

## **5. PETITIONS**

To receive petitions (if any) submitted by members of the public/Councillors under the provisions of Committee Procedure Rule 15 (Part 4B of the Constitution).

## **6. DEPUTATIONS**

To receive deputations (if any) under the provisions of Committee Procedure Rule 16 (Part 4B) of the Constitution.

## **7. THE FUTURE OF A STANDARDS REGIME AT LONDON BOROUGH OF HARROW (Pages 7 - 22)**

Report of the Director of Legal and Governance Services.

## **8. STANDARDS DECISIONS (Pages 23 - 52)**

Report of the Director of Legal and Governance Services.

# **AGENDA - PART II - NIL**

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# STANDARDS COMMITTEE

## MINUTES

### 16 JUNE 2011

**Chairman:** \* Dr J Kirkland

**Councillors:** † Mano Dharmarajah \* Victoria Silver  
\* Brian Gate \* Simon Williams  
\* Paul Osborn

**Independent Persons:** \* Mr J Coyle \* Mr D Lawrence

\* Denotes Member present

#### 44. Attendance by Reserve Members

**RESOLVED:** To note that there were no Reserve Members in attendance at this meeting.

#### 45. Declarations of Interest

**RESOLVED:** To note that there were no declarations of interests made by Members.

#### 46. Appointment of Vice Chairman

**RESOLVED:** That Mr Derek Lawrence be appointed a Vice-Chairman of the Committee for the Municipal Year 2011/12.

#### 47. Minutes

**RESOLVED:** That the minutes of the meeting held on 26 April 2011 be taken as read and signed as a correct record.

#### **48. Public Questions**

**RESOLVED:** To note that no public questions were received at the meeting.

#### **49. Petitions**

**RESOLVED:** To note the receipt of the following petition:

##### Ethical Governance

Petition containing 18 signatures stating that the proposed Social Media Protocol should have been put out beforehand to public consultation, given the degree of public participation in social websites. The petition also requested that there should be wider consultation on the proposed protocol before adoption by the Council.

#### **50. Deputations**

The Chairman reported that there had been a request for a deputation relating to agenda item 9 – Social Media Protocol. However the deadline for submitting a deputation, as contained in the Council's Constitution had not been met. Whilst it was important to adhere to the constitutional rules, and without creating a precedent for any future such case, the Chairman proposed that the person wishing to speak, Mrs Eileen Kinnear, be allowed to address the Committee at the start of the item for a period of two minutes.

**RESOLVED:** That Committee Procedure Rule 16 be suspended for agenda item 9 – Social Media Protocol, to allow a speaker to address the Committee for a period of two minutes.

### **RECOMMENDED ITEMS**

#### **51. Social Media Protocol**

The Committee received a report which set out a draft Social Media Protocol for Members to consider whether it would be useful for the Council to adopt. Mrs Eileen Kinnear addressed the Committee and stated that in her view the protocol was unnecessary. In her view the Protocol did not address websites or blogging and did not contain any sanctions.

An officer reported to the Committee that:

- the Social Media Protocol had been based on the Guide to Blogging produced by Standards for England. The Guide had been presented to the Committee at its previous meeting;
- the Council would be conducting a training session on the Protocol. The training would be held on 30 June 2011;
- the Protocol provided a simplified version of the Guide to Blogging provided by Standards for England. The Protocol's scope had also

been extended to provide advice on various media forms, not just blogging;

- the Protocol was intended to provide assistance to conform with the Member's Code of Conduct;
- the Protocol also contained examples of how the First Tier Tribunal and Standards Committee have viewed cases involving social media.

During the discussion on this item, Members made a number of comments as follows:

- Members generally obeyed good standards of conduct and abided by the Nolan principles;
- it was important to recognise that the use of social media was still a developing area of legislation and case law. The protocol was a good start and it was expected that it would evolve over time. It would be helpful to have a date of revision for the protocol within a year or two, given that this was an evolving area;
- the document was clear and concise. It also provided clear advice on who could potentially be interpreted as being a close associate;
- the Protocol had to be based on the Code of Conduct as that constituted the legal framework that Members had to operate in. Any sanction against a Member had to be based on a breach of the Code of Conduct;
- that although the Protocol would not be presented for approval by full Council by then, it should form the basis of the Members training event on social media scheduled for 30 June 2011.

**Resolved to RECOMMEND:** (to Council)

That the Social Media Protocol be adopted and incorporated in the Council's Constitution.

## **RESOLVED ITEMS**

### **52. Establishment of Sub-Committees for 2011/12**

**RESOLVED:** That the Sub-Committees of the Standards Committee be established for the Municipal Year 2011/12 with the memberships detailed in Appendix I to these minutes.

### **53. Standards Decisions**

It was reported that both groups has now submitted names of members to serve on the proposed working group established by the Committee to investigate and produce recommendations on the future of the Standards

regime in the borough, with one nomination still subject to confirmation. In view of the recommendation of the last meeting that the Committee should contain members with past expertise of Standards Committee membership, it was noted that at least one nominee from each group met this criteria. The Committee also confirmed that the Chairman, Dr Kirkland, should be the Independent Member on the working group.

An officer reported that at the first meeting of the working group, some fundamental questions would need to be answered such as whether the Council wanted to keep a Standards Committee and whether the Council would wish to adopt a voluntary Code of Conduct.

Members of the Committee stated that it was important for residents to be consulted by the working group. This would contribute towards the transparency and openness of the group. It would also be important to liaise with the internal audit department of the Council.

The Committee agreed that the working group should submit an interim report at the meeting of the Committee on 13 September 2011 with a view to providing a final report at the meeting on 28 November 2011. As a result it was anticipated that the working group would have its first meeting in July 2011. It was suggested that it would be helpful for research to be conducted ahead of the first working group meeting to provide benchmarking information and figures nationally.

An officer then introduced the case studies of complaints against Members, presented as part of this item. The officer reported that:

- the first case presented involved a Member who had inadvertently described a group of Councillors as 'corrupt'. The Member was not good at public speaking and had been placed under pressure. The Member was found to have been disrespectful and having brought his office and the Council into disrepute. However the sanction of no action was found to be appropriate;
- the second case involved a Member who had made comments about the Town Clerk. Consideration was given to the threshold for failure to treat others with respect. It was found that the threshold should allow for passion and frustration during political debate. In this case the Member believed the comments to be true and the Town Clerk was senior and able to defend their position. There was therefore no breach of the Code of Conduct;
- the third case involved a Member who had publicly criticised an officer. The words used were highly critical and personal. The officer was largely defenceless. The Member was suspended for four months or until an apology was provided;
- the fourth case involved a Member who had distributed leaflets relating to an election campaign claiming that there was a lack of staff within an



authority. It was found that the Member was acting in a personal capacity and the Code of Conduct was therefore not applicable.

During the discussion on this item, Members made a number of comments which included:

- discussions on the application of Article 10 of the Human Rights Act (freedom of speech) in relation to the Code of Conduct were helpful. It was an important balance to get right;
- the case studies were useful background information, particularly in assisting Members to focus on the correct issues when determining complaints;
- Council meetings sometimes involved raised passions from Members. It was important to account for this and to allow for robust political debate;
- the level of respect provided to officers was important. If there were any issues with performance, these were best dealt with under employment procedures.

**RESOLVED:** That the report be noted.

#### **54. Any Other Business**

In accordance with the Local Government (Access to Information) Act 1985, an officer provided an update to the Committee on information released publicly relating to a Freedom of Information request. The Committee discussed the business as a late item, to allow the information to be communicated at the earliest possible opportunity.

The officer reported on the costs involved in a recent standards matter. Members of the Committee agreed that the working party established to look into the future of the Standards Regime should have regard to costs in any future proposal, however it was important to get the balance right and ensure fairness for all.

**RESOLVED:** That the item be noted.

(Note: The meeting, having commenced at 7.30 pm, closed at 8.29 pm).

(Signed) DR J KIRKLAND  
Chairman

**STANDARDS PANELS 2011/12****ASSESSMENT, REVIEW AND HEARING SUB-COMMITTEES (3)  
– (Pool of Members) (Non-Proportional)**

(To be selected from the following nominees)

	<b>Independent Persons</b>	<b>Labour</b>	<b>Conservative</b>
	<b>(1) Chairman</b>	<b>(1)</b>	<b>(1)</b>
<b>I. Members</b>	<b>Mr James Coyle Dr John Kirkland Mr Derek John Lawrence (Vacancy)</b>	<b>Mano Dharamarajah Brian Gate Victoria Silver</b>	<b>Paul Osborn Simon Williams</b>
<b>II. Reserve Members</b>		1. Mitzi Green 2. Asad Omar 3. Nana Asante	1. Chris Mote 2. Richard Romain 3. John Nickolay

**Membership Rules**

(1) The membership of the Standards Committee - Assessment and Review Sub-Committees will be three persons (comprising one Independent Persons and one Elected Member from each of the main political parties, within the Standards Committee Membership);

(2) the quorum for the Sub-Committees is 3;

(3) the Sub-Committees shall be chaired by the Independent Person;

(4) Members attending a Panel be required to vote on a local determination and not be permitted to abstain.

**REPORT FOR: STANDARDS  
COMMITTEE**

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<b>Date of Meeting:</b>	13 September 2011
<b>Subject:</b>	<b>The Future of a Standards Regime at London Borough of Harrow</b>
<b>Responsible Officer:</b>	Hugh Peart, Director of Legal and Governance Services
<b>Exempt:</b>	No
<b>Enclosures:</b>	Appendix 1 – Standards Working Group Discussion Paper  Appendix 2 – Future Code of Conduct/Standards Committee Arrangements (views of other London Boroughs)

**Section 1 – Summary**

The Report addresses the options for maintaining high ethical standards in local government.

**Recommendation:**

**That the Committee:-**

1. Notes the comments of the working group regarding the type and content of a future standards regime.
2. That the Chair of the Committee writes on behalf of the committee to the Department of Communities and Local Government asking that the Localism Bill is amended so that it allows independent members to vote on the Standards Committee and that the Bill enables the Standards Committee to have sanctions to discipline members who breach the code of conduct.
3. That a press release is published directing members of the public to an online questionnaire about the future of the Standards Committee.

