

GOVERNANCE COMMITTEE

20 NOVEMBER 2012

REPORT OF CHIEF EXECUTIVE

SB014 – LEARNING FROM APPEAL DECISION

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of the issues and learning required from the appeal arising from SB014.

2.0 RECOMMENDATIONS

It is recommended that:-

- 2.1 **Statutory, Regulatory or deadlines set by this Committee be adhered to.**
- 2.2 **The procedure to deal with requests for adjournment as set out in Appendix D be approved.**
- 2.3 **Any extensions to the deadlines set out in Appendix D be approved by the Monitoring Officer after consultation with the Independent Persons.**
- 2.4 **A letter of apology be written by the Chief Executive to the member of staff concerned, which advises of the changes in procedure/lessons learnt by the Council.**
- 2.5 **An annual 'Ethical' Surgery be held by the Chief Executive and the Leaders of the Political Groups, following consultation with the Monitoring Officer.**

3.0 KEY ISSUES

Brief Resume of Facts (A Chronology is attached at Appendix A)

- 3.1 The initial Complaint in SB014 was made on 8 November 2009. Following consideration by the Standards Committee Assessment Sub Committee of 23 November 2009 the Case was referred for investigation of the Complaint. It is good practice in cases involving high profile Office holders that the matter is investigated outside of the Council. Therefore an external Investigating Solicitor was formally appointed on 7 December 2009.
- 3.2 The Investigating Solicitor dealt with the matter in the ensuing months and her formal report was received on 3 August 2010. In discussion with relevant Officers and Members 'Hearing Training' was held for Standards Committee Members on 30 September 2010 and the Standards Consideration Sub-Committee was held on 19 October 2010. That Sub-Committee determined that the Hearing should take place locally. The Council then proceeded towards setting up the Hearing.
- 3.3 As part of the process "Forms A-E" are to be completed. These were sent to the Subject Member and discussions held over setting the hearing date. An initial Hearing was proposed to take place in December 2010, however, the Council were advised that the Subject Member would be on holiday from 3-20 December inclusive. Neither Officers nor the Standards Committee considered it an unreasonable request to avoid the period of Holiday.

- 3.4 The Subject Member also objected to the matter being dealt with locally and this was not seen as an unreasonable request therefore Officers preceded to enquire of other Councils as to whether they would deal with the matter. However, Standards for England advised that this could only be achieved by the establishment of a Joint Committee and whilst this advice was different to that received from the Department of Communities and Local Government, the other Councils declined to take on the matter if a Joint Committee was required.
- 3.5 At their meeting on 10 March 2011, noting the enquiries made with respect to a Hearing elsewhere, the Committee decided to proceed with the Hearing. However, as the Pre-Election Period was fast approaching, that the Subject Member be asked if she wished the matter to be dealt with prior to the May Election. The Subject Member did not wish this to occur and the Committee decision was actioned. However, the Officers continued carrying out the procedures to hold the Hearing and a great deal of correspondence was held with the Subject Member, her Solicitor and the Council. Throughout, the Councils Officers asked that Forms A-E were completed with offers of help and support to do this. The Forms were not completed.
- 3.6 A new Hearing date was set for 23 September 2011, however, on 6 September a GP advised that the Subject Member was not fit to attend the Hearing for 8 weeks. The Council obtained advice from Standards for England which said that the Hearing should be adjourned and a new date sought. The Subject Member was therefore advised that an alternative date would be sought after 5 November 2011 the date of expiry of the GP's certificate. The new date for the Hearing Sub-Committee was set for 17 November 2011.
- 3.7 The Subject Member suggested to the Council from 19 October 2011 that there was a second GP's certificate with respect to her health which the Council should have received. The Council had not received this certificate. Further requests for clarification and exchanges took place between the Council and the Subject Member. On 16 November 2011 a further Doctor's certificate from a different GP was received by the Council stating that the Subject Member was unfit to attend the Hearing on 17 November 2011 and advising she would not be fit for a further 2 months.
- 3.8 As this was the day before the Hearing Sub-Committee, the meeting took place. The Subject Member was represented by a third party. Following representations by that third party the Sub-Committee agreed an adjournment as a result of the Subject Members' ill health. Further Hearing dates were sought at the close of the two month period and following settlement of availability of the parties a date of 16 April 2012 was put forward. Unfortunately, the Subject Member was unable to confirm acceptance of the date and the Investigating Officer ceased to be available and further dates in May were sought.
- 3.9 During this time it was difficult to settle dates the Civic Meeting made changes to the parent Standards Committee and two members of the Hearing Sub-Committee had health difficulties. These matters were all dealt with and a Hearing date set for 15 June 2012 when a full Hearing Sub-Committee could be held.
- 3.10 At that Hearing the Subject Member was found to have breached the Council's Code of Conduct and the Decision Notice issued on 26 June 2012. A copy of the Decision Notice is attached at Appendix B.

