

# Item 4

## REPORT TO STANDARDS COMMITTEE

5<sup>th</sup> April 2007

## REPORT OF SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

### GUIDANCE FROM THE STANDARDS BOARD: IMPLICATIONS OF COLLINS J IN THE LIVINGSTONE CASE

#### 1. SUMMARY

- 1.1 This report outlines the guidance offered by the Standards Board relating to the implications of the decision of Collins J in the Livingstone case. This High Court judgement has significant implications for the interpretation of the Code of Conduct.

#### 2. RECOMMENDATIONS

- 2.1 That Standards Committee be appraised of the report and future changes be noted.

#### 3. DETAIL

- 3.1 In 2005 Mr Livingstone allegedly made offensive comments to a journalist. The Standards Board referred this case straight to the Adjudication Panel for England. The Adjudication Panel found that Mr Livingstone had failed to comply with the Code of Conduct by bringing his office into disrepute and was suspended for four weeks. Mr Livingstone appealed to the High Court against the decision of the Adjudication Panel.
- 3.2 Mr Justice Collins, the judge presiding in the case, decided that Mr Livingstone had not been acting in his official capacity when he spoke to the reporter, therefore Paragraph 2(b) of the Code “to treat others with respect” while carrying out official duties did not apply.
- 3.3 Following the High Court’s decision a more restrictive view needs to be taken of when the Code of Conduct can apply to the actions of a Member. There are two provisions of the Code that apply not just when a Member is acting “in his official capacity” but also in “any other circumstances” (Paragraphs 4 and 5a). In past cases the Adjudication Panel has limited the terms “in any other circumstances” but a much stricter interpretation has been applied arising from the decision of Collins J.
- 3.4 Collins J went on to state that if Parliament wished to regulate the activities of Members in their private lives it needed to do so explicitly. He expressed the view that unlawful conduct was not necessarily

covered and that a Councillor convicted of shoplifting or drink driving was not caught by the Code if the offending had nothing to do with their position as a Councillor. Collins J expressed the view that private capacity conduct will rarely be capable of bringing a Member's office or authority into disrepute even if considered inappropriate, outrageous or unlawful. He found that while Ken Livingstone's comments may have tarnished his own reputation they did not tarnish the reputation of his office or authority.

3.5 Since the judgement, the Standards Board has been working with the Government, the Adjudication Panel and ACSeS to clarify the Code and in light of this judgement the Government has included proposals in the current *Local Government and Public Involvement in Health Bill* to make clear that the Code is not limited to actions taken only in an official capacity. However, this law has not been enacted and the law as declared by Mr Justice Collins must be followed.

3.6 The following principles emerged from the Livingstone decision regarding instances where a Member is not acting in an official capacity:

- For the code to apply, it will need to be established that, if the Member was not acting in an official capacity, he or she had nonetheless used or sought to use his or her "status" as a Member of the Council. An example may be where a Councillor, in dispute with a neighbour about their planning application, threatens to speak to colleagues on the planning committee.
- The second principle is that the use of the status must be of a type that is capable of amounting to a failure to comply with the code. An example would be where a Councillor attended a private pre-meeting to discuss a report, which included a proposal to purchase some land for the Council to redevelop new Council Offices, and then, immediately after the meeting, the Member contacted the owner and anonymously agreed to buy the property for the price quoted to the Council.
- The third principle relates to establishing disrepute to his or her office or the authority. Under this test a case tribunal or Standards Committee will need to be persuaded that the misconduct is such as to damage the reputation of the Member's "office or authority" as opposed simply to damaging the reputation of the individual concerned.

3.7 However, Collins J gave no indication of how these principles would be met in practice.

3.8 The Standards Board believes that some of the considerations that might tip the balance in favour of disrepute to the office of Member or to the authority in particular cases are: -

- a. situations where the Member has put his or her private interests over and above the public interest, that is flouting public interest for

private gain, for example by using their position to secure a personal profit

- b. similarly situations where a Member defies important and well established rules of the authority for private gain; also
- c. where a Member engages in conduct, which directly and significantly undermines the authority's reputation as a good employer or responsible service provider.

3.9 It must be reiterated that these examples are not exhaustive and each case will still be treated on its own particular facts.

#### **4. RESOURCE IMPLICATIONS**

4.1 No specific financial implications have been identified.

#### **5. CONSULTATIONS**

5.1 The Council's Management Team has considered this report on 12<sup>th</sup> March 2007.

#### **6. OTHER MATERIAL CONSIDERATIONS**

6.1 All material considerations have been taken into account in the contents of this report. In particular, risks may arise unless Members of Council are fully appraised on standards matters.

#### **7. OVERVIEW AND SCRUTINY IMPLICATIONS**

7.1 None apply.

#### **8. LIST OF APPENDICES**

8.1 None apply.

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**Wards:** N/A

**Key Decision Validation:** N/A

### Background Papers

SBE Publication: Case Alert: The Implications of the Decision of Collins J in the Livingstone Case

### Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Council's Head of the Paid Service or his representative	<input type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Council's S.151 Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input type="checkbox"/>	<input type="checkbox"/>