## **Section 2 – Report**

### **Background**

4. At the Standards Committee meeting on 26 April 2011 it was resolved that a member and officer working group be established to consider the future of the standards regime and report back to the committee. This report is an interim report with a final report following in November 2011.
5. On 4 August 2011, the Working Group met to consider what the most effective way may be of fulfilling the new duty proposed by the Localism Bill and set out in paragraph 7 below.this duty. The discussion paper is attached as Appendix 1. The questions asked included:
  - a) Does the Council want a Standards Committee to adopt member protocols etc or do they feel that this work would be done by another committee or by officers or in another way?
  - b) Does the Council want a code of conduct?
  - c) If so, what should the code contain?
  - d) If there is an allegation that a member breached the code what action should be taken?
6. In July 2011, officers from various London Boroughs were asked what, if anything, their respective Authorities are intending to do in light of the Localism Bill proposing the removal of the national Code of Conduct for Councillors and the abolition of the standards regime. The responses are set out in the table attached at Appendix 2.

### ***Current situation***

#### **Localism Bill Update**

7. The Localism Bill introduces a statutory duty that councils ‘promote and maintain high standards of conduct by members’.
9. The Localism Bill is currently at the committee stage in the House of Lords having already been through the Commons. It is expected that the Bill will receive Royal Assent in November 2011. Parliament is in recess at the time of writing and will resume on 5 September 2011.
10. A cross-party group of peers, led by the Chairman of the Committee on Standards in Public Life, met before the recess to discuss amendments to be moved when Parliament resumes in September. The Association of Council Secretaries and Solicitors (ACSeS) said it understood that the outcome of the meeting was to pursue provisions for a national code of conduct (to be issued through the Local Government Association if it agrees), standards committees with independent chairs and the removal of criminal sanctions.

11. Implementation of the new regime is likely to be April 2012. Standards for England advised on 10 August 2011 that their regulatory function to investigate complaints would cease on the 'appointed day' which they currently anticipate to be the end of January 2012.

### **Update from the Working group**

12. The working group met and had before them the discussion paper attached.
13. There was a consensus within the group that the Council should:
  - Have a Standards Committee to agree members protocols etc;
  - Adopt a code of conduct; and
  - Retain independent members on the Committee.
15. The group felt that generally at Harrow members conduct was good and that the Council had not had the serious complaints that other Councils had had. Concern was expressed that under the Localism Bill there was no provision for sanctions against members who had breached the code. Also the group expressed the wish to retain independent members as voting members which is currently not possible under the Bill. As far as sanctions were concerned they also discussed the possibility of one sanction being a referral to the police to investigate.
16. They felt that it was important for public confidence that a code was maintained.
17. The group discussed the possibility of having a filter by the Monitoring Officer, acting in consultation with the chair independent member, so that trivial complaints were not taken forward and were dismissed at an early stage. The group wanted a simple cost effective system. They still saw the need for officer reports.
18. As far as the code was concerned the group discussed having a code that covered members' private lives. They gave the hypothetical example of a member of the planning committee building an extension without planning permission. The current code would not cover this situation. They also considered having guidance for married couples who were both members in the code. They discussed raising the £25 limit on gifts that need to be declared.
19. As far as consulting with the public was concerned they discussed having an article in the Harrow People or an online questionnaire.

### **Why a change is needed**

20. The Localism Bill means that, in the absence of a national framework, the Council will need to decide if it wants a Member Code of Conduct and what such a code of conduct should contain. It looks likely, under the Bill, that breaches in relation to interests will in the future have a

criminal sanction. The rest of any code will not have any formal sanction for breaches.

## Considerations

### Resources, costs and risks

21. The consultation exercise, organisation of the working group and drafting of letters can be done within existing resources. The future regime will have a financial impact depending upon the type of regime that members choose. If a Monitoring Officer and Independent Chair of Standards filter is put in place, which filters out trivial complaints, then it is hoped that the costs can be kept to a minimum. Alternatively, costs will need to be dealt with either from within the existing budget or as part of the budget exercise for next year, but will require a saving to be made elsewhere to meet the additional cost.

### Equalities impact

22. Consultation with the public on this important issue will have a positive equalities impact. Any consultation should be done in a way that enables the maximum possible participation in the consultation.

### Legal comments

23. Included in the report.

## Section 3 – Financial Implications

24. There are no financial implications associated with this report.

## Section 4 – Corporate Priorities

25. This report is relevant to the corporate priority to united and individual communities: a council that listens and leads.

Name: Jennifer Hydari	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 25.08.11		
Name: Matthew Adams	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 30.08.11		

## **Section 6 - Contact Details and Background Papers**

**Contact:** Jessica Framer, Head of Legal Practice – Legal & Governance Services, 0208 420 9889.

**Background Papers:** April Standards Committee Report.

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## Standards Working Group Discussion Paper

### Future standards regime

At the standards committee meeting on 26 April 2011 it was resolved that a member and officer working group be established to consider and produce recommendations about the type and content of a future standards regime and that it report back to the committee. It is envisaged that the working group would provide an interim report in September 2011 with a final report following in November 2011.

### Summary

The working group is invited to consider what advice it may wish to offer on arrangements to promote and maintain high standards of conduct of members of Harrow council in the wake of the Government's proposed abolition of the current standards regime.

### Legislative timing update

The Localism Bill is currently at the committee stage in the House of Lords having already been through the Commons. It is expected that the Bill will receive Royal Assent in November 2011. Parliament is now in recess and will resume on 5 September 2011.

Implementation of the new regime is likely to be April 2012. Standards for England advised on 30 June that their regulatory function to investigate complaints would cease on the 'appointed day' which they currently anticipate to be the end of January 2012.

### How should the council discharge the proposed new statutory duty to 'promote and maintain high standards of conduct'?

The Localism Bill introduces a statutory duty that councils 'promote and maintain high standards of conduct by members'.

The working group are asked to consider what the most effective way may be of fulfilling this duty:

- 1) Do they want a standards committee to adopt member protocols etc or do they feel that this work could be done by another committee or by officers or another way?
- 2) Do they want a code of conduct?
- 3) If so, what should that code contain?
- 4) If there is an allegation that a member breached the code what action should be taken?

### Should the council adopt a voluntary code of conduct for members to sign up to?

The adoption of a voluntary code would be one way in which the local authority could demonstrate compliance with the proposed new statutory duty. It is noted, however, that there is no need to adopt a voluntary code to demonstrate compliance with the statutory duty.

## **If the council decides to maintain a code of conduct, what might the content be?**

The present code covers:

- treating others with respect;
- avoiding breaches of the equality legislation;
- avoiding bullying and intimidation;
- not disclosing confidential information;
- not bringing the authority or a member's office into disrepute;
- avoiding improperly conferring an advantage, or inflicting a disadvantage, on anyone;
- using the authority's resources properly and having regard to the relevant code of publicity;
- having regard to relevant advice from officers.

If the council were to decide to maintain a code of conduct the simplest course would be to re-adopt the general conduct rules in paragraphs 3-7 of the model code, as these are the parts which will not be replaced by the statutory interests regime.

## **How might the council discharge the duty to investigate complaints?**

The Localism Bill provides that if the council adopts a code of conduct it is under a duty to set up a suitable method of considering complaints of breaches of the code.

1. Two main issues seem to arise in relation to any such investigations:
  - (a) How to ensure a simple and straightforward cost effective procedure which is fair to both complainant and member complained against?
  - (b) Should there be an outside element in the method of consideration of complaints?
2. The problems with the procedure under the present legislation are that:
  - (a) There is no way of dismissing a complaint as not worth further consideration unless it is manifestly too trivial or too far out-of-date;
  - (b) If a complaint is to be considered further, there has to be a formal investigation, which can involve costs of several thousand pounds.

One option is that once a complaint comes in it is put through a simple filter process based upon objective criteria to see if there is merit in the complaint being taken any further.

If there is any merit in the complaint going any further it could then be investigated. This would also mean that members would be aware that there is a complaint against them at an earlier stage. The matter would then be investigated and go to a hearing sub-committee.

## **Sanctions**

If there is a code of conduct and it is concluded that there has been a breach of the code, the council (or the standards committee, if so decided) will need to decide what to do in relation to a member who is found in breach. The Localism Bill does not provide any specific powers for the local authorities in such circumstances, but leaves the authority to take such action as

its other powers permit. The present powers to impose a suspension or disqualify a member would cease to exist. Two possibilities for action seem to remain:

- (a) to adopt and publicise some form of reprimand. The power to do this seems to follow from the power of the local authority, under the Localism Bill, to decide whether there has been a breach and what action to take;
- (b) to take action such as offering training.

### **Should independent members be retained and utilised?**

Consideration also needs to be given to the legal power to retain independent members and what roles they will be able to take on the committee.

That raises the issue of whether such a committee can include co-opted independent members. Section 102(3) of the Local Government Act 1972 enables the co-option of non-councillors onto the committee, but section 13 of the Local Government and Housing Act 1989 prevents them from having a vote on the committee unless it is purely advisory.

### **Consultation**

The working group has several consultation options as follows:

- (a) On-line survey - the problem with this method of consultation is that the numbers that respond to the consultation cannot be guaranteed. It could be one, it could be hundreds. The other problem is that it is not possible to ascertain who is filling in the survey form.
- (b) Residents panel – this option offers 3 to 4 consultation sessions per year. There is a charge for every question asked and the report back contains an analysis of the survey based on age, geographic location and demographics.
- (c) Focus group – a focus group of 12 to 15 people can be arranged from the residents panel. This option provides a lower cost and more direct feedback from residents than option (b). It would involve residents being asked questions over a two hour period for which they would be provided with £5 each and refreshments. A facilitator or two would have to be provided, as would a venue.

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## FUTURE CODE OF CONDUCT/STANDARDS COMMITTEE ARRANGEMENTS

20 July 2011: Colleagues will be aware of the provisions of the Localism Bill (Act) which includes the abolition of the current Standards for England regime. It is likely that Standards For England will cease to investigate complaints in late 2011 and will be formally abolished in early 2012. The Act will also remove the national Code of Conduct for Councillors and the requirement to have a Standards Committee and allow councils to choose whether or not they wish to have a local code or / and a Standards Committee. At Hillingdon, Members have expressed their desire to adopt a Local Code of Conduct based on, but not identical to, the current National Code. Would colleagues be kind enough to indicate:

Council	What, if anything, their authorities are intending to do in this regard? Is it intended to adopt a local Code and, if so, is there any indication of how this will differ from the current National Code?	In addition, have authorities given any regard to how such a local Code will be enforced?
<b>Barking &amp; Dagenham</b> <b>Bexley</b>	Still awaiting before any formal view/decisions are taken. Still awaiting the outcome of the revised legislation, but we are working towards the adoption of our own code and method of dealing with complaints received. Like others, the Independent members will form part of that process and future. We plan to take some ideas to Members in September.	
<b>Brent</b>	The last discussions showed that the 3 parties here wanted to retain some form of code and thought it would be preferable to wait and see if a London-wide draft code came forward from wider discussions taking place. I have not seen anything to allow me to see what differences there might be.	Similarly there has not been discussion on how it might be enforced although it was recognised that a local code would carry much less weight.
<b>Bromley Bromley</b>	No firm decisions as yet (some thinking about whether to keep a separate committee or to adapt ToR of another committee to incorporate ethical governance lead role).	

