

DETERMINATION OF AN ALLEGED BREACH OF THE MEMBERS' CODE OF CONDUCT OF BLETCLEY AND FENNY STRATFORD TOWN COUNCIL BY COUNCILLOR R. BOWEN-WILLIAMS

Report Author Philip McCourt, Monitoring Officer (MK 252962)

1. PURPOSE OF REPORT

- 1.1 To conduct a Hearing into allegations that Councillor R. Bowen-Williams failed to observe the Members' Code of Conduct.

2. RECOMMENDATIONS:

- 2.1. That the Hearing endorse the directions made by the Monitoring Officer, in consultation with the Chair, as set out at paragraph 7.1 of this report
- 2.2. That, in accordance with the procedures provided to the parties to the Hearing, a Hearing be conducted into allegations, referred for determination by an Ethical Standards Officer under Part III of the Local Government Act 2000, that Councillor Robin Bowen-Williams failed to comply with the Members Code of Conduct of Bletcley and Fenny Stratford Town Council.
- 2.3. That, as provided for by The Relevant Authorities (Standards Committee) Regulations 2001 (as amended), the decision made be submitted to the parties with a notice summarising the decision to be published in a local newspaper.

3. INTRODUCTION

- 3.1 Following the referral of the allegation to the Monitoring Officer for determination by the Standards Committee, the Monitoring Officer undertakes a pre-hearing process in order to prepare this covering report for the Hearing.

- 3.2 The object of the pre-hearing process is to enable the hearing to take place fairly and as efficiently as is reasonably practicable, through conveying to it those aspects, issues and matters related to the investigatory report and the observations or representations made or received in respect of it that are relevant to the matter the subject of the investigation. As such the Monitoring Officer's covering report concerns itself with procedure and does not contain any recommendation as to the outcome of the hearing.
- 3.3 This report, therefore, seeks to convey the outcome of the pre-hearing process and:
- collate the paperwork to be presented or submitted to the Hearing;
 - identify main facts of the case that are in dispute;
 - identify those issues, where appropriate, that are not relevant to the Committee/Panel's hearing of the complaint;
 - list those witnesses which may be called to give evidence; and
 - determine what papers (if any) are likely to be considered in the absence of press or public at the hearing and therefore exempted from publication prior to the hearing.

4. THE ALLEGATION

- 4.1 The allegation made to the Standards Board for England and investigated by the Ethical Standards Officer were made by Ms Maria Craig.
- 4.2 The allegation referred for determination at the Hearing is that Councillor Bowen-Williams failed to comply with the Code of Conduct by bringing his office or authority into disrepute as a result of driving a motor vehicle whilst having consumed alcohol in excess of the legal limit, an offence for which he pleaded guilty, was convicted and received a fine of £200 and a ban from driving for 12 months.

5. THE ETHICAL STANDARDS OFFICER'S REPORT

- 5.1 Following investigation of the allegation by the Ethical Standards Officer, Mr Steven Kingston, the facts found and conclusions from those facts are reflected in Mr Kingston's report dated 19th June 2006, which is annexed hereto and marked **Annex A**.
- 5.2 The Ethical Standards Officer's report includes:
- a summary of allegations and conclusions on whether there have been failures to comply with the Code of Conduct and findings reached;

- the Ethical Standards Officer’s findings of fact;
- the Ethical Standards Officer’s reasoning as to whether there have been failures to comply with the Code of Conduct;
- the Ethical Standards Officer’s decision to refer the matter for local determination;
- evidence which the Ethical Standards Officer used in reaching his findings.

6. PRE HEARING PROCESS

6.1 The pre-hearing process begins with setting a provisional date and writing to the Member to inform him of:

- (i). Reference to the Monitoring Officer – information on the reference
- (ii) Hearing Date and Arrangements – noting the provisional date and inquiring about attendance
- (iii) Standards Committee Procedure - Attaching a copy of the procedure and drawing particular attention to the items on presumption of Hearing in public and the confidentiality of documents
- (iv) Findings open to the Standards Committee – that the Hearing may determine that there has been no breach of the Code, that there has been a breach of the Code but no action should be taken or that there has been a breach of the Code and sanctions should be applied
- (v) Sanctions and Recommendations – that the Hearing may impose the sanctions detailed in the procedure
- (vi) Pre-hearing Process – explaining the process and requesting the return of standard forms concerning:
 - A. Members response to the evidence set out in the Ethical Standards Officer’s (ESO) report.
 - B. Member’s evidence relating to the allegation not previously submitted or identified in the ESO’s report.
 - C. Mitigating circumstances to be submitted by or on behalf of the member (to be returned under separate cover)
 - D. Arrangements for the Standards Committee/Panel hearing.
 - E. Details of proposed witnesses.
 - F. Acknowledgement of forms returned.

