

## STANDARDS COMMITTEE

22 JANUARY 2017

### REPORT OF THE MONITORING OFFICER

#### A.1 OUTCOME OF INVESTIGATION – FAILURE TO COMPLY WITH THE MEMBERS' CODE OF CONDUCT

(Report prepared by Lisa Hastings)

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

In accordance with the District Council's Complaints Procedure, the Monitoring Officer is required to report the outcome of an investigation to the Standards Committee, where an informal resolution has been reached, in consultation with the Council's Independent Person without the need for a hearing.

##### EXECUTIVE SUMMARY

Two complaints were received in October 2017 one from a member of the public, Mr William Hones and the other from District Councillor Baker regarding the actions of District Councillor Anne Davis under the Members' Code of Conduct and Complaints Procedure (**Appendix 1**), which was adopted by full Council on 26 November 2013.

It is alleged that Cllr A. Davis did not have regard for four of the Seven Principles of Public Life:

- **Selflessness** - Holders of public office should act solely in terms of the public interest.
- **Integrity** - Holders of Public Office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships
- **Objectivity** - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Honesty** - Holders of public office should be truthful.

Although not expressly referring to the Rule, it is alleged that Cllr Davis actions contravened Paragraph 10 of the Code of Conduct (*Effect of Other Pecuniary Interests on participation*) by remaining on the Committee after declaring that she attended court with Councillor Bennison, who was the subject of an agenda item before the Standards Committee on 27<sup>th</sup> September 2017.

On the 1<sup>st</sup> November 2017, the Monitoring Officer decided that it was reasonable and appropriate that the complaints merited further investigation. The parties were informed of this decision and that an external investigator would be appointed. Section 5 of the Complaints Procedure sets out how an investigation is conducted and under Section 5.6, the investigation report must contain a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct. Annex E of the Complaints Procedure sets out the Investigation Procedure.

Mr John Austin was appointed as external investigator and following a thorough investigation concluded that there was sufficient evidence to show that Councillor Davis breached Paragraph 10 of the Council's Code of Conduct, in remaining in the meeting and participating the way she did. The investigator did not however consider this was a deliberate or conscious act. Councillor Davis had nothing to gain personally, took advice beforehand and felt that it had been followed. The investigator accepted that her actions were borne firstly out of a genuine wish to support a Council colleague who she felt needed help and secondly a misunderstanding of how her court attendance would be viewed by others given her role on the Standards Committee.

All parties have had the opportunity to comment on the investigation report and the findings contained therein. Consultation has been undertaken with the Independent Person. The report was finalised on 11<sup>th</sup> January 2017.

If an investigation concludes that there is evidence of a failure to comply with the Code of Conduct, the Council's Complaints Procedure at Section 7.1 provides the Monitoring Officer with the authority to obtain an informal resolution, in consultation with the Independent Person, without the need for a hearing by the Standards Committee.

Upon receipt of the external Investigator's draft report Councillor Davis provided a written apology accepting that paragraph 10 of the Code of Conduct had been breach and upon further communication with the Monitoring Officer agreed to undergo refresher training on the provisions of the Code of Conduct, especially in relation to declarations of interest and the effects on participation. The Monitoring Officer considers that these actions are both appropriate and proportionate responses to the investigators findings and in the circumstances, has resolved the matter informally without the need for a hearing.

One Complainant and the Council's Independent Person are in agreement with this outcome as appropriate and proportionate responses to the breach.

## **RECOMMENDATION**

**That the Standards Committee:**

- (a) Notes the outcome of the investigation undertaken by Mr Austin on behalf of the Monitoring Officer in respect of Councillor Davis;**
- (b) welcomes acknowledgement by Councillor Davis that the Code of Conduct has been breached;**
- (c) notes and endorses the Informal Resolution reached in respect of:-**
  - (i) Councillor Davis's written apology contained within the body of the Report;**
  - (ii) Agrees that Councillor Davis should undergo refresher Code of Conduct training; and**
- (d) requests that all elected Members should ensure that their declarations of interest are clear and concise at the meeting and that the Monitoring Officer ensures particular care is taken in recording what Members say under the declarations of interest item on the agenda for the purposes of the minutes.**

## **BACKGROUND & SUMMARY OF THE INVESTIGATOR'S CONCLUSIONS:**

Paragraph 10.1 of the Member's Code of Conduct states:

*"If you have ... a non-pecuniary interest in any business of your Authority which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and you are present at a meeting of the authority at which such business is to be considered or is being considered you must:-*

- (a) Disclose the existence and nature of the interest in accordance with paragraph 7.1 (but subject to paragraph 12)*
- (b) Withdraw from the room or chamber where the meeting considering the business is being held, immediately after making your representations or in any other case when the business is under consideration, unless you have obtained a dispensation from your authority's Monitoring Officer.*

**In response to the allegations the external Investigator has provided a Summary of Findings in conclusion to the investigation:**

- Given her attendance in court to support Councillor Bennison, Councillor Davis was correct in declaring a non-pecuniary interest at the Standards Committee on 27 September 2017.
- There is no conclusive evidence that she said she was a friend when declaring the interest.
- Councillor Davis stated that she would consider the matter with an open mind.
- She also stated that she applied the public interest test when deciding to stay in the meeting.
- On the evidence in front of me, I am of the view that Councillor Davis made an error of judgement when applying the public interest test and under-estimated the strength of public perception in such matters. The fact that she attended court would in my view cause people to think that she had an allegiance to Councillor Bennison over and above being a fellow councillor.
- I therefore find that there is sufficient evidence to show that Councillor Davis breached Paragraph 10 of the Council's Code of Conduct in remaining in the meeting and participating the way she did.
- I do not however think this was a deliberate or conscious act. She had nothing to gain personally. She took advice beforehand and felt that she followed it. I accept that her actions were borne firstly out of a genuine wish to support a council colleague who she felt needed help and secondly a misunderstanding of how her court attendance would be viewed by others given her role on the Standards Committee for the issue in question.
- Given the passage of time since Councillor Davis' had relevant training, and my view that she made an error of judgement partly based on a misunderstanding, I recommend that she be asked to undertake further training on the Council's Code of Conduct.