Council	What, if anything, their authorities are intending to do in this regard? Is it intended to adopt a local Code and, if so, is there any indication of how this will differ from the current National Code?	In addition, have authorities given any regard to how such a local Code will be enforced?
<b>Ealing</b>	<p>As the legislation so not yet finalised, the Council's Standards Committee has considered a number of reports on the issue, and these can be accessed from the Council's website. At this stage, it seems highly probable that Ealing will continue with some sort of code.</p> <p>It feels premature for Ealing to draft its proposed code until after the Bill receives Royal assent. We are looking at the model code being drafted by ACSeS, but will only use this if it meets Ealing's needs.</p>	<p>Possibilities being discussed are recommendations from a continuing Standards Committee / Panel, for full Council censure or (less likely) suspensions of allowances.</p>

Council	What, if anything, their authorities are intending to do in this regard? Is it intended to adopt a local Code and, if so, is there any indication of how this will differ from the current National Code?	In addition, have authorities given any regard to how such a local Code will be enforced?
GLA	<p>Here at the GLA, there is informal agreement to:</p> <ul style="list-style-type: none"> <li>Establishing a voluntary Code under the new regime (that will, as it stands, be virtually identical to the one we have now – which is of course based on the national model Code but which has a couple of additional paragraphs to deal with ‘local’ issues (ie the unique governance arrangements that exist here, in terms of the relative powers and roles of the Mayor of London and London Assembly));</li> <li>The operation/implementation of that Code (including decision-making powers) will then, under current plans, be delegated to the Authority’s Monitoring Officer (and it is likely that the Localism Bill will be amended in order to provide absolute clarity as to the GLA’s ability to grant such a delegation – which, as I understand it, is already available to all other councils); and</li> <li>The Authority might well appoint a small number of independent people to give advice to the Monitoring Officer (yours truly) in terms of the discharge of those functions – so there could be, for example, informal assessment panels in respect of complaints (with the MO taking any final decision). Members have also made it clear that they expect there to be a significant threshold put in place in terms of the circumstances under which a complaint would be referred to formal consideration – in order to allow much greater discretion for the MO to refuse to progress trivial/vexatious complaints than currently exists.</li> </ul>	
Hammersmith & Fulham)	Members have agreed to wait for the regulations before they decide what to do.	
Hounslow)	At this stage, the London Borough of Hounslow’s Standards Committee has expressed its own view that a local regime should continue.	
Kensington & Chelsea	Not sure at this stage	

Council	What, if anything, their authorities are intending to do in this regard? Is it intended to adopt a local Code and, if so, is there any indication of how this will differ from the current National Code?	In addition, have authorities given any regard to how such a local Code will be enforced?
<b>Kingston</b>	We are waiting to see what emerges from ACSeS' work on a London code and what support there is for this. If not then we will look at a local code or possibly one that works across the South London partnership.	
<b>Lambeth</b>	Want to put in place an alternative code so as to ensure ethical standards are maintained and indeed the duty to promote this under the Localism bill is met.  The ACSeS are working on new Model Code of Conduct for Members, and it is expected this will be (at least) the basis of the Council's future code.	
<b>Sutton</b>	We have started the ball rolling with members to see what they want to do but no decision yet. If ACSeS or London Councils come up with a Code that looks as though it has general support I think it would at least get serious consideration. If we have a Code of Conduct then there has to be some procedure to deal with breaches of it, and of course it looks as though there will be a duty to promote good conduct. All that rather suggests there will still need to be some sort of standards committee.  I think there may be some more Lords amendments on this subject after the recess so we do not have the final wording of the Bill yet.	
<b>Tower Hamlets)</b>	It's a bit early to say what we will do on this at Tower Hamlets. I am sure we will want to put in place a local Code and I would be surprised if it differs too much from the current Code. However no work has yet been done on the detail of this or on the questions around enforcement/sanctions etc.	



Council	What, if anything, their authorities are intending to do in this regard? Is it intended to adopt a local Code and, if so, is there any indication of how this will differ from the current National Code?	In addition, have authorities given any regard to how such a local Code will be enforced?
<b>Waltham Forest)</b>	The Monitoring Officer in Waltham Forest will shortly be leaving to take up a new post elsewhere, and until a new appointment is made I am unable to give an indication in response to your query.	
<b>Wandsworth</b>	Wandsworth's position is set out in a paper to our Standards Committee last month (see link below) – essentially, it's a local code, continue with a Standards Committee with independent members (though meeting much less frequently) and procedures for dealing with complaints (and enforcement of any sanctions) yet to be developed. With the withdrawal of the statutory sanctions, we'll have to rely more on the political groups being supportive of the new regime.	
<b>Westminster)</b>	Broadly similar. Retain Standards Committee, with independent element and less complex processes.	

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**REPORT FOR: STANDARDS COMMITTEE**

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**Date of Meeting:** 13 September 2011

**Subject:** **Standards Decisions**

**Responsible Officer:** Hugh Peart, Director of Legal and Governance Services

**Exempt:** No

**Enclosures:**

Appendix 1:  
Adjudication Panel Decision – Dartford Borough Council (Member: Former Councillor Leadbeater)

Appendix 2:  
Adjudication Panel Decision – Coventry City Council (Member: Councillor Matchet)

Appendix 3:  
First Tier Tribunal Decision – London Borough of Havering (Member: Councillor Mark Logan)

**Section 1 – Summary**

This report sets out three Standards for England cases.

**Recommendation:**

That the committee notes the attached standards decisions.

## **Section 2 – Report**

1. While the majority of investigations into complaints that members of local authorities have breached their authority's Code of Conduct are conducted locally, the most serious cases are referred to Standards for England. Where a Standards for England investigation reveals evidence of a serious breach of the Code, the case is referred to the First Tier Tribunal (Local Government Standards in England), part of the General Regulatory Chamber, for a decision. The First Tier Tribunal is also the body that hears appeals against Standards Committee decisions.
2. Standards for England publishes summaries of the cases it investigates on its website. The decisions of the First Tier Tribunal are also publicly available. There is therefore an expanding body of local government standards case decisions available, which can assist authorities and their Standards Committees in interpreting the Code, and help Standards Committees to decide the cases they hear.
3. Attached to this Report at Appendixes 1, 2 and 3 are three such decisions. All of the cases deal with issues of bringing a Councillor's office or Council into disrepute.
4. The cases are summarised as follows:

### **Case No: APE 0389**

A councillor accessed and downloaded inappropriate material on the internet using a computer provided by the council. He was convicted for doing so. Even though that activity may be perceived as private in nature, it constituted behaviour which brought his office into disrepute as he had used the council's equipment. He was disqualified from office for five years.

### **Case No: APE 0474**

The councillor, as Lord Mayor of the council, hosted an event which was ceremonial and a fund raiser for the Lord Mayor's charities. During the evening, he had a conversation with a woman attending the event, some of which was of a sexually explicit nature. The Tribunal found that this conversation was highly embarrassing, offensive and disreputable. The Mayor's conduct was found to have brought his office and the authority into disrepute. He was given a 3 month suspension from office and required to provide a written apology.

### **Case No: LGS/2010/0485**

The councillor had arranged, of his own volition, for another councillor to be observed and his commuting and travelling arrangements to be monitored and noted. This was undertaken by covert surveillance and

the information was used to found an allegation by the appellant that the councillor was neither residing nor working in the borough and so did not qualify to stand for election as a local councillor. The local Standards Sub-committee found that the appellant had breached paragraphs 3(1) and 5 of the Code of Conduct and imposed a one month suspension (during which member's allowances would not be paid) requiring him to undertake relevant training. The Tribunal held that the appeal would be refused and the decision of the Standards Committee would be upheld.

5. Members are requested to note the attached decisions.

### **Risk Management Implications**

Failing to stay informed about developments in the standards framework may impact on the ability of the Standards Committee to perform its role to a high standard.

### **Relevant Objectives of the Standards Committee**

This report contributes towards the objective of 'Internal Control', as being aware of standards cases that are reported nationally will help the Committee to ensure that it deals with ethical governance issues in accordance with the law and in line with best practice.

## **Section 3 – Financial Implications**

There are no financial implications associated with this report.

## **Section 4 – Corporate Priorities**

This Report is relevant to the corporate priority of united and involved communities: a council that listens and leads.

Name: Jennifer Hydari	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 25.08.11		
Name: Matthew Adams	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 30.8.11		

## **Section 6 - Contact Details and Background Papers**

**Contact:** Jessica Framer, Head of Legal Practice – Legal & Governance Services, 0208 420 9889.

**Background Papers:** None.

## **Decision**

<b>CASE REF:</b>	<b>APE 0389</b>
<b>HEARING DATE:</b>	<b>6 November 2007</b>
<b>RE:</b>	<b>Reference in relation to a possible failure to follow the Code of Conduct</b>
<b>RESPONDENT:</b>	<b>Former Councillor Leadbeater</b>
<b>RELEVANT AUTHORITY CONCERNED:</b>	<b>Dartford Borough Council</b>
<b>ESO: (<i>Ethical Standards Officer</i>)</b>	<b>Ms Jennifer Rogers</b>
<b>ESO REPRESENTATIVE:</b>	<b>Ms Sarah Reid</b>

### **Case Tribunal Members:**

<b>Chairwoman:</b>	<b>Ms Melanie Carter</b>
<b>Member:</b>	<b>Mr Alex Rocke</b>
<b>Member:</b>	<b>Mr Ian Prosser</b>

### **1 Preliminary**

In a letter dated 24 July 2007, the Adjudication Panel for England received a reference from an Ethical Standards Officer ('ESO') in relation to an allegation that former Councillor Leadbeater had failed to comply with Dartford Borough Council's Code of Conduct. It was alleged that he had misused his position as a councillor when he improperly used a council owned computer, in order to access indecent images of children contrary to the terms of the Council's Internet Policy and Guidance; and that in so doing so he was in breach of paragraphs 4 and 5 of the Code.

