

Item 3

REPORT TO STANDARDS COMMITTEE

5th April 2007

REPORT OF SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

SBE: CASE REVIEW: RELATIONSHIP BETWEEN COUNCIL LEADERS, CHIEF EXECUTIVES AND OFFICERS

1. SUMMARY

1.1 This report focuses on a number of cases that have been investigated by the Standards Board for England examining the relationship between Council Leaders, Chief Executives and Officers. The cases focus on several areas including responsible leadership, appointment of a Chief Executive, unauthorised expenditure, abuse of position, criticism of Officers and conflicts of interest.

2. RECOMMENDATIONS

2.2 That Standards Committee be appraised of the report.

3. DETAIL

3.1 *Responsible Leadership:* The need for Leaders to act as an example for others and take ownership of their responsibility to the Code of Conduct is highlighted by the case SBE11213.05. The Leader of a City Council referred himself to the Standards Board for investigation. He asked the Standards Board to look into allegations that he had sent improper emails to a Senior Officer in the Council's media department about the possible early retirement of the Chief Executive.

3.2 After an investigation was carried out, the Ethical Standards Officer considered that the Leader's emails condoned and actively encouraged attempts by the Senior Officer to generate press coverage that would increase pressure on the Chief Executive to take early retirement. The Ethical Standards Officer considered that the Leader had breached the Code by acting in a manner that was likely to compromise the impartiality of the Senior Officer.

3.3 The Leader accepted that he had acted in a misguided and unacceptable way. He issued a statement, which said he was extremely sorry for his actions, and that he now realised that the views expressed in the email exchanges were misguided and totally unacceptable. The Leader said that he would be standing down and would not stand for leadership for the remainder of his term of office. This amounted to a self-imposed removal from office for a period of 18 months. The Ethical Standards Officer regarded this as a significant recognition of the extremely serious nature of the misconduct.

- 3.4 *Appointment of a Chief Executive-implications of the Islington case:* A series of cases were presented before the Standards Board in 2002, all alleging that five Members of Islington Council acted improperly during the appointment of a new Chief Executive. The matter was referred to the Adjudication Panel for investigation, who concluded that the investigation was warranted, but expressed reservations about aspects of the investigation and the length of time it took to complete.
- 3.5 One of the consequences of the long and complex investigation and hearing was the financial cost to the Members involved. The Standards Board has called for a system of indemnity for Local Authorities, allowing them to take out insurance cover against any financial costs incurred by Members who are found not to have breached the Code. This is now in place in the form of the *Local Authorities (Indemnities for Members and Officers) Order 2004 (SI2004/3082)*.
- 3.6 The Standards Board has since reflected on these cases and put in place a number of changes, which have now been implemented. These include a change in the focus of its resources for complex cases, and a presumption that documents will be made available in advance to those being interviewed as part of the investigation, unless there is a specific reason not to. It was evident from these cases the need to collate and present cogent evidence and facts during an investigation. These cases also highlight the importance placed on Local Authorities to conduct themselves and their decision-making processes in an open, fair and transparent manner.
- 3.7 *Unauthorised Expenditure:* In case SBE2870.03, the actions of a Parish Council Chair were called to account when authority procedures were abused and decisions made behind closed doors. The Member authorised a series of building and landscaping works in the local area, without the prior consent or knowledge of the Parish Council, leaving the Council in serious debt. This included one payment of over £40,000. There was no evidence in the minutes of any of the council meetings to show that any of the work had been discussed or approved by the Council before it was undertaken and paid for.
- 3.8 In a bid to repay the overspending, the Member applied to the Public Works Loan Board on behalf of the Council. The loan was requested specifically for the refurbishment of the Parish Hall, and was approved on that basis. However, as the Member was aware, this work had already been completed and full payment had been made before the loan application was submitted.
- 3.9 The tribunal took into account the serious nature of the Member's numerous failures to comply with the Code, which included preventing others from assessing information to which they were legally entitled, bringing her office into disrepute, and improperly securing an advantage for herself. The Member was disqualified for four years.