- (vii) Presenting the case – explaining that the member is entitled to present his or her own case, or to arrange representation by a lawyer or, with the permission of the Standards Committee, a friend.
 - (viii) Costs – explaining that each party are responsible for their own costs and that no award of costs may be made by the Hearing.
 - (ix) Agenda - timescales
- 6.2 The Ethical Standards Officer is then approached concerning the comments received from the Member.
- 6.3 A pre-hearing review then takes place before the Hearing Chair, based on these written materials, to determine what pre-hearing directions should be made, if any.

7. PRE-HEARING DIRECTIONS

- 7.1 The Hearing is asked to endorse the following directions made by the Monitoring Officer in consultation with the Chair, for the reasons set alongside.
- (a)** That Cllr Bowen Williams be requested to attend, with or without legal representation as he wishes
 - Natural justice requires that Cllr Bowen-Williams should be given every reasonable opportunity to appear before the Hearing and answer the allegation made against him.
 - Whilst the Hearing may proceed in his absence, Cllr Bowen-Williams has stated he will attend.
 - (b)** That Mr Steven Kingston or a representative of Mr Kingston be requested to attend
 - The Hearing would wish a representative present and be available to answer questions upon the report.
 - Whilst the Hearing may proceed in the absence of Mr Kingston or a representative, the SBE has stated that a Mr Richard Moules (counsel) will attend as Mr Kingston's representative.

- (c) That no witnesses are called to give evidence to the hearing
- Neither the Ethical Standards Officer nor Councillor Bowen-Williams indicated that they wished to call any witnesses.
 - There did not appear to the monitoring officer a need for witness led evidence that should be called by the Hearing of its own volition.
- (d) That the evidential bundle be that supplied with the Ethical Standards Officer's report, together with any additional material supplied or requested to be supplied by Councillor Bowen-Williams
- to avoid duplication
 - to rely on redacted material which results in no reference to materials not before the Hearing (as produced by the Ethical Standards Officer and as requested by Councillor Bowen-Williams)
- (e) That there is no need to identify any deviations from the adopted procedure.
- Whilst the Chair may deviate during the hearing in the interests of fairness and efficiency, regard must be had to the Statutory Guidance upon which the adopted procedure is based.

8. KEY ISSUES

8.1 The Allegation

8.1.1 The key issues surround whether or not a conviction of the offence of driving a motor vehicle after consuming excess alcohol, perpetrated during the course of the councillor's private life, amounts to a breach of Paragraph 4 of the Member's Code of Conduct and, if so, what sanction (if any) should be imposed.

8.2 Documentary Evidence

8.2.1 Both the Ethical Standards Officer and Councillor Bowen-Williams seek to rely on the same documentation in relation to the evidence they would wish to put before the Hearing. This material is listed and annexed hereto and marked "**Annex B**" (**Schedule of Evidence**)

8.2.2 In addition, Councillor Bowen-Williams has requested that letters supplied as part of the pre-hearing process are also put before the Hearing. These are also annexed hereto and are marked as "**Annex C**"

8.3 Findings of Fact

- 8.3.1 As part of the pre-hearing process the Monitoring Officer is asked to inform the Hearing of those of the Ethical Standards Officer's findings of fact that have been agreed and those which have been disputed by Councillor Bowen-Williams.
- 8.3.2 In response to that request, Councillor Bowen-Williams has stated that he does not dispute the findings of fact set out in the Ethical Standards Officer's report.

8.4 Precedent

- 4.2.1 The Hearing may wish to have regard to other cases decided by case tribunals or standards committee hearings that have concerned or have involved a councillor being convicted of the offence of driving a motor vehicle whilst having consumed alcohol in excess of the legal limit.
- 4.2.2 Each case is decided on its individual facts, alleged breaches of the Code of Conduct and mitigating circumstances, all of which may differ markedly.
- 4.2.3 Whilst the Hearing may have regard to these cases, they do not form precedent in the legal sense and the Hearing is not bound to follow them in any way.
- 4.2.4 These cases may be found on the website of the Standards Board for England and/or the adjudication Panel for England. These cases are listed in date order.