### **2 Procedural matters**

Mr Leadbeater did not appear at the hearing. The Case Tribunal were informed that he had previously indicated that he did not intend to take part in the proceedings beyond giving evidence to the ESO. In these circumstances, the Case Tribunal decided to proceed in his absence.

### **3 Findings of fact**

The Case Tribunal found the following facts:

- 3.1 Mr Leadbeater was first elected to the Council in 1983 and served continuously until June 2006. Mr Leadbeater was elected Leader of the Council between May 1991 and May 1995 and again between May 2003 and June 2006. Mr Leadbeater held a significant number of positions within the Council and the community.
- 3.2 The Council adopted the Code of Conduct in January 2002. Mr Leadbeater gave a written undertaking to observe the Code of Conduct on 2 May 2003. He attended training on the Code of Conduct provided by the Council on 17 February 2004.
- 3.3 The Council adopted its Code of Conduct on 28 January 2002. Paragraph 1 of the Code states:

*“1.(1) A member must observe the authority's code of conduct whenever he*  
*(a) conducts the business of the authority;*  
*(b) conducts the business of the office to which he has been elected or appointed; or*  
*(c) acts as a representative of the authority, and references to a member's official capacity shall be construed accordingly.*

*2) An authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.”*

**Paragraph 4:** *“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.”*

**Paragraph 5:** *“A member- (b) must, when using or authorising the use by others of the resources of the authority - (i) act in accordance with the authority's requirements; and....”*

- 3.4 Mr Leadbeater signed a declaration to abide by the Council's Internet Policy on 16 October 2003. The declaration requires members to sign and to adhere to the policy, comprising an Overview and Declaration and Further Details and Guidance. The Council's policy covers both internet connection and council provided equipment.
- 3.5 A document entitled 'Further Detail and Guidance' (the "Guidance document") provided members with additional information regarding the Internet Policy:

**Paragraph 2:**  
*The Internet Policy provides that the Council has the right to inspect any and all files stored on the Council's computing facilities in order to assure compliance with the policy.*

**Paragraph 3:**  
*“the display of any kind of indecent image or document on any Council system is a violation of its policy on harassment. In addition, indecent material may not be archived, stored, distributed, edited or recorded using the Council's network or computing resources”*

**Paragraph 5:**  
*“the Council's Internet facilities and computing resources must not be used knowingly to break the law. Use of any Council resources for illegal activity is*



*grounds for immediate dismissal and the Council will cooperate with any legitimate law enforcement activity”.*

Paragraph 15:

*“since a wide variety of materials may be deemed offensive by colleagues, customers or suppliers, it is a violation of Council policy to store, view, print or redistribute any document or graphic file that is not directly related to the user’s job or the Council’s business activities.”*

- 3.6 The declaration of acceptance of the Internet Policy signed by Mr Leadbeater states: *“I accept that I must release my PC for audit by IT Delivery or Internal Audit immediately upon their request”*
- 3.7 Mr Leadbeater resigned as Leader of the Council on 20 February 2006, and resigned from the Council on 12 June 2006.
- 3.8 On 22 September 2006 Mr Leadbeater was convicted on 14 charges of making indecent images of children. It is probable that all the offences took place in April and May 2004. No offences took place after May 2004.
- 3.9 Mr Leadbeater was sentenced to a three year community rehabilitation order and a three year sexual offences prevention order. He was placed on the sexual offenders’ register.
- 3.10 Mr Leadbeater accessed the indecent images of children on a computer provided to him by the Council because he was a councillor.

#### **4 Whether the material facts disclose a failure to comply with the Code of Conduct**

##### 4.1 Mr Leadbeater’s submissions

4.1.1 Mr Leadbeater had argued to the ESO that, albeit he admitted paying and viewing the relevant images he had not set out to save or download them in anyway. He understood now however that the computer saved such images as temporary files.

4.1.2 He told the ESO that he did not know at the time that viewing such images was unlawful.

4.1.3 Mr Leadbeater further argued that, at the time he accessed the images, he believed that he owned the computer. It had been provided to him by the Council on account of being a senior member of the Council. He told the ESO that he had understood that its value was being written down by 25% every year such that by 2004, being effectively valueless, he thought it belonged to him. He claimed that he was paying for the internet connection such that, to the best of his knowledge he was not using council owned resources when he viewed the offensive material.

##### 4.2 The ESO’s Submissions

###### Paragraph 4 of the Code of Conduct

4.2.1 Mr Leadbeater misused his position as a member when he committed the criminal offences and used the resources of the Council contrary to the Council’s policy and guidance. Paragraph 4 of the Council’s

Code of Conduct provides 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. It is accepted that in these circumstances, Mr Leadbeater was acting outside of his official capacity. The question then was whether this fell within "*any other circumstance*".

- 4.2.2 The ESO drew the attention of the Case Tribunal to the case of *Ken Livingstone v. The Adjudication Panel for England* and the need for a link to the Council where it is alleged that a member has breached paragraph 4 "*in any other circumstance*".
- 4.2.3 The relevant link to the Council, it was submitted, was Mr Leadbeater's use of the Council provided computer to access and view the indecent images. Mr Leadbeater misused computer resources that were only made available to him as a result of his position as a member of the Council. As such, paragraph 4 of the Code applied to Mr Leadbeater's conduct.
- 4.2.4 A member of the public with knowledge of the relevant circumstances would consider that Mr Leadbeater's conduct was such that it seriously undermined confidence in his appropriateness to hold public office. By failing to comply with the terms of the Council's policies for the use of its resources in order to commit criminal offences which are regarded by the public as of a most repugnant nature, Mr Leadbeater brought his office into disrepute contrary to paragraph 4 of the Council's Code of Conduct. He flouted the rules of the authority that were designed to protect its reputation and its property against misuses.
- 4.2.5 The ESO's representative submitted, at the hearing, that one of the facts that the Case Tribunal should take into account were the breaches by Mr Leadbeater of the Internet Policy. She exhorted the Case Tribunal to take a purposive approach to the document and to conclude that the former councillor was clearly in breach of the policy. Particular attention was drawn to:
- 4.2.5.1 the prohibition against display of any kind of indecent image on any council system;
  - 4.2.5.2 the prohibition against the Council's internet facilities or computing resources being used to knowingly break the law;
  - 4.2.5.3 the prohibition against the viewing and storing of any graphic file that is not directly related to the user's job or the Council's business activities.

#### Paragraph 5 of the Code of Conduct

- 4.2.6 Paragraph 5(b)(i) of the Council's Code of Conduct provides that a member must act in accordance with the authority's requirements when using the resources of the authority. This paragraph only applies when a member is acting in his official capacity. At the hearing, the representative of the ESO accepted that Mr Leadbeater was not at the relevant time acting in an official capacity. As such, this head of the allegation was not pursued.

### 4.3 Case Tribunal decision

- 4.3.1 The Case Tribunal had first to consider the extent to which the Code covered Mr Leadbeater's conduct. As set out above, the representative of the ESO agreed at the hearing that Mr Leadbeater had not been acting within his official capacity. As such, the Case Tribunal found that he had not been in breach of paragraph 5 of the Code, as alleged, as this provision only applied to members acting within their official capacity.
- 4.3.2 Given that Mr Leadbeater was not acting within his official capacity the question was whether his conduct fell within "*any other circumstance*" under paragraph 4 of the Code.
- 4.3.3 The Case Tribunal took into account the case of *Ken Livingstone v. The Adjudication Panel for England*. In that case, Mr Justice Collins had considered the scope of paragraph 4 of the Code of Conduct and the phrase "*or any other circumstances*". It was held by the court that the phrase must be read in conjunction with section 52 of the Local Government Act 2000 which requires a member to provide a written undertaking that in "*performing his functions*" he will observe the authority's Code of Conduct. Mr Justice Collins held in relation to the phrase "*or any other circumstances*":

*"That phrase must receive a narrow construction so that any other circumstance will not extend to conduct beyond that which is properly to be regarded as falling within the phrase 'in performing his functions'. Thus, where a member is not acting in his official capacity (and official capacity will include anything done in dealing with staff, when representing the council, in dealing with constituents' problems and so on), he will still be covered by the Code if he misuses his position as a member. That link with his membership of the authority in question is in my view needed".*

Mr Justice Collins further stated:

*"It seems to me that unlawful conduct is not necessarily covered. Thus a councillor who shoplifts or is guilty of drunken driving will not if my construction is followed be caught by the code if the offending had nothing to do with his position as a councillor."*

- 4.3.4 In this regard, the Case Tribunal was aware that the Government is seeking to amend the Local Government Act 2000 such that councillors may be caught by the Code when acting outside their official functions if they have committed certain prescribed criminal offences. The Case Tribunal noted however that this was not yet the law and that the case before them had to be decided on the basis of the legislation and the Code in force at the date of the hearing.
- 4.3.5 The Case Tribunal was of the view that the necessary link with membership of the Council was provided by the fact that the computer was owned by the Council. The computer was meant for

the sole use of councillors in the performance of their functions. It was not anticipated that councillors would use the computers provided for personal matters. Mr Leadbeater used a council owned computer to access the indecent images. In these circumstances, the Case Tribunal found that paragraph 4 of the Code did potentially apply to the case at hand. It had then to consider whether the conduct in question was such that it could be reasonably be regarded as bringing the councillor's office or authority into disrepute.

4.3.6 The Case Tribunal asked itself whether it might be said that the conduct in question would bring disrepute upon the man himself rather the office of councillor or the authority. This distinction had been considered in the *Livingstone* case. The Case Tribunal took the view that the fact that Mr Leadbeater had used council resources to access pornographic images of children and therefore committed serious criminal offences through council owned property inevitably brought the Council and his office as councillor into disrepute.

4.3.7 In the circumstances set above, the Case Tribunal concluded that Mr Leadbeater was in breach of paragraph 4 of the Code.

## **5 Submissions as to the action to be taken.**

### 5.1 ESO's submissions

5.1.1 Mr Leadbeater entered a plea of guilty to the charges brought against him, and he was given a substantial but non-custodial sentence. Mr Leadbeater took steps to minimise the damage to the reputation of the Council by resigning as Leader immediately after the police investigation began and before charges had been brought against him. He then resigned from the Council, and his resignation letter contained expressions of regret and remorse.

