

## STANDARDS COMMITTEE MINUTES - 20 OCTOBER 2005

**Present:** Councillor T Jones (Chair);  
Councillors Borgars, Green, Hanley and Maskell; Mrs A Lee and Mr F Stroud.

**Also in attendance:** Councillor McKenzie and Mrs I Ballsdon

**Apologies:** Councillors Skeats and Wilson.

### RESOLVED ITEMS

#### 3. MINUTES

The Minutes of the meeting held on 11 August 2005 were confirmed as a correct record and signed by the Chair.

#### 4. MEMBERS' INTERESTS

Prior to the consideration of the Item 5 below, members of the Committee were invited to consider whether they had an interest in the matter.

Councillor Borgars declared a personal interest in the Item on the basis that she was acquainted with some of the people who had given evidence.

#### 5. COMPLAINT AGAINST COUNCILLOR MCKENZIE - PRE-HEARING

##### (a) Request for Deferral

The Chair reported that the Monitoring Officer had received a request that afternoon from Councillor Wilson for Item 5 to be deferred, as neither he nor his substitute were able to attend the meeting. The Monitoring Officer advised the Committee that the quorum for its meetings was three Councillors and one independent member. There was no requirement that Members of all political Parties should be present to enable the meeting to proceed. However, there was a requirement that the process for consideration of the complaint be completed by 13 December 2005, and a deferral at this stage could make this more difficult to achieve. Having considered this advice, all members present indicated that they were happy to consider the matter at this meeting.

##### (b) Submission of Additional Information

The Monitoring Officer reported that on 19 October 2005, he had received additional information from Mrs Ballsdon with a request that this also be considered at the meeting. This information related to a separate complaint made by a third party on a separate occasion, which Mrs Ballsdon had presented as evidence of the inconsistency of Councillor McKenzie's behaviour and statements. The Investigating Officer, Mr R Penfold, stated that Mrs Ballsdon had referred to this matter during his

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investigation but had not presented the material at that time. Had she done so, he would have referred the material to the Monitoring Officer for separate consideration under the Local Investigation Procedure. All members present indicated that they were satisfied that the additional material was not relevant to their consideration of Item 5.

### (c) Complaint - Pre-hearing

The Monitoring Officer submitted a report stating that, under the provisions of Section 6 of the Council's Procedure for Local Investigation of Referred Complaints, it was necessary to receive and consider the report of the Investigating Officer, Mr R Penfold, into a complaint made against Cllr McKenzie by Mrs I Ballsdon concerning an incident at the Wycliffe Baptist Church on Thursday 28 April 2005. This complaint had been made to the Standards Board for England in May 2005, and subsequently referred to him for local investigation by an Ethical Standards Officer in June 2005.

The Investigating Officer's report was attached at Appendix A and, in line with the Local Investigation Procedure, the Investigation Officer had shared this in draft form with both the complainant and the Councillor complained about. The witness statements and other supporting documentation referred to in the report had been circulated to Committee Members, and to the complainant and Councillor complained about, under separate and confidential cover.

The Procedure for the Local Investigation of Referred Complaints was attached at Appendix B.

### The Complaint

The report stated that the Monitoring Officer had first become aware of the complaint, to the Standards Board, in a letter from the Board's Referral Case Manager, dated 18 May 2005. The letter had enclosed a notification that the complaint had been referred to an Ethical Standards Officer [ESO], and the notification had described Mrs Ballsdon's complaint in the following terms:

"... that at a public meeting convened in her church to debate the matter [Kings Meadow public baths] Councillor McKenzie sat inappropriately close to her, and was insulting and intimidating towards her, calling her a liar in front of people in the vicinity ... when the complainant tried to move away, Councillor McKenzie's inappropriate behaviour continued, reducing her to tears, leaning his legs against hers and imposing himself directly in front of her face. The complainant ... felt obliged to put her arm up to defend herself and told him to 'get away' . "

The incident had in fact taken place at the political hustings held at Wycliffe Baptist Church, at Cemetery Junction. The hustings were being held as part of the general election campaign and had not been organised by the Council.

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The actual complaint had been referred to him by the ESO, for local investigation, by letter dated 6 June 2005, and was set out more fully by Mr Penfold in paragraph 1.1 of his investigation report.

### The Investigation Process

The report stated that the complainant had also made the same complaint directly to the Council, as a parallel process. Unaware of the concurrent complaint to the Standards Board, he had responded to the complainant on 18 May 2005 in the following terms:

"I note that your complaint concerns events on Thursday, 28 April 2005, at the Reading East Parliamentary Candidate's Hustings at Wycliffe Church at Cemetery Junction. I would observe that this was not a Borough Council event, and that Richard McKenzie was not attending it as a Councillor. I understand that he is an active member of the Church's congregation.

I have also read the report on the incident by Linda Fort in the Evening Post on 3 May 2005.

Given that the incident about which you complain took place at a political meeting, organised independently of the Council, and that Richard McKenzie was not attending it as a Councillor, I cannot see that I have any locus, as the Council's Monitoring Officer, to investigate it. I have, however, drawn your complaint to the attention of Richard McKenzie so that he might be aware of your comments, and to give him an opportunity to respond to you if he wishes to do so."

