

STANDARDS COMMITTEE (ENGLAND) REGULATIONS 2008

PUBLIC SUMMARY OF PROCEEDINGS OF THE ASSESSMENT SUB COMMITTEE WHICH MET AT WARWICK ON THE 16TH OCTOBER 2008.

Present: -

Independent Member

Mark Magowan (Chair).

County Councillors

Les Caborn

Tim Naylor

Officers

Jane Pollard, Corporate Legal Services Manager

John Wright, Committee Manager

1. General

(1) Apologies for absence

None

(2) Members' Disclosures of Personal and Prejudicial Interests

None

2. Complaint Under The Members Code of Conduct

Case reference WCC 1/2008

Alleged Breaches

The complaint arises out of a mediation process conducted by a Councillor as a co-mediator. The background to the complaint involved a boundary dispute between the complainant and another person which had led to Police involvement and potential criminal proceedings. The mediation process commenced in September/October 2005 and legal resolution of the boundary dispute was finally reached in January 2008. The allegations related to

- Failure by the Councillor to disclose a conflict of interest of the co-mediator at an earlier time.
- Release of confidential information.
- Poor management of the mediation process i.e. short timescales for concluding matters at particular points in the process which left the complainant inadequate time to seek legal advice.
- On occasion favouring the other party in terms of the conduct of the mediation process and the writing of the mediation agreement.
- The premature withdrawal of the Councillor from the process in 2007 before legal closure was obtained.

The Sub Committee considered each of the alleged breaches and took account of the Council's published assessment criteria and the Standards Board guidance against which complaints would be judged.

Conclusions

The Sub-committee was not satisfied that any substantive or serious breach of the Member Code of Conduct adopted by the Council in April 2002 or the revised Code adopted in May 2007 would be identified on the basis of the information provided and would make the following comments in particular

- **Actions of the co-mediator**

The co-mediator was not a councillor and was not subject to the Member Code of Conduct. The actions of the co-mediator are outside the scope of the Assessment Sub-Committee.

- **Conflict of interest**

There is no evidence to show that the Councillor had knowledge of any conflict of interest of the co-mediator prior to the withdrawal of the co-mediator from the process. Therefore we do not consider that the information indicates that there has been any breach of the Code of Conduct.

- **Confidentiality**

Various emails and a letter to an MP from the Councillor were produced by the complainant. We do not consider that these substantiate a breach of confidentiality. Even if there was proven to be a breach of confidentiality we consider that given the nature of the information and the context at most it would be a minor breach of the Code.

- **Bias in the approach to the mediation**

The overall timetable (by end of October 2005) for agreeing the mediation agreement had been set by the Police to enable a decision to be made about whether or not to continue with criminal proceedings. There is no discernible breach of the Code of Conduct due to the fact the complainant had a short-time to agree certain matters at the end of October/early November 2005 and at other points in the process there was more relaxed timetable.

- The complainant says that the wording in the mediation agreement did not reflect his views, however this was a draft document submitted to both parties for comment prior to it being finalised. Amendments were made to the agreement following comments made by the complainant. We do not consider that the circumstances surrounding the finalisation of the agreement indicate any potential breach of the Code of Conduct.

- **Withdrawal**

The withdrawal of the Councillor from the mediation process during 2007 does not of itself indicate any breach of the Code of Conduct. Although it appears that by this stage there had been a repeated breakdown in communication between the complainant and the Councillor.

Decision

There has been a substantial delay in referring this complaint to us. Most of the matters which the complainant seeks to rely on relate to events which took place during September 2005 to December 2005. Based on the information provided we are not satisfied that any substantive or serious breach of the Code of Conduct would be identified. Therefore we do not consider that it is in the public interest to commission an investigation into these matters given the time that has elapsed, the potential cost to the public purse and the nature of the alleged breaches.

We are concerned that there appears to have been a breakdown in the relationship between the Councillor and the complainant during 2007 which ultimately appears to have led to the withdrawal of the Councillor from the process. It is obvious from the papers that by 2007 that both were frustrated by their communications. We believe that a conciliation process between the Councillor and the complainant to clear the air might be of value in setting this matter to rest and improve understanding. We would encourage both parties to take up the offer of conciliation as there is obviously some need to achieve some form of closure.

In accordance with Section 57A(2) of the Local Government Act 2000, as amended, the Assessment Sub-committee of the Audit and Standards Committee has decided to refer the allegation to the Monitoring Officer of the Council for other action namely

- (a) to offer the complainant and the councillor concerned the opportunity to engage in a conciliation process
- (b) that the Monitoring Officer considers the appropriate advice or guidance to be offered to councillors about undertaking a mediation role.

The Sub Committee rose at 4:35 p.m.