*SBE11506.05 / APE0346 - Cllr Kehoe of Sefton M.B.C.
– disqualified 1 year by Case Tribunal [previous offence]*

*SBE 11530.05 - Cllr Stweart of Northampton B.C.
- censured by Standards Committee Hearing*

*SBE 1212.05 / APE 0343 - Cllr Ladds of North Hykeham T.C, & N.
Kesteven DC
– reprimanded but no further action by Case Tribunal*

*SBE 11176 - Cllr Carroll of Wyre B.C.
- suspended for two months by Standards Committee Hearing*

*SBE 10551.05 / APE 0279 - Cllr Stroud of Leiston-cum-Sizewell T.C.
– disqualified 2 years by Case Tribunal [other offences]*

*SBE 7414.04 / APE 0257 - Cllr Judge of Boston B.C.
– disqualified 1 year by Case Tribunal [including other breaches of the Code]*

*SBE 5779.04 - Cllr Ahern of Brandon T.C.
- suspended for one month by Standards Committee Hearing*

*SBE 3276.03 / APE 0233 - Cllr Buckle of Isle of Wight Council
– disqualified 1 year by Case Tribunal [included other breaches of the Code]*

9. THE PROCEDURE FOR THE HEARING

- 9.1 The procedure for the Hearing, which the Standard Committee has adopted, for conduct of such hearings is attached to the agenda to this meeting. It was also sent out in advance to the member as part of the pre-hearing process.
- 9.2 Please note that:
- (a) the Committee/Panel is not a Court;
 - (b) evidence will not be taken on oath;
 - (c) persons attending the Committee/Panel will not be expected to stand when addressing the meeting or giving evidence; and
 - (d) comment or questions are to be put to, or through, the Chairman, but that the hearing before the Committee/Panel remains quasi-judicial and the principles of natural justice must be applied where exercising the Standards Committee's functions. Those principles are that:
 - "no man may be a judge in his or her own cause" (*nemo dex in causa sua*); and
 - "hear the other side" (*audi alteram partem*)
- 9.3 Subject to the Member's request to do otherwise if no breach of the Code is found, the decision is required to be published in a local newspaper circulating in the area.
- 9.4 An important part of the process is the consideration of recommendations to the Town Council.

[It should be noted that the advice reported in the Council minutes, that a town council has no power to discipline a member but only the ability to carry out such actions as are considered necessary for the continuing good administration of the authority, was given to the Town Council by the

author of this report – the Monitoring Officer’s view is that that advice is sound but wishes it brought to the Hearings’ attention in the event that the Hearing or any person appearing before it wishes to challenge that opinion].

10. APPEALS

- 10.1 The member who is the subject of a Standards Committee finding may apply in writing to the President of The Adjudication Panel for England for permission to appeal against that finding. The President must receive the member’s written application within 21 days of the member receiving notice of the Standards Committee’s decision. In this application, the member must outline the reasons for the proposed appeal and whether or not he or she wants the appeal carried out in writing or in person.
- 10.2 When deciding whether or not to grant permission to appeal, the President will consider whether or not there is a reasonable chance of the appeal being successful, either in whole or in part.
- 10.3 The President will give the member concerned his or her written decision within 21 days of receiving the application. The President will also give his or her written decision to:
- the ESO concerned;
 - the Standards Committee that made the original finding;
 - the Standards Committees of any other authorities concerned;
 - any parish councils concerned; and
 - any person who made the allegation.
- If the President refuses to give permission, he or she will explain the reasons for that decision.
- 10.4 If permission is granted, the President of The Adjudication Panel for England will arrange for a tribunal to deal with the member’s appeal. The appeal tribunal will consider whether or not to uphold or dismiss the finding or part of the finding made by the Standards Committee.
- 10.5 If the tribunal upholds the Standards Committee’s finding, or part of the finding, it may:
- approve the penalty set by the Standards Committee;
 - require the Standards Committee to set a penalty if it has not already done so; or
 - require the Standards Committee to set a different penalty to that already set.
- 10.6 If the tribunal dismisses the finding of the Standards Committee, the decision and any resulting penalty will no longer apply.

10.7 The Standards Committee must act on any directions given by the appeal tribunal.

Background papers

Correspondence on file relating to the decision of the Standards Board for England, referral for investigation and the pre-hearing process following referral for local determination.