On receiving the request to conduct a local investigation, he had contacted the ESO to explain the above, and to ask whether in the circumstances she was happy for the complaint to proceed as a local investigation. The ESO had confirmed that she was.

He had written to both Councillor McKenzie and Mrs Ballsdon on 6 June 2005, to explain that he had received the complaint for local investigation from the ESO, and had set out the process for the local investigation in the following terms:

"The local investigation will investigate the complaint that you have made to the Standards Board, and which the Standards Board has referred to me for local investigation, ie the incident that you have described at the political hustings at Wycliffe Baptist Church on 28 April 2005, and no other incident or allegations.

The local investigation procedure involves investigating alleged failures by Councillors to comply with the Member Code of Conduct. I also enclose a copy of the Council's Code of Conduct for Members. Neither you nor the Standards Board have specified which paragraph(s) of the Code that

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Richard McKenzie's alleged action has breached. However, the Code states that it only has effect in relation to the activities of a Councillor undertaken in his/her official capacity, except in the two circumstances set out in paragraphs 4 and 5(a), which are (my italics):

(4) A member must not in his/her official capacity, *or any other circumstance*, conduct him/herself in a manner which could reasonably be regarded as bringing his/her office or authority into disrepute

(5)(a) A member must not in his/her official capacity, *or any other circumstance*, use his/her position as a member improperly to confer on or to secure for him/herself or any other person, an advantage.

I have asked Mr Penfold, as his first step, to establish the basis of Richard McKenzie's attendance at the political hustings, and whether it was in an official capacity as a Councillor (which is different from his activities as a party member). His second step will be to establish whether the allegations that you have made about Richard McKenzie on the day took place in the way you have described.

If Richard McKenzie's attendance at the political hustings was not in an official capacity as a Councillor, then Mr Penfold's investigation will be limited to considering whether any action by Richard McKenzie at the public meeting involved a breach of the code of conduct under paragraphs (4) or (5)(a) above."

The process and timetable followed by Mr Penfold to undertake his investigation was set out in Section 4 of his report. Mr Penfold had interviewed both Mrs Ballsdon and Councillor McKenzie, together with five witnesses, identified by either party. He had also received written statements from two further persons.

In line with Section 4(f)(iii) of the Local Investigation Procedure, Mr Penfold had made a written note of each interview, which he had invited the person interviewed to sign and return as a correct record. As indicated above, Mr Penfold had been unable to interview two witnesses in person. In one case the witness had provided a written statement which Mr Penfold had then discussed with the witness by telephone. In the other case, a facsimile written statement from the witness had been provided by the complainant, and Mr Penfold had communicated by e-mail with the witness, who had been out of the country.

In line with Section 5 of the Local Investigation Procedure, Mr Penfield had sent his draft report, in confidence, to Councillor McKenzie and Mrs Ballsdon, for their comments on 23 August 2005, and had received comments back from both of them. Mr Penfold had also sent copies of Part 6 of his draft report ("findings") to the witnesses whose evidence he had cited in the draft report, one of whom had replied with comments. Mr Penfold had taken these comments into consideration when drafting his final report.

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Mr Penfold had sent the final report to the Monitoring Officer on 13 September 2005. In line with Section 6(b) of the Local Investigation Procedure, the Monitoring Officer had sent a copy of the final report to Councillor McKenzie on 20 September 2005, under cover of a memo. which explained that he would now be referring the report to the Standards Committee for consideration.

In line with Section 6(c) of the Local Investigation Procedure, the Monitoring Officer had sent copies of the final report, and the accompanying witness statements (under confidential cover), to the ESO, and to the complainant, at the same time as the Standards Committee's agenda had been sent out.

### The Code of Conduct

The report re-iterated that any investigation commissioned by the Standards Board had to concern an alleged breach of the Code of Conduct for Members. Under Section 1(2), the Code of Conduct did not have effect in relation to the activities of a Member undertaken other than in an official capacity, except in the following two circumstances:

Section (4) - A member must not in his/her official capacity, *or any other circumstance*, conduct him/herself in a manner which could reasonably be regarded as bringing his/her office or authority into disrepute

Section (5)(a) - A member must not in his/her official capacity, *or any other circumstance*, use his/her position as a member improperly to confer on or to secure for him/herself or any other person, an advantage.

In investigating this complaint, therefore, Mr Penfold had had to ask himself three questions:

- (1) Was Richard McKenzie attending the public meeting on 28 April 2005 as a Councillor?

Mr Penfold had found that he wasn't. The meeting had not been organised by or under the aegis of the Council. It had been held at Richard McKenzie's church, where he was an active member of the congregation. He had not attended the meeting in his role as a Councillor.

This analysis coincided with the Monitoring Officer's initial evaluation of the complaint, as explained to Mrs Ballsdon in his letter to her of 18 May 2005.