- 3.10 *Abuse of Position:* There is a general agreement about the importance of good corporate governance. The case SBE7151.04 highlights the consequences when a Leader fails to work with Senior Officers to provide good governance.
- 3.11 In this case the Chief Executive of a County Council alleged that the Leader actively tried to remove him from office through a pattern of undermining, demeaning and demoralising behaviour. This case was referred to the Adjudication Panel who found that a grave misuse of power had taken place and decided that the Leader had brought his office into disrepute and therefore was disqualified for 15 months.
- 3.12 This case emphasises the consequences when Members overstep the limits of their authority. It is considered that the essence of a democratic body such as a Council is that its Members are given the opportunity to be involved in making decisions that affect the local community. To abuse this trust damages an important part of the democratic process.
- 3.13 *Criticising Officers:* It is important that Members feel able to express genuine concerns and opinions about the conduct of Council Officers if they feel it is in the interests of the public, but it is not acceptable for Members to openly criticise an Officer on a personal basis. In 2005, five members of the same authority were alleged to have improperly criticised the authority's Monitoring Officer.
- 3.14 The five members, who included the Leader, expressed serious reservations about the legality of a new independent political group that was formed within the Council, and publicly questioned the advice of the Monitoring Officer on the issue. The Members issued a notice outlining their concerns and circulated it widely to the local media. The Monitoring Officer felt like this notice made her position very difficult if not untenable and it was interpreted by some Members as inappropriate, amounting to bullying, harassment and criticism of a Senior Officer. It was alleged that the Members had failed to treat others with respect and brought their authority into disrepute by failing to follow the correct internal complaint procedures.
- 3.15 The Ethical Standards Officer found no evidence to suggest that the Members had been rude or impolite when questioning the Monitoring Officer's advice and the notice was submitted by the Members to encourage public debate on concerns they held in good faith on a matter of significant public interest, and as a result a breach of the Code did not occur.
- 3.16 This case underlines the importance of drawing a distinction between the requirement for Members to treat others with respect, and the need for Members to have freedom to disagree with the views and opinions of others, including Officers.
- 3.17 The Code of Conduct ensures that integrity of the Council is maintained and does not operate to prevent the expression of fairly held opinions,

restrict freedom to disagree with views of others, or prohibit fair criticism.

- 3.18 *Conflicts of Interest:* The issue of personal and prejudicial interests continues to cause confusion for some Members. Case SBE10372.05 clarifies Councillors' duties when they have conflicts of interest, in light of human rights legislation. The Councillor, a member of a District Council was found to have taken part in the consideration of his own company's planning application for flats and shop storage at a development control committee meeting. The case tribunal found that the Member had both a personal and prejudicial interest. The tribunal also decided that the Member had brought his office/authority into disrepute, particularly by choosing to ignore the advice of Council Officers before and during the meeting.
- 3.19 The Member argued that it was unfair in terms of his human rights that he had been denied the right to speak on the application as a result of his holding office. However, the tribunal found that the civil rights being referred to were those of the company, which had the right to a fair and public hearing. The company were free to send anyone to the meeting to make representations except the Member, who was prevented from doing so because of his position within the Council and was regarded as a lawful restriction.
- 3.20 The issue over the Member's right to freedom of expression was also questionable, however, the tribunal decided that denying him the right to speak on this occasion did not infringe his human rights, as the restriction was in accordance with the law and "necessary in a democratic society for the protection of the rights of others". The tribunal suspended the Member for one year in view of the seriousness of the breach.
- 3.21 The Standards Board advises that when Members agree to take office, they are agreeing to comply with the Code of Conduct, which might, at times, affect the exercise of their rights as private citizens.

4. RESOURCE IMPLICATIONS

- 4.1 No specific financial implications have been identified.

5. CONSULTATIONS

- 5.1 The Council's Management Team considered this report on 12th 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 Case Review: Number 4

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"/>

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