

Hearing of Complaint under the Protocol of Member / Officer Relations

Standards Hearings Panel

Date: 19th October 2012

Author:	Director of Law and Democratic Services
Wards:	All
Locality Affected:	All
Parishes Affected:	All

1. Purpose and Reasons

- 1.1 To hear a complaint SBC/PMOR/02/11 under the Protocol of Member / Officer Relations in accordance with the Council's adopted Hearings Procedure.

2. Recommendations

The Committee is recommended to:

- 2.1 Conduct a hearing into an allegation of failure to comply with the Council's Protocol of Member / Officer Relations.

3. Detail

The Complaint

- 3.1 The complaint under reference SBC/PMOR/01/11 was originally submitted on 25th May 2011 as a complaint under the Members Code of Conduct under reference SBC/58/11, and alleged that a Councillor had breached the Code of Conduct by sexually harassing and bullying a female officer at the Civic Dinner on 20th May 2011.
- 3.2 An Assessment Sub-Committee met on 22nd June 2011, and agreed that the matter should not be investigated under the Code as it concluded that the Councillor was not performing his function as a Councillor at that time of the alleged incident. However, the Sub-Committee asked that the Monitoring Officer, in consultation with the Chair of the Standards Committee and the Head of Human Resources, consider whether the matter should be investigated under the Protocol, and it was agreed that it should be investigated.

The Investigating Officer's Report

- 3.3 An independent investigator was appointed by the Monitoring Officer to carry out the local investigation, and he completed the investigation and finalised his report in February 2012.
- 3.4 The Investigator concluded that there had been a breach of the Protocol in respect of :

Paragraph 1.1 (mutual courtesy and respect)

Hearing of Complaint under the Protocol of Member / Officer Relations

Standards Hearings Panel

Date: 19th October 2012

Paragraph 2.1.9 (promotion of the highest standards of conduct and ethics by leadership and example)
Paragraph 4.1 (mutual respect)
Paragraph 4.2 (use of improper and / or inappropriate language)
Paragraph 4.3 (close personal familiarity).

- 3.5 A copy of the Investigator's Report (Exempt Appendix 1) has been circulated to all parties prior to the Hearing.

Pre-Hearing Arrangements

- 3.6 The Consideration and Hearings Sub-Committee met on 19th April 2012. Neither party had at that stage submitted on the required forms their responses to the Investigator's Report.
- 3.7 In order to know whether the Parties disputed any part of the Report, would wish to call any witnesses to the Hearing, or would wish for any part of the Hearing to be held in the absence of the press and public, the Sub-Committee set a new deadline for both parties to return the forms of 18th May 2012.
- 3.8 It was also agreed that the Hearing be arranged for week commencing 11th June 2012 or as soon as convenient thereafter for all parties and the Investigator. .

Hearing Arrangements

- 3.9 An Assessment Panel of the Standards Committee met on 3rd August 2012 to consider the arrangements for the Hearing.
- 3.10 The Panel considered the Investigator's report, and representations received from the complainant on 11th May 2012, and from the respondent on 31st July 2012, and the procedures for the Hearing. These representations are attached at Exempt Appendix 2 and Exempt Appendix 3. The Panel gave consideration to the timetable for the hearing, the calling of witnesses and whether or not it should be held in public.
- 3.11 The Panel noted that the response from the Respondent had indicated that although he did not accept the factual allegations, he asked if the Panel and the Complainant would consider some form of resolution to the complaint through a less formal route than a hearing. The Panel agreed that the Monitoring Officer should put this to the complainant, but was itself neutral on the matter, as it considered it was for the Parties involved as to whether they wished to agree to any less formal resolution of the complaint.
- 3.12 The Panel agreed that:

Hearing of Complaint under the Protocol of Member / Officer Relations

Standards Hearings Panel

Date: 19th October 2012

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- (1) The Hearing take place on 19th October 2012 or earlier by agreement between the parties. If the hearing is not concluded on that day then it would be adjourned until the next available working day.
 - (2) The Hearing go ahead on that date in accordance with Section 8 of the 'Procedures for Determination of Complaints under the Protocol for Member / Officer relations, even if the Respondent is not present, unless the Panel is satisfied on the day that there is sufficient reason for the Respondent's absence.
 - (3) The Investigating Officer and the Respondent be asked to call a maximum of two witnesses in addition to the Complainant and the Respondent, and that the names of these witnesses be notified to the Monitoring Officer on a date to be identified for inclusion in the papers for the hearing (two weeks prior to the hearing).
 - (4) The Monitoring Officer be asked to contact the Complainant to see whether the Complainant would consider some form of resolution to the complaint through a less formal route than a hearing, but that if this is not accepted then the matter proceed to formal hearing.
 - (5) The Hearing be held in public as there was no information included in the complaint of a personal or confidential nature which would enable the matter to be considered with the press and public excluded.
- 3.13 The Investigator will be present at the Hearing, and will present his report. He has indicated that the Complainant and two other witnesses will give evidence.
- 3.14 The Respondent has stated that he will attend and will be represented at the hearing by a barrister. The Respondent has stated that he will be calling witnesses but has given no details.
- 3.15 A copy of the procedure which the Standards Committee has adopted for the Determination of Complaints under the Protocol of Member / Officer relations, together with the 'Practical Arrangements' for use at the hearing have already been circulated to Members of the Hearings Panel and the Complainant (Appendix 4).
- 3.16 Any additional papers provided by either party, together with a list of witnesses, will be sent out to the Hearings Panel when available.

4. Alternative Options

- 4.1 Any alternative options are set out in the body of the report.

Hearing of Complaint under the Protocol of Member / Officer Relations

Standards Hearings Panel

Date: 19th October 2012

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 The cost of investigating a complaint referred by to the Monitoring Officer are met from the External Audit Fees budget. The Council seeks to keep costs of investigation to a minimum and achieve value for money.

Legal and Human Rights Implications

- 5.2 Complaints under the Protocol of Member / Officer Relations are dealt with in accordance with the Council's adopted procedure for Determination of Determination of Complaint under the Member / Officer relations. Any action taken in relation to complaints is considered a proportionate interference with the rights of those complained against.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.3 The Protocol of Member / Officer Relations is an important document for ensuring that the appropriate standard of behaviour between Members and Officers is understood and maintained in the Council. The Protocol was first adopted in September 2002 and has been kept under review and amended as required by the Council.

Links to One Swindon, Plans and Policies

- 5.4 Monitoring of issues of probity in the Council underpins the Council's plans and policies and the delivery of One Swindon objectives.

Diversity Impact Assessment

- 5.5 A Diversity Impact Assessment has not been completed for this report, as it does not recommend a change in Council policy or service.

Risk Management

- 5.6 A risk assessment has not been completed in relation this report, as it does as it does not recommend a change in Council policy or service.

6. Consultees

- 6.1 The Board Director of Finance, Revenues, Benefits and Property (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

Hearing of Complaint under the Protocol of Member / Officer Relations

Standards Hearings Panel

Date: 19th October 2012

7. Background Papers

7.1 None

8. Appendices

- 8.1 Appendix 1* – Investigating Officer's Report and Appendices (Exempt under Paragraph 1 of Part 1 of the Schedule 12A of the Local Government Act 1972)
- 8.2 Appendix 2 – Representations from the Respondent (Exempt under Paragraph 1 of Part 1 of the Schedule 12A of the Local Government Act 1972)
- 8.3 Appendix 3 – Representations from the Complainant (Exempt under Paragraph 1 of Part 1 of the Schedule 12A of the Local Government Act 1972)
- 8.4 Appendix 4* – Standards Committee Procedure for Determination of Complaints under the Protocol for Member / Officer Relations and the Practical Arrangements for the Hearing (Previously circulated).

*(*These Appendices have been circulated to Panel Members, the Respondent and the Complainant and the Investigating Officer as part of the Pre-Hearing Process. All parties are requested to bring these copies with you to the hearing. Additional copies can be obtained from the Committee Clerk prior to the Hearing if required).*