5.1.2 The ESO must however consider the nature of the offences for which Mr Leadbeater was convicted, his position as Leader of the Council during the time when offences were committed, and his use of council resources to commit these offences. The ESO has also taken into account the seriousness with which these offences, involving as they do the exploitation of children, are viewed by the public, and the impact that such criminal conduct is bound to have had on public confidence in such a senior elected member. The ESO has noted that Mr Leadbeater is not prevented from seeking election as a councillor in the future.

### 5.2 The Respondent made the following points during the ESO's investigation:

5.2.1 In his resignation letter dated 12 June 2006, Mr Leadbeater explained that he was "*devastated by what has happened*" and "*deeply sorry for what I have done and for the hurt I have caused to colleagues, friends, neighbours, family and residents*" [JR8 p72].

5.2.2 Mr Leadbeater stated that he served as a member of the Council for 23 years and during that time he had given his time and abilities and had endeavoured to work for the people of Dartford. Mr Leadbeater wrote that he hoped "*that the lurid headlines of the past four months will not eclipse the achievements and dedication of 23 years.*"

5.2.3 Mr Leadbeater said at interview that he does not intend to put himself forward for any public office in the future.

### 5.3 **Case Tribunal decision**

5.3.1 The Case Tribunal considered that Mr Leadbeater had, in the most serious way, abused the trust placed by the public in its local government representatives. The accessing of child pornography led directly to the exploitation of children. Mr Leadbeater had accessed the images using a council owned computer, paid for by public funds. This behaviour indicated that Mr Leadbeater was not fit to hold public office as a councillor and warranted the highest possible sanction.

5.3.2 The Case Tribunal took into account the points in mitigation put forward by Mr Leadbeater and the ESO on his behalf. Whilst acknowledging his long years of public service and the steps he had taken to minimise the damage to the Council on being arrested, the Case Tribunal still felt that the most serious sanction available to it was the appropriate one to impose.

5.3.3 It took into account its own guidance document, noting the references there to disqualification being likely to be appropriate following conviction of an offence punishable by a sentence of three months or more imprisonment. It noted further that the guidance provided that the fact that a court has imposed a lesser sanction does not mean that a five year disqualification is inappropriate. In this regard, the Case Tribunal took into account that albeit Mr Leadbeater was in receipt of community sentence orders lasting three years, he would remain on the sexual offenders list for five.

5.3.4 Mr Leadbeater had been a very senior member of the Council, indeed at the time of the offences, he had been its Leader. Public trust and confidence required that he be disqualified from seeking public office as a local government for a substantial period.

5.3.5 The Case Tribunal decided therefore that Mr Leadbeater should be disqualified for five years from being or becoming a member of the relevant authority or of any other relevant authority within the meaning of the Local Government Act 2000. The disqualification was effective from the date of the hearing.

5.3.6 The decision of the Case Tribunal was unanimous.

Melanie Carter

**Chairwoman of the Case Tribunal**

**9 November 2007**

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**APPEALS TRIBUNAL**

<b>Case Ref:</b>	<b>APE 0474</b>
<b>Appeals Tribunal Date:</b>	<b>21 December 2009</b>
<b>Relevant Standards Committee:</b>	<b>Coventry City Council</b>
<b>Date of Standards Committee Decision:</b>	<b>3 November 2009</b>
<b>Name of member concerned:</b>	<b>Councillor Matchet</b>
<b>Monitoring Officer:</b>	<b>Christine Forde</b>
<b>Independent Investigator:</b>	<b>David Taylor</b>

**Appeal Tribunal Members**

<b>Chairman:</b>	<b>Sally Lister</b>
<b>Member:</b>	<b>Richard Boyd</b>
<b>Member:</b>	<b>Bill Nelson</b>

1. The Appeals Tribunal considered an appeal from Councillor Matchet, the Appellant, against the decision by the Standards sub-committee of Coventry City Council ("the Council") to suspend the Appellant for a period of three months and to require him to submit a letter of apology for failing to comply with the Council's Code of Conduct.
2. The Appellant had agreed to the appeal being considered by way of written representations. After consideration of all the papers, including further written submissions provided by Ms Forde, the Monitoring Officer of Coventry City Council ("the Council") dated 18 December 2009 and a letter dated 21 December 2009 from Messrs Angels Solicitors, who were representing the Appellant, the Appeals Tribunal considered that it was appropriate to make a determination on the written evidence available.
3. The Appellant raised a number of issues in his submissions concerning this appeal, including an allegation that the Council had breached its duty of care towards him; that the Appellant, himself was a victim of discrimination and that in an unspecified way, the decision of the Standards Sub-committee or the appeal interfered with his convention rights as defined in section 1 of the Human Rights Act 1998.
4. The Appeals Tribunal, after considering the Appellant's grounds of appeal concluded that, save for the extent to which it was relied upon as a motive for making the allegation by the complainant, it was not a body with jurisdiction to hear a grievance about such discrimination. This was also accepted by the Appellant in the letter from his Solicitors dated 21 December 2009. Nor did the Appeals Tribunal consider it had jurisdiction to determine issues concerning a breach of duty of care although, in reaching its decision, the Appeals Tribunal took into account that the Appellant may have been on medication at the time the alleged incident occurred.

5. The Appeals Tribunal also concluded that there was no evidence or indication in the information before it that suggested the Appellant's convention rights had been infringed in anyway. It was noted that the Council had provided the Appellant with documentation in relation to the allegation against him and he had sought independent legal advice. He had not attended the hearing but had provided written submissions through his solicitors.
6. The issue that was determined by the Appeals Tribunal therefore, concerned the alleged incident on the 10 December 2008 and the decision of the Council's Standards sub-committee of the 3 November 2009.
7. The Appellant's grounds for appeal in relation to these specific issues could be summarised as follows:
  - 7.1. The Appellant did not breach the Council's Code of Conduct. The alleged conversation reported by the complainant between the Appellant, the complainant and Ms X was disputed. The Appellant had no recollection of the alleged conversation.
  - 7.2. The complainant's testimony was the sole evidence of the alleged conversation and her credibility should be questioned, particularly as she had been drinking at the time the incident took place. There was nothing to suggest that the complainant did not maliciously formulate her complaint on the grounds of disliking the Appellant on the basis of his age or sex.
  - 7.3. The documentary and oral evidence did not prove the conduct as alleged.
  - 7.4. In the absence of conclusive proof, it must be concluded that on the balance of probabilities the Appellant did not use unacceptable language towards the complainant or any other party and that the alleged breach of the Code of Conduct could not be upheld.
  - 7.5. There had been an unreasonable delay in carrying out the investigation and it was unreasonable to expect the Appellant to recall whether the alleged conversation had taken place.
  - 7.6. There was a failure to consider evidence and interview witnesses as requested.
  - 7.7. The sanction was disproportionate to the alleged offence.

### **The Appeals Tribunal's finding of Fact**

8. The Appeals Tribunal considered all the documentary evidence and made the following findings of fact:

#### Facts as found not in dispute:

- 8.1. The Appellant had been a member of the Council since 1999. On taking office the Appellant has signed an undertaking to abide by the Code of Conduct. On being elected Lord Mayor on the 15 May 2008, the Appellant had signed a further undertaking. The Appellant had also undertaken training on the Code of Conduct in 2008.
- 8.2. The Council's Code of Conduct provided:

*Paragraph 5.1.3.1 "You must treat others with respect"*



and

*Paragraph 5.1.5 "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute"*

- 8.3. On the 10 December 2008 the Appellant, as Lord Mayor of the Council hosted a community party, the purpose of which, in the words of the Appellant, was both ceremonial and a fund raiser for the Lord Mayor's charities. It was attended by over 500 people. The Appellant attended in his official capacity as Lord Mayor of the Council and wore his mayoral chain of office.
- 8.4. As the official host of the event, the Appellant moved around the party greeting, chatting and dancing. He also had his photograph taken with a number of guests. There was food, drink, including alcohol, and entertainment at the party.
- 8.5. The complainant attended the party with eight friends and colleagues including a Ms Claire Cheney and a Ms Gennie Holmes. Ms X also attended with a group of work colleagues.

Facts as found in dispute:

- 8.6. The Appeals Tribunal found, on a balance of probabilities that sometime during the evening the Appellant, who had been drinking, had a collective dance with Ms X and some of her work colleagues. When Ms X left the dance floor and went to sit next to the complainant, the Appellant joined them.
- 8.7. A conversation took place between the Appellant, Ms X and the complainant, some of which was of a sexually explicit nature. The conversation included comments by the Appellant about the age at which he lost his virginity and the comment that he would "like to fuck" Ms X.
- 8.8. In finding that this conversation did take place; the Appeals Tribunal was mindful that the Appellant had consistently said that he had no accurate recollection of the conversation. The Appeals Tribunal had taken into account the Appellant's view that the original investigation had failed to interview witnesses but concluded that as no other persons were party to the actual conversation the scope of the investigation was adequate. Also the Appeals Tribunal was not of the view that there had been an unreasonable delay in notifying the Appellant of the complaint or in carrying out the investigation into the incident. The formal complaint was made on 30 January 2009; the Appellant was notified in general terms of the complaint on 9 February 2009 and in detail on the 17 March 2009, a period of under seven weeks.
- 8.9. By contrast to the Appellant's inability to recall the alleged conversation, the complainant had consistently had a clear and unequivocal recollection of the conversation and the nature of what was said.
- 8.10. The Appeals Tribunal took into account that very soon after the conversation had taken place, the complainant had told Ms Cheney and Ms Holmes. This is confirmed in the two women's statements both of which describe the context in which the conversation took place and corroborate the complainant's account in an important respect.
- 8.11. In Ms Cheney's statement she said that she saw the Appellant come and sit with Ms X and the complainant and leaned towards the two women. She confirmed that it looked as if they were having a serious conversation. She stated that she noticed the Appellant was staggering and his speech was

slurred. After a further period Ms X and the complainant joined her on the dance floor and the complainant told her about the conversation that had just taken place.