4.0 POLICY AND CORPORATE IMPLICATIONS

- 4.1 The Council had no Policy or Procedure in place to deal with this type of case. This report, written in response to the Tribunal decision offers to Members an opportunity to put in place those actions.

5.0 FINANCIAL AND OTHER RESOURCE IMPLICATIONS

5.1 The costs of the case are as follows:-

Investigation Costs	£ 4,753.70
Abortive Hearing Costs (17 November 2011)	£ 1,118.00
Hearing Costs (15 June 2012)	£ 1,088.00
<i>External Advice in connection with the Hearing</i>	
Up to date of aborted Hearing (20.09.11)	£ 1,764.00
Up to date of adjourned Hearing (17.11.11)	£ 1,953.00
Up to date of Hearing (15.06.12)	£ 1,184.00
Advice in relation to the subsequent appeal and role of Standards Committee post July 2012	£ 3,838.00
Total	£15,698.70

Other impacts on capacity have been managed within the Council by Senior Managers.

6.0 LEGAL IMPLICATIONS/POWERS

- 6.1 Once the Standards Committee Consideration Sub-Committee had determined to proceed to a Hearing the Legal position is that the Hearing should be held within 3 months or as soon as 'reasonably practicable.' The Council through its Standards Committee and the Officers advising it considered that the issues brought forward by the Subject Member were not unreasonable and therefore it would have been inappropriate to proceed towards a Hearing without dealing with and responding to these matters as they arose. In particular, a Subject Member is entitled to a holiday, she was also entitled to ask whether the matter could be dealt with by another Council, the question of dealing with the case in Pre-Election Period, whilst criticised by the First Instance Tribunal (Appendix C) was considered by all relevant parties including the Standards Committee as not unreasonable. The Subject Members' ill health as certified to by two GP's was in the first instance checked with Standards for England whose advice was to recommend an adjournment and in the second case the adjournment was agreed by the Hearing Sub-Committee. The difficulty in settling dates with Members and external parties diaries is not unusual, however, in this instance was also complicated by the ill health of the Hearing Sub-Committee Members which necessitated substitutes, including one from another Council willing to act to enable the Council to deal with the case.
- 6.2 Whilst the Council and its Committee considered that it was meeting the 'reasonably practicable' requirement of the Regulations. It is clear in the judgement of the Tribunal that they did not accept the issues raised as sufficient reason for the time taken to bring the matter to Hearing. It is clear from this judgement that the Council was not strong enough in dealing with the issues that it faced and was perhaps 'too reasonable' in its approach. The Council had no procedure for dealing with such matters and had no overriding instruction or requirement to bring the matter to conclusion.
- 6.3 It is suggested therefore that the most important piece of learning for the Council from this case is that it requires to set as a first principle Statutory, Regulatory or Member set timescales for procedural matters must be adhered to with the only exception being following advice sought from the Independent Persons to the Committee. This first principle will set in context any requests for adjournments, however a further procedure to deal with these should be in place and one is proposed to Members, for approval, as set in Appendix D. This is similar to procedures that would be in place for dealing with

disciplinary matters within the Council, however, it is slightly amended to take in account reasonable difficulties with respect to settling dates in Members and external parties diaries. This was experienced with this case, however, tighter deadlines are proposed within this procedure.

- 6.4 The case before the Tribunal found against the Council on this first point on compliance with the Regulations and the test applicable to what was 'reasonably practicable.' The Tribunal did not deal with the facts of the case itself nor its substance or the finding against the Subject Member. The judgment is attached at Appendix C.
- 6.5 In summary, by acceding to the Subject Members' requests and concerns in what was thought to be a proper manner and as a result of having no procedure to call to assistance the Council and its Committee failed in the opinion of the Tribunal to meet the Regulatory Duty. The Council must accept this criticism and should put in place the recommendations and procedure as proposed within the report.