- Paragraph 10.1 states, *“If you have ... a non-pecuniary interest in any business of your Authority which a Member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and you are present at a meeting of the authority at which such business is to be considered or is being considered you must:-*
  - (a) *Disclose the existence and nature of the interest in accordance with paragraph 7.1 (but subject to paragraph 12)*
  - (b) *Withdraw from the room or chamber where the meeting considering the business is being held, immediately after making your representations or in any other case when the business is under consideration, unless you have obtained a dispensation from your authority’s Monitoring Officer.*

### **Principles of Public Life:**

In addition to Paragraphs 7.1 and 8.1 of the Code of Conduct it is necessary to highlight that these obligations are required to ensure that *“holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear reasons in so doing”*. Therefore, by failing to disclose the existence and nature of a Non-Pecuniary Interest, both Councillors contravened the Openness Principle of Public Life.

## **INFORMAL RESOLUTION AND SANCTION**

### **Informal Resolution and Sanction:**

Councillor Davis has acknowledged the breach and her written apology is contained within this report. In accordance with Section 7.1.1 of the Council’s Complaints Procedure, the Monitoring Officer is authorised in consultation with one of the Independent Persons to seek an informal resolution.

Councillor Davis undertook Code of Conduct training on two occasions in 2015, one as a member of the Planning Committee, both sessions include sections on declarations of interest and the effect on participation. Through this investigation, Councillor Davis has gained practical experience and application of the Code of Conduct however, given the passage of time since the training, and the acceptance that she made an error of judgement, it was recommend that further training on the Code be provided, to which Councillor Davis has agreed.

Consideration was given to any resolution being appropriate and proportionate, with the investigation outcome and the resolution being reported to the Standards Committee. The Committee is held in public, the Members can provide comments and observations and the minutes of the meeting are reported to full Council.

Consideration was given to the sanctions which are afforded to the Committee at Section 8 of the Complaints Procedure and whether any of the remaining ones would be more appropriate. Due to the circumstances of this case it is not considered that further sanctions could have been reasonably recommended following a hearing of the Standards Committee.

## **WRITTEN APOLOGY**

- (a) From Councillor Davis:

*Dear Mr Austin,*

*As you are aware, I have read the content of all the papers concerning the complaint against me, and responded to the best of my ability.*

*Having objectively considered that evidence, I believe and accept that I may have inadvertently and unintentionally breached article 10 of the councillor's code of conduct, and certainly, that I could be perceived to have done so. For that, and the expense caused to the council by that mistake, I am very sorry.*

*Would you please accept and pass on my apology for so doing, and pass it on to all concerned? Thank you so much.*

*Yours sincerely,*

*Anne*

## **CONSULTATION WITH THE INDEPENDENT PERSON**

John Wolton has provided the following comments in response to the consultation with him on the investigation findings and the proposed informal resolution:

*“Cllr Davis duly phoned (on 13<sup>th</sup> December) and advised me of her concern and the circumstances that she now faced. A lengthy phone call ensued.*

*Towards the end of our discussion I felt that an apology would be appropriate and Cllr Anne Davis agreed.*

*My thoughts on the situation are that Cllr. Anne Davis was by naivety incorrect in taking further steps to be present at the confidential meeting of the Standards Committee as rightly noted by the complainants.*

*It is also noted that the Standards Committee as a whole knew of her previous declaration of interest and could have advised her of the inappropriate attendance at that confidential meeting”.*

A member who is the subject of a complaint, as the right to speak to an Independent Person as part of the process.

## **MISCELLANEOUS MATTERS**

The Standard's Committee minutes are draft subject to confirmation at the next meeting and those draft minutes for 27<sup>th</sup> September state “Councillor Davis declared a non-pecuniary interest in that she had attended the Court Hearing in respect of Councillor Bennison but that she was present at the Standards Committee with an open mind.”

Witness testimony from those present at the meeting however varied on whether Councillor Davis actually said she had an open mind.

There was also dispute as to whether Councillor Davis said in her declaration of interest that she was a ‘friend’ of Councillor Bennison. Some witnesses think she did, some couldn't recall and one remembered her saying that she wasn't a particular friend. Reference to the word ‘friend’ was included in the original draft of the minutes but was

deleted after representations made by Councillor Davis, who denies using the word. These representations were received very shortly after the draft minutes were published and prior to any complaints being received. Reference to the word 'friend' was however also referred to in the Decision Notice dated October 2017. The Monitoring Officer clarified that the inclusion of the word 'friend' in the Decision Notice, was just prior to the draft minutes being amended. The update was not reflected in the Council agenda for its meeting on 21<sup>st</sup> November 2017, and this was an error.

During the investigation, Councillor Davis has made representations for the meetings to be recorded so that there is an audio recording of what was said by members under declarations of interest. It is not considered a proportionate response to the outcome of this investigation to record all meetings of the Standards Committee, although the Monitoring Officer does agree to ensure that particular care is taken in recording what members actually say under the declarations of interest item on the agenda for the purpose of the minutes. In addition, elected members are reminded that it is their responsibility to provide clear and concise declarations of interest with reasons if necessary.

## **APPENDICES**

- Appendix 1 – Code of Conduct and Complaints Procedure