- 8.12. In Ms Holmes' statement she said that the Appellant, the complainant and Ms X were having a conversation which she could not hear and left them to go for a dance. She noticed that the conversation between the three of them resulted in a lot of "shaking of heads and hand movements in a polite way but everything was not right". She stated that the body language was consistent with the nature of the conversation which was told to her by the complainant when she was joined by Ms X and the complainant on the dance floor shortly after the conversation had taken place. The complainant also told Ms Holmes about the conversation again in the taxi home at about 1am.
- 8.13. The Appeals Tribunal also noted that the complainant, upon arriving home, told her fiancée and made a written note of the conversation before she went to bed, when the events were still fresh in her mind. The next morning she discussed the incident with her line manager.
- 8.14. The complainant repeated the incident and the nature of the conversation to Mr David Taylor, the Investigating Officer on 23 April 2009. Again, the complainant repeated these events to the Council's Standards sub-committee on the 3 November 2009 when, quite rightly in the absence of the Appellant at the hearing, her evidence was robustly challenged and she was subjected to some quite probing, direct and blunt questioning.
- 8.15. The Appeals Tribunal took account of the fact that the complainant had been drinking at the party; a matter that was put to her by the Standards sub-committee, but accepted that alcohol had not affected her recollection, particularly as she had written the facts down as soon as she had got home that evening. Both the evidence of Ms Holmes and Ms Cheney confirm that the complainant had a few glasses of wine and may have been a little tipsy but was not drunk and was not slurring her words.
- 8.16. The Appeals Tribunal considered carefully the Appellant's suggestion that the complainant had maliciously formulated her complaint as she disliked him on the basis of his age or sex. The Appeals Tribunal concluded that there was no credible evidence that showed, or even indicated, that the complaint had been made maliciously.
- 8.17. The Appeals Tribunal found that, on balance the complainant had given an entirely credible and truthful account of what had taken place at the community party on the 10 December 2008 and therefore concluded that the alleged incident had occurred.

#### **Failure to comply with the Code of Conduct.**

9. On the facts as found, the Appeals Tribunal were of the view that the conversation that the Appellant had with Ms X and the complainant was highly embarrassing, offensive and disreputable. It would have offended anyone who heard it and was totally inappropriate. The Appellant certainly failed to treat both Ms X and the complainant with respect and therefore he had failed to comply with paragraph 5.1.3.1 of the Council's Code of Conduct.
10. In addition to this the Appeals Tribunal was of the view that by this disgraceful conduct, the Appellant had brought his office and authority into disrepute. Disrepute was defined as a lack of good reputation or respectability in the Oxford English

Dictionary. In the Appeals Tribunal's view, on an objective standard, by having this type of conversation while at an official function, where the Appellant attended in an important ceremonial capacity; representing the Council, his conduct was capable of diminishing public confidence and harming the reputation of the office of Lord Mayor, the position of Councillor and, indeed, the authority as a whole. Therefore the Appellant had failed to comply with paragraph 5.1.5 of the Council's Code of Conduct.

### **Sanction**

11. The Appeals Tribunal took account of the representations from the parties. Credit was given to the representations made in mitigation on behalf of the Appellant by Ms Jane Barlow, a member of the Lord Mayor's Office staff, that he had had a successful year as Lord Mayor and in his dealings and travels with her, their relationship had been very good and his conduct had always been perfect. Also the comments made by Ms Lorraine Evans, PA to the Council Leader who said her relationship with the Appellant had always been quite proper; that she had never detected any hint of inappropriate behaviour and that she had a good relationship with him and could not recall any problems.
12. However, the Appeals Tribunal was very concerned that the Appellant, in conducting his defence had attempted to malign the reputation of the complainant and impugn the standing of someone who did no more than their duty in making the complaint. In the Appeals Tribunal's view these were aggravating factors that may well have increased the appropriate sanction in this case.
13. The Appeals Tribunal considered the guidance issued by Standards for England entitled "Standards Committee Determinations" and the guidance issued by the President of the Adjudication Panel for England entitled "Guidance on decision to be made by a Case Tribunal where a respondent has been found to have failed to comply with a Code of Conduct". This document was issued for Case Tribunals but was nonetheless of assistance in gauging the appropriateness of sanctions imposed by Standards sub-committees.
14. All guidance was intended to assist those considering breaches of the Code of Conduct to gauge what action was appropriate in order to discourage or prevent the particular member from any future non-compliance and also to discourage similar action by others. The guidance advised that a tribunal should bear in mind the aim of upholding and improving the standard of conduct expected of members as part of fostering public confidence in local democracy. The Adjudication Panel for England guidance provided:

*"Suspension is likely to be appropriate where the Respondent has been found to have brought his or her office into disrepute..."*
15. It followed from this guidance that, given the Standards sub-committee found that the Appellant had failed to comply with paragraph 5.1.5 of their Code of Conduct, suspension was a sanction which was appropriate. The Appeals Tribunal may well have imposed a longer period of suspension than that imposed by the Standards sub-committee considering the aggravating factors but accorded appropriate deference to the decision of the Standards sub-committee with its knowledge of the local circumstances and which had the benefit of hearing oral and written evidence.
16. The Appeals Tribunal was of the view that the Standards sub-committee's sanction was reasonable and proportionate and decided to uphold its decision to suspend the appellant for 3 months and to require him to submit a letter of apology in a form

specified by the sub-committee. The original sanction should take effect as of the date of this decision.

17. A copy of this determination is being given to the Appellant, the Standards Board, the Standards Committee, the Council and any person who made the allegation that gave rise to the investigation.
18. This determination will be published in a newspaper that is circulated in the area of the local authority and will also be published on the Adjudication Panel's website at [www.adjudicationpanel.tribunals.gov.uk](http://www.adjudicationpanel.tribunals.gov.uk).

Sally Lister

**Chairwoman of the Appeals Tribunal**

5 January 2010



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(Local Government Standards in England)**

**CASE NO:** LGS/2010/0485

**ON APPEAL FROM:**

Standards Committee: London Borough of Havering  
Dated: 22 January 2010

**APPELLANT:**

**Councillor Mark Logan**

**RESPONDENT:**

**London Borough of Havering (the Council)**

**DATE OF HEARING:**

**21 April & 27 July 2010**

**DATE OF DECISION:**

**16 August 2010**

**BEFORE**

**Judge: Karen Aldred  
Member: Alison Lowton  
Member: Alex Rocke**

**ATTENDANCES:**

For the Appellant: Unrepresented

For the Respondent: Owen Davies QC

**SUBJECT MATTER:**

**Reference in relation to a possible failure  
to follow the Code of Conduct**

**CASES CITED:**

**Mullaney –v- The Adjudication Panel for England  
2009 EWHC 72 (Admin)  
Councillor Sharratt of South Ribble Borough  
Council  
APE 0458  
Councillor Barnbrook –v- The London Borough of  
Barking and Dagenham LGS/0471  
Fox and Stirk/Ricketts –v- City of Cambridge  
ERO 1070 2QB 463**

## **DECISION OF THE FIRST-TIER TRIBUNAL**

The appeal has been refused and the decision of the Standards Committee has been upheld

### **REASONS FOR DECISION**

1. This is an appeal by the Appellant against a determination made by the local Standards Sub-Committee of the Council on the 19 January 2010 that there was a failure by him to comply with paragraphs 3(1) and 5 of the Council's Code of Conduct and to impose a sanction of suspension for a period of one month; require him to undertake relevant training; and, provide that no member's allowance be paid for the period of suspension.

#### **Procedural information**

2. The Tribunal in preparation for the hearing which was planned to take place on the 21 April 2010 issued Directions in which it sought further information from the parties. As a result of the hearing on the 21 April 2010 being adjourned the Tribunal issued further Directions and made a determination on an application to strike out the Appellant's case. There was therefore a large body of documentation and submissions before the panel when it met to decide on paper evidence the outcome of this appeal on the 27 July 2010.
3. This is an appeal by way of re-hearing of the issues and so the Tribunal when making its findings and decision has taken into account all information available to the Standards Sub-Committee and the submissions and further documentation provided by the parties for this hearing.

#### **Background**

4. Briefly the facts are that the Appellant arranged of his own volition for Councillor Gadd of the London Borough of Havering to be observed and his commuting and travelling arrangements to be monitored and noted. This was undertaken by covert surveillance and the information was used to found an allegation by the Appellant that Councillor Gadd was neither residing nor working in the borough and so did not qualify to stand for election as a local councillor. Councillor Gadd works outside of the borough and he owns a family home some way further into Essex, but not, he states, at Burnham on Crouch as alleged by the Appellant. His association with the borough, and his right to stand for election to the council, was, therefore, based on residency for a portion of time at his parent's home in Colliers Wood in Havering from where travel to his office was easier. This temporary residency entitled him to be registered on the list of voters of Havering Borough and therefore stand for election.

5. The Appellant first brought his concerns that Councillor Gadd neither worked nor resided within Havering into the public arena in March 2006 when an article appeared in the Romford Recorder.
6. The first episode of covert surveillance was undertaken by the Appellant personally between May and September 2006. The Appellant was not a member of the Council at that time.
7. In September 2006 the Appellant brought this matter to the attention of the Electoral Commission and the Standards Board for England. Both authorities declined to deal with the complaint on the basis of lack of jurisdiction. The Standards Board for England found that the Appellant should, in the first instance, bring this matter to the attention of the Council.
8. The Appellant became a councillor of the London Borough of Havering in March 2008. At that time the Appellant still held, and indeed from the documentary evidence before the Tribunal continues to hold, the belief that Councillor Gadd was not entitled to serve as a councillor on the Council due to his lack of qualifying residency.
9. The Appellant received face to face training on the Code of Conduct from the Head of Legal Services and signed an undertaking to comply with it on the 20 March 2008.
10. In the autumn of 2008 the Appellant contacted the local press. An article subsequently appeared in the Romford Recorder on the 7 November 2008. This article repeated the Appellant's allegations that Councillor Gadd was not eligible to be a councillor for Havering.
11. Following publication of that article Councillor Gadd made a formal complaint to the Monitoring Officer on the 10 November 2008 stating that:
  - 11.1. The Appellant arranged covert surveillance of his parents' address in Collier Row and an address in Burnham on Crouch.
  - 11.2. The Appellant has made a false allegation that Councillor Gadd lives in Burnham on Crouch and is not qualified to act as a councillor in Havering.
  - 11.3. Councillor Gadd has been intimidated and harassed by the Appellant as this is now the second time when the Appellant has made complaints to the press about the same issue, the first being 2006. He, [the Appellant] has also complained previously to the Standards Board for England.
  - 11.4. In reporting the matter to the press the Appellant has placed on record that he has been involved in some sinister activities, namely the surveillance mentioned above.
12. This resulted in the Deputy Monitoring Officer being instructed to carry out an investigation.
13. The chronology and detail of this investigatory process is lengthy. It appears to have been beset with communication difficulties and the Appellant's concerns about the process are evidenced by his guarded participation. The Tribunal has had the benefit of seeing all the documentation relating to this investigation and takes no view as to whether the Appellant's concerns were well-founded.