7.0 STAFF MEMBER

- 7.1 The Council put in place support mechanisms for the staff member who exercised her proper right in complaining about the conduct of the Subject Member. This support continued throughout the period with a Senior Manager designated to give assistance and answer queries. It is accepted that the length of time to bring the matter to Hearing has now been determined as too long, however, it was considered that respect was also being given to the Subject Member in dealing with her requests and concerns.
- 7.2 The Chief Executive has met with the staff member concerned and she has confirmed that she was "fully supported throughout" the processes. She was advised if there was likely to be any publicity or comment so she was able to cope and deal with this. The Officer has said she understood the reasons for the delays, as fitting in with the Councils values and further that she considered the outcome of the Tribunal as 'unfortunate,' but she had no adverse feelings.
- 7.3 It is suggested that the Chief Executive should write a letter of apology to the staff member indicating that whilst the Council thought it was being respectful to both parties it did not give due regard to the time taken in dealing with such matters as raised and that it should act more strongly with a closer adherence to timescales in future. The staff member will also be advised of the decisions of this Committee, in particular whether it approves the tighter Procedure for setting Hearing dates and adjournments.

8.0 ETHICAL STANDARDS

- 8.1 As part of the Tribunal commented that it seems strange "that such a prominent and long standing Councillor should have such little respect and regard for her own Council that she did not trust it's Standards Committee and refused to cooperate as was her clear duty with making arrangements for the Hearing by completing the Forms. Her response to the Standards Committee shared scant understanding of the Nolan Principles of Public Life and in particular the obligation to show Leadership and accountability, rather she demonstrated an alarming arrogance and lack of insight."

This is an unfortunate impression to come from the case in that it suggests work is needed within the Council to promote communication, develop understanding of the Nolan Principles, and raise awareness of the Ethics and Probity agenda particularly when matters concerning individual Members arise.

- 8.2 In order to facilitate this activity it is suggested that the Chief Executive organise an 'Ethical' Surgery annually working with the Leaders of the Political Groups to address any

issues and concerns that may have arisen concerning Procedures and issues that have developed through the year. A report of that Surgery should be made to this Committee including any recommendations that may arise from Member discussion concerning Ethics, Probity, Procedures and Guidance. It is hoped that such an approach which allows for discussion, feedback and consideration of change will help to overcome any such difficulties which may arise in the future.

9.0 CONCLUDING REMARKS

9.1 The form of procedures for dealing with Standards matters has received much criticism and complaint nationally from Members, organisations and Officers. In particular the procedures were regimented, formulaic and offered little opportunity for a flexible/ reasonable outcome. This point was understood by Government which has now radically overhauled the Standards Regime and handed control back to Councils with much more simplified approaches to dealing with difficult cases. It is suggested that as a result of this, a case such as this should not occur in similar circumstances in the future as a result of the control locally and the ability to deal with matters more flexibly. The role of this Committee in ensuring that approach is developed is critical keeping both the confidence of Complainants, Officers and importantly Members in their procedures.

10.0 COMMUNITY SAFETY

10.1 There are no implications arising from the report.

11.0 EQUALITIES

11.1 There are no implications arising from the report as the proposals for changes to procedures involve internal matters.

12.0 RISKS

12.1 **Probability**



Very High A				
High B				
Significant C				
Low D				
Very Low E			1	
Almost Impossible F				
	IV Neg- ligible	III Marg- inal	II Critical	I Catast- rophic

Impact →

Risk No.	Description
1	No learning is put in place from the Hearing and Tribunal Decision

13.0 **CLIMATE CHANGE**

13.1 There are no implications arising from the report.

14.0 **CONSULTATION**

14.1 Consultation with the Officer affected is set out in the report. Procedures for consultation with Members on the major issues is as set out also.

15.0 **WARDS AFFECTED**

15.1 All

Contact Officer Lynn Aisbett, Chief Executive
Date: 8 November 2012

Appendices : A – Chronology of the Case
 B – Decision Notice
 C – First Instance Tribunal Judgement
 D – Proposed Procedure for Adjournment

Background Papers: First Instance Tribunal Judgement
 Minutes of Standard Committee/Sub Committees Nov 2009-June 2012

Reference : X : Committees\Gov\2012 13\201112