

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **J110**

TO: STANDARDS COMMITTEE

DATE OF MEETING: 16 October 2009

STANDARDS FOR ENGLAND BULLETIN (ISSUE 45)

1. **PURPOSE OF REPORT**

1.1 To receive the latest bulletin published by the Standards For England.

2. **RECOMMENDATION**

2.1 That the content of this report be noted.

The Committee is able to resolve this matter.

3. **FINANCIAL IMPLICATIONS**

3.1 None.

4. **RISK MANAGEMENT**

4.1 Not applicable to this report.

5. **KEY INFORMATION**

WRITTEN APOLOGIES

5.1 Clarification is provided on the circumstances in which the sanction of an apology is appropriate for the member being found to be in breach of the Code of Conduct. It is highlighted that the apology may not be verbal. The sanction may also not be appropriate where the member has shown no remorse for their conduct and there is no evidence at the hearing to indicate that the member is able to acknowledge their behaviour and its impact on others.

5.2 The Committee may not impose a longer suspension period (up to the 6 month maximum) as a means to encourage the member to opt to provide an apology instead.

5.3 Whilst it is not emphasised in the Bulletin, the suspension of a member for a period of up to 6 months or until an apology has been received, must always be carefully worded so that it does not read as though the suspension could go beyond the maximum 6 month period if the apology is not made before. In other words, the sanction should be expressed to be a suspension for a specified period, not exceeding 6 months, or such earlier time as a written apology is sent in a form specified by the Committee.

- 5.4 The Hearings Sub-Committee will always be provided with details of the full array of sanctions available to it. For information Regulation 19 of the Standards Committee (England) Regulations 2008 provides that if a standards committee makes a finding that a member had failed to comply with the Code of Conduct and that a sanction should be imposed, that sanction shall be any one of, or any combination of, the following:
- (a) censure of that member;
 - (b) restriction for a period not exceeding six months of that member's access to the premises of the authority or that member's use of the resources of the authority, provided that those restrictions –
 - (i) are reasonable and proportionate to the nature of the breach; and
 - (ii) do not unduly restrict the person's ability to perform the functions of a member;
 - (c) partial suspension of that member for a period not exceeding six months;
 - (d) suspension of that member for a period not exceeding six months;
 - (e) that the member submits a written apology in a form specified by the standards committee;
 - (f) that the member undertakes such training as the standards committee specifies;
 - (g) that the member participate in such conciliation as the standards committee specifies;
 - (h) partial suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the standards committee;
 - (i) partial suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the standards committee specifies;
 - (j) suspension of the member for a period not exceeding six months or until such time as the member has submitted a written apology in a form specified by the standards committee;
 - (k) suspension of the member for a period not exceeding six months or until such time as that member has undertaken such training or has participated in such conciliation as the standards committee specifies.
- 5.5 A sanction commences immediately or where it is a sanction under (b) to (k) above or otherwise includes a combination of sanctions, the Committee has discretion to direct that the sanction commences on a later date provided it is within 6 months of the sanction being imposed.

INTIMIDATION AND THE CODE

- 5.6 Members will note that the Adjudication Panel has made its first determination on paragraph 3(2)(c) of the Code which prohibits a member from intimidating or attempting to intimidate a complainant in a Code of Conduct investigation. The case concerned Councillor Buchanan of Somerset County Council and complaints made against him under the Code by the Chief Executive of the Council. The councillor had proceeded to make a number of formal complaints against the Chief Executive. The question before the Tribunal was whether those complaints by the councillor which were undoubtedly intended to cause the Chief Executive harm in his employment, could also offend paragraph 3(2)(c).
- 5.7 The key points of the decision are that:
- “intimidate” should be given its ordinary dictionary meaning and should be interpreted as “to force to or to deter from some act by threats of violence”.
 - The councillor must have intended to intimidate the complainant to change his/her evidence against the councillor or not to make further complaints
 - It does not matter that the complainant was not actually intimidated by the councillor’s actions, attempt is sufficient to breach the paragraph.
- 5.8 On the facts of the case, the Adjudication Panel decided that the councillor had not intended to intimidate the Chief Executive to change his evidence and deter him from further complaints, but had acted out of revenge. Paragraph 3(2)(c) had not therefore been breached, but it was nevertheless serious conduct which had brought the councillor’s office into disrepute meriting disqualification as a councillor for 2 years.

ONLINE MONITORING SYSTEM

- 5.9 The Monitoring Officer can confirm that the quarterly returns with statistical data about the Committee’s handling of complaints have continued to be filed with Standards For England in accordance with the applicable timescales.

6. APPENDICES

Appendix 1 – Standards For England Bulletin 45 (August 2009).

7. BACKGROUND PAPERS REFERRED TO:

None.

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