### **The hearing before the Standards Sub-Committee**

14. The Deputy Monitoring Officer's report (DMO) was before the Standards Sub-Committee. That report made a number of recommendations and findings.
15. At the hearing in January 2010 the Appellant appeared in person and as part of his case he produced further evidence that Councillor Gadd lived at Burnham on Crouch and not at an address in Havering. This evidence was based on further covert surveillance of Councillor Gadd this time undertaken by an independent agency. The evidence consisted of two sets of observations of Councillor Gadd's house on two disparate dates in November 2009. This was evidence that the Appellant had commissioned further surveillance of Councillor Gadd and after the date that Councillor Gadd had lodged his complaint.

### **Code of Conduct – relevant provisions**

16. Paragraph 3(1) states: *You must treat others with respect*
17. Paragraph 5 states: *You must conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*

### **The findings of Fact made by the Standards Committee were:**

#### Covert Surveillance

18. The Sub-Committee found that the Appellant had arranged covert surveillance of both Councillor Gadd's parent's home and of an address in Essex. By his own admission the Appellant had arranged further surveillance as recently as November 2009.
19. The Sub-Committee considered that, in arranging for such surveillance to be undertaken, the Appellant had not shown respect to Councillor Gadd.

#### Allegation that Councillor Gadd did not live in Havering

20. At the hearing, the Appellant accepted that any person was entitled to own or reside at more than one property.
21. The Sub-Committee was not persuaded, therefore, that the allegation made by the Appellant was well-founded. Accordingly, the Sub-Committee concluded that he had not shown respect to Councillor Gadd.

#### The Appellant had intimidated and harassed Councillor Gadd

22. The Sub-Committee found that the Appellant's allegations related to events in 2006 and that, at that time, he had referred matters to the relevant authorities but they had declined to take further action. The Sub-Committee also noted that the DMO had found that the Appellant had not bullied Councillor Gadd.
23. The Appellant maintained that the surveillance he had arranged had been undertaken in compliance with the relevant law.
24. The Sub-Committee considered that, in arranging for properties to be subjected to surveillance in the way that the Appellant had, he failed to show respect to Councillor Gadd.

#### Reporting the matter to the press



25. The Sub-Committee found that the Appellant had actively encouraged the publication by the Romford Recorder of a report about his allegations, which (among other things) told of the methods he had used to seek to verify his suspicions. The Sub-Committee having found that the surveillance did not prove his allegations, it followed that the Appellant's allegations in the newspaper report were not well founded.
26. The Sub-Committee found that, by being instrumental in the reporting of the matters referred to in the Romford Recorder article, the Appellant had not only failed to show respect to Councillor Gadd but had brought the Council into disrepute.

In relation to the issues of whether there had been a breach of the Code the Sub-Committee made the following decisions:

27. The law does not prohibit members from owning or living at more than one residence and, if one wishes to challenge the eligibility of a candidate to stand for election there are specific courses of action that the law requires to be taken. The Appellant pursued some courses of actions some months after the election but the relevant authorities declined to investigate further.
28. It was, therefore, inappropriate for the Appellant to seek to re-open this matter following his election as a member, in the form of a personal attack upon Councillor Gadd. To do so through the press was inevitably improper, showed disrespect to Councillor Gadd and brought the Council into disrepute.

#### Sanction imposed

29. The Sub-Committee considered that the Appellant's actions amounted to a serious breach of the Code and that his suspension as a member was the inevitable consequence.
30. The Sub-Committee decided that, having regard to the seriousness of the Appellant's breaches of the Code, and in particular, the degree of intrusion of the surveillance arranged by him.
31. The Appellant shall be suspended for a period of one month from the date of the hearing, expiring at midnight on the 18 February 2010.
32. The Appellant is required to undergo such training as the Monitoring Officer considers appropriate to be undertaken before the end of the period of suspension.
33. No member's allowance shall be payable for the period of suspension.

#### **The Appeal**

34. The grounds of appeal submitted by the Appellant were, and these are repeated here verbatim:
  - 34.1. The Appellant has been used as a political scapegoat. He gave substantial evidence to prove a fraud is being committed by a councillor to the sum of £64,000.
  - 34.2. The Appellant would be guilty of the Code of Conduct if he hadn't told the Council about the fraud being committed, by reporting the fraud to the Council and other agencies. The Appellant has been persecuted for doing so.
  - 34.3. The Appellant believes he was being honest and reported a fraudulent councillor and on the 22 December issued court summons against Councillor

Gadd to seek reimbursement of funds for the Council who has not issued a counter claim.

- 34.4. The Appellant was told he was guilty of setting up surveillance, disrespecting a councillor, although this is not what the Deputy Monitoring Officer found him guilty of. The Appellant should have been offered protection under the whistleblower law also chapter 40 Harassment Law (prohibition of harassment) section a, section c.
35. In the grounds on which leave to appeal was granted, and in further representations to the Tribunal by the Appellant, the issue of whether the Appellant's Article 10 right to free speech had been infringed was raised.

### **Tribunal's Findings of fact**

36. For ease of reference the Tribunal has addressed the issues in the same order as that adopted by the Sub-Committee.
37. The Sub-Committee's findings were consistent with the DMO's findings and recommendation save in one respect, and that is where it had taken into its consideration the additional surveillance information placed before it by the Appellant at the hearing. There was no finding that the Appellant had harassed or intimidated Councillor Gadd as alleged by him in his complaint.
38. The Appellant has at no point challenged the DMO's factual evidence as to what was done and when. Moreover, having seen all supporting documentation the Tribunal has no reason to question the factual evidence in the DMO's report.

### Covert surveillance

39. The information supplied by the Appellant to the DMO and to this Tribunal clearly showed that he had carried out or commissioned surveillance of Councillor Gadd in 2006 and 2009. The Appellant clearly believed that he was correct in his belief that Councillor Gadd's residential arrangements did not qualify him to be on the voting register and for election to the Council.
40. From the submissions made by the Appellant he still considers this to be the case and he is of the opinion that he has furnished sufficient information to support his allegations. A true belief that something is as it is alleged does not of course make it so and in the absence of any conclusive evidence that belief remains just a belief.
41. The evidence produced to the DMO is not conclusive on what Councillor Gadd's travelling patterns and arrangements were at the time of surveillance in 2006. Nor, more importantly, does this evidence provide proof that Councillor Gadd permanently or temporarily resides somewhere other than where he has stated.
42. The further evidence supplied by the Appellant at the hearing in January 2010, relating to the further surveillance undertaken in November 2009, did not take matters any further. This surveillance observation related to two days only during a longer period of observation. These two days were also non-consecutive dates. The evidence consisted of photographs of a car which it is suggested is owned by Councillor Gadd but there is no supporting proof that in fact this is a car owned by him.
43. The Appellant has always maintained that he has been within the law whilst undertaking his surveillance operations. The panel takes no view on this and has no evidence one way or the other to support this. It therefore remains the Appellant's

assertion that he was working within the legal framework whilst carrying out his surveillance.

44. In his grounds for appeal the Appellant states that he has a right to pursue an individual where they are carrying out a crime and quoted from a text book focused on the topic of harassment law in support.
45. He further states in support for his actions that he is taking steps through legal redress to reclaim on behalf of the Council expense payments made to Councillor Gadd. The Tribunal has no information relating to these proceedings but more importantly it is not a matter that falls to be considered by it at this hearing. This is however further evidence that the Appellant clearly believed that Councillor Gadd was not eligible to stand for election and therefore in collecting his fees for being on the Council he was committing an electoral crime. Again, the Tribunal is not concerned with, or takes a view on, whether Councillor Gadd has committed or is committing, an electoral crime. This is not an issue for this Tribunal.
46. This Tribunal therefore upholds the Sub-Committee's findings on covert surveillance.
47. Residency in Havering the Tribunal was directed to the case of **Fox –v- Stirk** in which the issue before the court was whether temporary residency in a town during a period of study at university entitled the student to entry on the electoral role. The finding in that case was that to establish residence in a constituency, an elector need only show a considerable degree of permanence and that a man can have two residencies. Temporary absence does not deprive a person of his residence. A person might be on the electoral register at a number of places but he may only vote at one. It was held that the test was, was there, on the qualifying date, a considerable degree of permanence. In this case there was a sufficient prospect of permanence to turn simple occupation into residence, and the students were not disqualified simply because their parental homes, at which they might also qualify, were elsewhere. Councillor Gadd has stated that for the major part of a working week he resides with his parents at their home within Havering which has so far been accepted as a basis for him to register as a voter in that borough and to stand for election.
48. The DMO in his report sets out clearly the mechanisms that the Appellant could have pursued to challenge Councillor Gadd's qualifying residential status. There is a right to object contained within Regulation 29 of the Representation of the People (England and Wales) Regulations 2001 and the Electoral Registration Officer has powers to make house to house enquiries if he thinks fit pursuant to Section 10A of those regulations. Additionally, there is a right to petition the High Court or by way of complaint to the Magistrates Court pursuant to Section 92 of the Local Government Act 1972. The Appellant did not avail himself of these mechanisms in 2006 or 2008 and he has not furnished any information that he has done so since. These means of challenge and redress are still open to the Appellant.
49. As stated above, no conclusive evidence has been produced that Councillor Gadd did not reside as he stated which was for part of the week with his parents in Colliers Row and accordingly the Tribunal upholds the Sub-Committee's findings that the allegations made by the Appellant were not well-founded

#### Treating Councillor Gadd with respect

50. In his grounds of appeal the Appellant states that the DMO did not find him guilty of being disrespectful of another councillor. In paragraph 16.5 of his report the DMO states in his finding that the Appellant did not treat Councillor Gadd with respect, and in paragraph 16.6 gives full reasons for this finding. The DMO did not make a finding

of intimidation or harassment and this is conceivably what the Appellant was intending to refer to as a ground of appeal. However, even if this were the case, the finding which this Tribunal has to consider is whether the Appellant has been disrespectful.

