



Standards Committee

21 January 2009

Report from the Borough Solicitor

For Action

Wards Affected:
ALL

Allegation of a breach of the Code of Conduct

***Not for publication (below the line)**

This report and the appendix to it are not for publication because they contain information that will be presented to the Standards Committee set up to consider a matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008 or referred under 58(1)(c) of the Local Government Act 2000.

1. SUMMARY

- 1.1 This report summarises the result of an investigation into an allegation that Councillor Bertha Joseph breached the Code of Conduct and attaches the investigator's report for the Committee to consider.

2. RECOMMENDATIONS

That members:

- 2.1 Agree that this report is exempt information.
- 2.2 Agree that the press and public should be excluded while considering this report.
- 2.3 Agree that there is no evidence of a breach of the Code of Conduct.
- 2.4 Note that the Borough Solicitor will write to Councillor Joseph to remind her of the importance of declaring gifts and hospitality.

3. DETAIL

Exempt information

- 3.1 Regulation 8 of the Standards Committee (England) Regulations provides that all information presented to the Standards Committee when considering an allegation of a breach of the Code of Conduct is exempt information. However the test for exempt information is a two part test and information is only exempt if the committee consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 3.2 The Access to Information Rules in the Constitution provide that the committee may exclude the press and public when it considers exempt information.
- 3.3 Usually officers would recommend that the consideration of complaints and any hearings should be held in public so that the process is as transparent and open as possible. However in this case officers recommend that the press and public should be excluded from the meeting while this report is considered.
- 3.4 The investigation into the allegations by Mr Fernandez uncovered information that relates to a possible further breach of the Code of Conduct by Councillor Joseph. Members should note that the investigator had no powers to investigate this further possible breach. His powers related only to the allegations made by Mr Fernandez. Standards Board advice was that the further possible breach should be referred to the Standards (Initial Assessment) Sub-Committee for consideration.
- 3.5 As members are probably aware complaints are referred to the Initial Assessment Sub-Committee before a member has a chance to comment or respond to the allegation and before any investigation of the allegation can take place to establish the bona fides of the complaint. It is considered unfair to have an allegation in the public domain when a member has not had the opportunity to respond to it. Standards Board guidance is that complaints should be kept confidential before the Initial Assessment Sub-Committee has decided whether to investigate the complaint.
- 3.6 Members are therefore recommended to exclude the press and public while this report is considered.

Summary of the allegation and the report

- 3.7 The allegation submitted by Mr Fernandez was that Councillor Joseph failed to declare twelve gifts or hospitality that were each worth more than £25 during the period 15th November 2007 – 12th September 2007.

- 3.8 The investigators report is attached as **appendix 1**. Members are reminded that disclosure of information obtained by an investigator is prohibited by section 63 of the Local Government Act 2000.
- 3.9 The investigator has concluded that there was no breach of the Code of Conduct in relation to six of the allegations because they are considered gifts from a friend and members are not required to declare the receipt of gifts and hospitality from friends.
- 3.7 The investigator has concluded that there was no breach of the Code of Conduct in relation to three of the allegations because the gifts were worth less than £25 and members are not required to declare the receipt of gifts and hospitality worth less than £25.
- 3.8 The investigator has concluded that there was no breach of the Code of Conduct in relation to one allegation because it was a goodwill gesture between a supplier and a long standing customer.
- 3.9 The investigator has concluded that there was no breach of the Code of Conduct in relation to one allegation because it was an official engagement for the Mayor.
- 3.10 Members are recommended to accept the investigator's findings that there has been no breach of the Code of Conduct in relation to these eleven allegations.
- 3.9 The investigator has concluded that there may have been a breach of the Code of Conduct in relation to one allegation however for the reasons set out below members are recommended not to take any further action in relation to this allegation.
- 3.10 The investigator was unable to conclude what the value of the gifts from Kingsbury Printers were. Mr Fernandez alleges that the gift was worth £70 and this valuation is supported by a letter provided by Mr Dash Patel of Kingsbury Printers. However Mr Patel would not provide a further statement confirming that valuation and would not meet with the investigator to discuss the gift. The investigator notes some concerns with the letter from Mr Patel and his reluctance to confirm the valuation.
- 3.11 Councillor Joseph for her part states that the two gifts that she received were worth less than £5 each and she did not therefore have to declare them.
- 3.12 Taking into account the difficulty in resolving the disputed valuation, the possible value and type of gift concerned and the investigator's findings on the other eleven allegations, officers recommend that the Committee find that there has not been a breach of the Code of Conduct in relation to this allegation.

- 3.13 As a result of the investigator's report the Borough Solicitor will be writing to Councillor Joseph to stress the importance of declaring gifts and hospitality.

What is the committee required to do?

- 3.13 The purpose of this report is for the Committee to receive the investigator's report and to make one of the following findings that is required by legislation;
- a) That there has been no breach of the Code of Conduct; or
 - b) That the matter should be considered at a hearing of the Standards Committee; or
 - c) That the matter should be referred to the Adjudication Panel for determination.
- 3.14 Members are asked to note that at this time the Committee has no power to make a finding that there has been a breach of the Code of Conduct as a hearing would have to be held before the Committee could reach such a conclusion.
- 3.11 For the avoidance of doubt the Committee can make a different finding in relation to each of the different allegations.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from this report.

5. STAFFING IMPLICATIONS

- 5.1 There are no direct staffing implications arising from this report.

6. DIVERSITY IMPLICATIONS

- 6.1 Officers believe that there are no specific diversity implications in this report.

7. LEGAL IMPLICATIONS

- 7.1 This allegation has been referred to the Committee under Regulation 17 of the Standards Committee (England) Regulations 2008.

Background Information

Standards Committee (England) Regulations 2008

Should any person require any further information about the issues addressed in this report, please contact Dan Bonifant on 0208 937 1368.

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