

STANDARDS HEARING PANEL

Thursday, 16 July 2009

Present: Councillor Cummings (Chair)
Councillors WJ Davies C Teggin
L Fraser

1 DECLARATIONS OF INTEREST

Members of the panel were invited to consider whether they had a personal or prejudicial interest in connection with any of the items on this agenda and, if so, to declare it and state the nature of such interest. No declarations were made.

2 EXEMPT INFORMATION

The Hearings Panel was asked to consider whether the hearing should be conducted in private. Having applied the public interest test, the panel decided that the release of the documentation outweighed any argument that it be withheld.

3 COMPLAINT AGAINST A MEMBER OF THE COUNCIL - CASE REFERENCE 2008/01

1. Summary of the Complaint

1.1 The complaint relates to Councillor Smith's conduct at the Annual Meeting of the Council [which met over a number of evenings, but the date in question was] on 20 May 2008. The complaint states that Councillor Smith, during the course of the debate, directed comments to some of the younger members of the Conservative Group sat opposite him in the Council chamber

1.2 Relevant sections of the Code of Conduct:

The complaint is that Councillor Smith has acted in a manner which amounts to a breach of the Code of Conduct for members of Wirral Council. The current code was adopted by Council on 21 May 2007. The relevant parts of the Code are contained within the general obligations in paragraph 3 of the Code:

(i) You must treat others with respect.

(ii) You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

1.3 Investigations were carried out by Mr Simon Goacher, Acting Monitoring Officer and Head of Legal Services.

1.4 Mr Goacher's report on the allegations was completed on 20 March,2009

1.5 The investigator's report found that there had been a failure to comply with the Code of Conduct. Councillor Smith's case was therefore referred to the Hearings Panel for determination.

2. Procedure

2.1 Following receipt of the investigating officer's report, Councillor Smith accepted that he made an inappropriate and offensive comment.

2.2 He indicated that he would attend the hearing and present his case.

3. Findings of fact

3.1 The findings of fact in the Investigating Officer's report were accepted by the subject member at the hearing .

4. Written Submissions for Hearing

4.1 Councillor Smith read out a prepared statement indicating:

(i) that he had never denied making an inappropriate and offensive comment at the Council meeting on 20 May 2008.

(ii) that he had apologised to the Council verbally and had indicated to the monitoring officer in November 2008 that he was prepared to give a written apology.

(iii) that he wished to offer an unreserved apology to the Hearing Panel.

(iv) that some 14 months had elapsed since the incident and he therefore questioned whether it was in the interests of natural justice for the case to be heard after such a long time.

5. Hearings Panel's decision on whether or not there had been a failure to comply with the Code of Conduct

5.1 The Panel considered the Investigating Officer's report together with the offer on the part of Councillor Harry Smith to submit a written apology to the Council.

5.2 The Panel reached the following decision after considering the Investigating Officer's report and the information referred to in paragraph 4.1 above:

Councillor Harry Smith did breach paragraphs 3(1) and 3(5) of the Code of Conduct by failing to treat others with respect;

5.3 The reasons for this decision are that foul and abusive language such as that used by Councillor Smith at the Council meeting on 20 May 2008 is totally unacceptable. The role of the Panel is to uphold the standards agreed by each member in compliance with the Code of conduct.

On this occasion the Code has been seriously breached and Councillor Smith has accepted that he indeed did breach the Code and has since made an apology. The Panel believe, however, that this apology to the Council was qualified and not sufficient. It therefore instructs Councillor Smith to send a written apology to the Council and that he should serve a period of suspension.

6. Hearings Sub-Committee's decision on what penalty if any ought to be imposed?

6.1 The Panel was concerned that a 14 months had elapsed before formal action, to lodge a complaint about Councillor Smith's conduct was carried out. The Panel expressed the view that officer concerns about member conduct should be taken up at a much earlier stage.

6.2 The Panel decided that Councillor Smith:

(i) should send out a letter of apology in the terms to be agreed by the Director of Law, HR and Asset Management, to all members of the Council and the independent members of the Standards Board on Friday 24 July 2009.

(ii) be suspended from the office of councillor for a period of 5 working days from 10 to 14 August 2009

7. Right to appeal

7.1 Councillor Harry Smith has the right to apply in writing to the President of the Adjudication Panel for England for permission to appeal against the Hearings Panel's findings. Written notice requesting permission to appeal must be received by the President of the Adjudication Panel for England within 21 days of the members receipt of the notification of the Hearings Sub-Committee's findings.