51. As to whether mounting a programme of surveillance is treating another with disrespect is an issue which the Tribunal gave some consideration to during its deliberations. It noted that whilst the Appellant was consistent in his belief that Councillor Gadd did not qualify to stand for the election this did not necessarily support him taking what were rather unusual, and what may be considered by others, extreme measures of observing the movements of another individual. The Tribunal in this regard noted that an individual is increasingly under surveillance from a number of sources not least by CCTV cameras. However, undertaking personal, continual surveillance of a fellow councillor was a measure which it did not consider could be taken lightly and could not envisage many situations where such activities were engaged in for positive reasons. In this particular instance the information gathered from the surveillance was intended to be used in a negative way.
52. Moreover, the Appellant did not appear to have given consideration to the impact that his actions may have had on those he was observing and the distress which they may have suffered through finding out that they had been observed or having this fact brought into the public arena. The Appellant's surveillance was an infringement of another individual's right to privacy and had not been required either for national security or public protection. Given the fact that there were other means by which the Appellant could have challenged the election of Councillor Gadd this surveillance was also not necessary or proportionate.
53. The Tribunal therefore came to the conclusion that the mounting of surveillance generally, but particularly on the second occasion, after Councillor Gadd had lodged his complaint and had stated that the information gathered was incorrect, was disrespectful. Moreover, the Tribunal considered that this further period of surveillance bordered on harassment of Councillor Gadd.
54. The Tribunal therefore upholds the Sub-Committee's findings that the Appellant in mounting this surveillance has not treated Councillor Gadd with respect.

#### Publication in the press

55. Orchestrating the publication of this information through the medium of the local press a second time was also, in the Tribunal's view, an act that showed disrespect to Councillor Gadd.
56. The Tribunal noted that at the time the second article appeared the Appellant had joined the Council and had received training on the Code and therefore was aware of the behaviour that was expected of a councillor. Moreover, at this time the surveillance information which the Appellant was relying upon in 2008 was, by then, out of date.

#### Freedom of expression

57. The question of whether publication of this information by the Appellant was in pursuance of his Article 10 rights was considered by the DMO in his report. The respondent made detailed submissions on this point in its response to the reasons given for granting the appeal.

Article 10 states:

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without*

*interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be the subject of formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for the preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

58. In this regard, the Tribunal noted that the Appellant's case that his rights had been infringed hinged on two issues. Firstly, that he was exercising his right to political freedom of expression. Secondly, that this right was not negated by the right of Councillor Gadd to protection of his reputation as he was, in the Appellant's view, perpetrating an electoral crime.
59. In considering this matter the Tribunal took into consideration the fact that the Appellant had not expressed these views in the heat of political debate. Nor had these comments been aimed at a party policy or action but at an individual's behaviour outside of the political arena. More importantly these comments were expressed with the express intention of bringing Councillor Gadd's reputation into question.
60. The Tribunal also noted that that there were means other than publication in the local press by which the Appellant could have pursued his genuine concerns about abuse of the electoral system. These alternative means were more appropriate and would provide redress where as publication merely gave the issues a public airing.
61. The Tribunal therefore does not consider that the Appellant's rights under Article 10 have been breached and that by bringing this matter to the public attention in the way he chose he is not protected by this provision.

### **Breach of the Code of Conduct**

62. Having upheld the findings of the Council the Tribunal went on to consider whether the facts as found constitute a breach of the Code of Conduct. As a starting point the Tribunal considered whether the Appellant's actions as found above were covered by the provisions of the Code. It considered this as clearly the Appellant had been acting of his own volition.
63. In reaching its decision on this issue the Tribunal took into account and construed the terms of paragraph 2 of the Code which states amongst other things:
- You must comply with this Code whenever you:*
- (a) conduct the business of your authority (which in this Code, includes the business of the office to which you are elected or appointed); or*
  - (b) act, claim to act to give the impression you are acting as a representative of your authority, and references to your official capacity are construed accordingly.*
64. It also considered the dictum in the case of **Mullaney** and in particular paragraph 85 which states:

- (i) *I do not agree that paragraph 2 of the code only covers actions that a Councillor could do if he was not a Councillor as was submitted, or to turn that from the negative that paragraph 2 only covers actions that can be performed by a councillor because he is a Councillor.*
- (ii) *To my mind that is too restrictive both as to manner of language and having regard to the purpose of the Code to promote and uphold proper standards in public life.*
- (iii) ....
- (iv) *Rather in my view more important factors are the reasons why, the circumstances in which, and the reasons for which, the communication was made, or the action taken.*

65. The Appellant has stated that it was his responsibility and duty to bring this matter to the public's attention and that he would have been in breach of the Code had he not done so. The Appellant held himself out as a councillor and made no secret of the fact that he was doing this on behalf of Havering residents and the Council. He has stated that he is personally pursuing on behalf of the Council the return of local resident's council monies paid to Councillor Gadd by way of expenses through an action in the County Court. The Appellant intended to be identified as a councillor and represented that he is acting in the Council's interest. Those reading the article in the Romford Recorder in November 2008 would be left in little doubt that the Appellant was righting a wrong in his representative capacity. The Tribunal therefore considers that the Appellant has given the impression that he is acting as a representative of the authority, the Council.
66. In reaching this decision the Tribunal distinguished the particulars of this case from those considered in the South Ribble and Barnbrook cases. In the South Ribble case the councillor had used his professional journalistic skills to publish a local newspaper the focus of which was to publicise and to criticise the actions of the Council. This would have been understood by locals as an action flowing from his general interests in local politics rather than, and solely from, his role and function as a councillor. In the Barnbrook case the councillor had not identified himself as a local councillor and had been engaged at the relevant time in the making of a national party video with wider political intentions and focus.
67. The Tribunal has therefore determined that the Appellant's actions do fall within the ambit of the Code in that he held himself out to be a councillor and believed himself to be acting in the Council's interest and in compliance with the Code of Conduct. Moreover, someone reading the article in the Romford Recorder would reasonably reach the conclusion that the issue of election of members or the qualifying provisions would be a matter that would concern a councillor.
68. Having made a finding that the Appellant was acting in his capacity as a councillor the Tribunal went on to consider whether the Appellant's actions as found by it could be construed as a breach of paragraphs 3(1) and 5 of the Code.
69. As stated above in the findings of fact, the Tribunal considers that the Appellant did not treat Councillor Gadd with respect either by mounting two periods of surveillance or in using the medium of the local press to air his allegations. The Tribunal therefore finds that he has breached paragraph 3(1) of the Code.
70. The Tribunal also finds that the Appellant has brought himself and the council into disrepute. The Appellant had mounted a personal attack on Councillor Gadd with a

view to expose Councillor Gadd, as a liar. These actions fell outside of the political arena: was conduct that was unbecoming of a Councillor; and which called into question the electoral process of the Council and the standing and reputation of the Council. Moreover the exposure that the Appellant had carried out surveillance on a fellow councillor would bring into question the standing of this councillor and in turn the Council. However, the use of the local press as a means of redress rather than other, more appropriate avenues of redress further sullied the standing of this councillor and the Council.

## **Sanction**

71. In considering the appropriate and proportionate sanction to apply in this instance the Tribunal took into consideration the following factors as identified in the indicative sanctions guidance.
72. In relation to mitigating factors:
  - 72.1. The Tribunal took into account the fact that the Appellant held, and still appeared to hold, a true belief that his allegations are well-founded and that his actions were appropriate in the circumstances. As stated above, the Tribunal does not have evidence to support the allegations and, more importantly, does not consider that the actions taken by the Appellant were appropriate. Even if the Appellant were able to provide evidence that the allegations were well founded the Tribunal does not agree that his chosen course of action, publication in the local press, is an appropriate course of action.
  - 72.2. The Tribunal took into account that there are no other matters which have brought into question the Appellant's standing as a councillor however, the Appellant has only been a councillor for a relatively short period of time and the events which culminated in Councillor Gadd's complaint took place only a few months into his term as a councillor.
73. Aggravating factors
  - 73.1. The Tribunal noted that not only had the Appellant mounted two periods of surveillance but had adopted the use of publication through the local press on two occasions. There was therefore a repetition of the behaviour complained of.
  - 73.2. The Appellant has not shown any regret or remorse for his actions and he has not apologised for his behaviour. Indeed, he has continued to assert that his actions were appropriate and proportionate and that he is right in his continued belief that there has been an electoral breach.
  - 73.3. In stating that the Appellant has not offered any apology or shown any remorse or regret the Appellant has demonstrated that he has gained no insight into the nature of his conduct and how it is inappropriate for a local councillor.
  - 73.4. Finally, the Tribunal has noted that the Appellant has made several allegations for which he has not provided any supporting evidence, such as his assertions relating to season tickets purchased by Councillor Gadd.
74. In the Tribunal's view this matter hinged on two issues. Firstly, the publication of the Appellant's allegations in the local press. Secondly, the fact that there were other routes by which the Appellant could more appropriately have sought effective redress

for his concerns. By choosing the methods he did he opened himself to the imposition of a sanction and this was therefore not a case in which the Tribunal could take no further action or issue a rebuke.

75. In all the circumstances of this case and taking into consideration the mitigating and aggravating factors above the Tribunal came to the conclusion that the Sub-Committee's sanction of one month's suspension and the requirement to undertake further relevant training on the Code of Conduct was appropriate and proportionate.
76. The Tribunal however makes no direction in relation to the withholding of expenses during the period of suspension, this being an administrative matter and one which will flow from the imposition of the suspension.
77. The Sub-Committee's sanction in relation to suspension and relevant training is therefore reinstated and takes immediate effect.

### **Costs and Procedural matters**

78. Under the Tribunal's rules both parties are required to agree to a matter being determined on paper submissions and evidence. As a result of matters raised by the Appellant in his grounds of appeal the Council wished to have the opportunity to question and cross examine the Appellant in person at a hearing. A hearing was therefore arranged for the 21 April 2010. However, on the day of the hearing the Appellant was not in attendance and due to the suggestion that his non-attendance was due to ill health the hearing was adjourned. The Tribunal thereafter directed that information relating to the non attendance be produced. The information requested was not furnished by the Appellant in the form requested by the Tribunal and in some respects not at all. The Tribunal was thereafter involved in an increased amount of case management which ultimately resulted in this matter being disposed of by way of written representations and contrary to the initial wishes of one of the parties. There have been two points in these proceedings when the tribunal has given consideration to the issue of striking out these proceedings. The manner and way in which this matter proceeded to a paper-based hearing was a cause of concern to the Tribunal and will therefore be the subject of further Directions that might result in a wasted costs order.
79. The written reasons for the Tribunal's decision will be published on the Tribunals website [www.adjudicationpanel.tribunals.gov.uk](http://www.adjudicationpanel.tribunals.gov.uk)
80. Any request for the decision to be reviewed or for permission to appeal needs usually to be made to the First-tier Tribunal within 28 days of receipt of the Tribunal's reasoned decision. Such applications need to be in writing.

Karen Aldred

**Judge**

16 August 2010