- (2) Did Councillor McKenzie's actions on 28 April 2005, as complained about by Mrs Ballsdon, involve him using his official position as a Councillor improperly to gain an advantage for himself or any other person (i.e. a breach of paragraph 5(a) of the Code)?

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Mr Penfold had put this question to Mrs Ballsdon, who had suggested that by sitting next to her, Councillor McKenzie had been seeking to prevent her speaking at the meeting, and thus gain political advantage, as a political tactic employed by Councillor McKenzie's political party. Mr Penfold had not found any evidence to suggest that this was the case.

- (3) Could Councillor McKenzie's actions on 28 April 2005 be seen as bringing his office as Councillor or the authority into disrepute (i.e. a breach of paragraph 4 of the Code)?

This has been the focus of Mr Penfold's investigation into the complaint made by Mrs Ballsdon. There was agreement about a number of the elements of the complaint:

- Councillor McKenzie had sat next to Mrs Ballsdon in Wycliffe Baptist Church, and had initiated the conversation;
- A number of people present, including three of the witnesses, had intervened;
- Mrs Ballsdon had indicated to Councillor McKenzie that he should move away from her, which he had declined to do as a member of the host church;
- Mrs Ballsdon had stood up and moved to the end of the row, and two other people (both witnesses) had come to sit between them;
- Mrs Ballsdon had been approached by a press reporter (also a witness) who had asked her how she was, at which stage Mrs Ballsdon was in tears;
- Councillor McKenzie had approached both Mrs Ballsdon and the reporter and spoken to the reporter.

There were also some significant areas of disagreement:

- The nature of the conversation between Councillor McKenzie and Mrs Ballsdon, whether it was heated, and whether Councillor McKenzie had called her a liar;
- The circumstances by which Mrs Ballsdon had asked Councillor McKenzie to move, and by which she then moved to the end of the row;
- What had happened when Mrs Ballsdon had moved to the end of the row, and the circumstances by which the press reporter had become aware of the incident;

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- What had happened when Councillor McKenzie had joined in the conversation with the press reporter, and whether Councillor McKenzie's actions at this stage might have been physically intimidating to Mrs Ballsdon.

Mr Penfold had reached the following conclusions:

"There is no doubt that Mrs Ballsdon and Councillor McKenzie had a discussion which became heated, although Councillor McKenzie stated to me that he spoke in a mild and calming manner throughout the exchange. Certainly, few of those in the church at the time were aware of the incident until Mrs Ballsdon stood and, by her subsequent actions, drew attention to it.

By his physique, Councillor McKenzie might indeed appear intimidating, a view endorsed by one of the female witnesses. There appears, however, to have been no threatening physical contact between Mrs Ballsdon and Councillor McKenzie, even during the discussion with Ms Fort.

I have no doubt that Councillor McKenzie's conduct was not exemplary on the night in question. He should, for instance, have shown greater readiness to move when others, as well as Mrs Ballsdon, asked him to do so. With the benefit of hindsight, Councillor McKenzie was probably ill advised to have chosen to sit next to Mrs Ballsdon in the first instance."

In the light of this analysis, Mr Penfold had reached the following finding:

"However, in all the circumstances, and on the basis of the evidence presented to me by the witnesses, I do not believe that Councillor McKenzie has breached paragraph 4 (a) of the Code of Conduct."

The report stated that, in considering the Investigation Report, the Committee needed to be aware of the advice issued by the Standards Board in its booklet, "Local Investigations - Guidance to Monitoring Officers and Standards Committees" (November 2004). This stated that if the report found that there had not been a breach of the Code of Conduct, the role of the Standards Committee should be as follows:

"... the standards committee should simply consider the report; it should not seek to interview witnesses or take representations from the parties. The standards committee's role at this stage is to decide whether, based on the facts set out in the report, it agrees with [the report's] finding or believes there is a case to answer"

In the light of the Investigating Officer's finding that the actions complained about on 28 April 2005 did not amount to a breach of the Code of Conduct, and in line with

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Section 6(d) of the Local Investigation Procedure, the Committee must make one of two findings:

- (1) That it accepted the Investigating Officer's finding that the Councillor had not failed to comply with the Code of Conduct for Members as set out in the allegation; OR
- (2) That the matter should be considered at a hearing of the Standards Committee, conducted in accordance with the authority's adopted Procedure for Local Determination Hearings.

If the Committee found as in (2) above, then he would call a Hearing Sub-Committee in line with Sections 11-17 of the Local Determination Procedure, to hear the case.

Members of the Committee questioned the Investigating Officer and the Monitoring Officer on aspects of the investigation and the Code of Conduct, and addressed the three questions highlighted above.

**Resolved -**

- (1) That the Investigating Officer's finding that Councillor McKenzie had not failed to comply with the Code of Conduct for Members as set out in the allegation, be accepted;
- (2) That the Chief Executive and the Monitoring Officer be requested to write to all Members of the Council without delay, reminding them of their responsibilities under the Code of Conduct and pointing out that it might not always be easy for other people, including members of the public and political activists, to distinguish when councillors were or were not acting as councillors or were on Council business.

(The meeting commenced at 6.10pm and closed at 7.09pm).

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