



Standards Committee

2nd May 2012

Supplementary Report from the Director of Legal and Procurement

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***Not for publication (below the line)**

This report and the appendix to it are not for publication because it contains a confidential report that will be presented to the Standards Committee set up to consider a matter under regulation 17 of the Standards Committee (England) Regulations 2008.

1. SUMMARY

- 1.1 The Investigator appointed by the Monitoring Officer has now completed her report into allegations that Councillor John breached the Members' Code of Conduct. This report discusses the Investigator's report which is attached as **Appendix 1**.
- 1.2 As part of the statutory process that must be followed when considering an allegation that a member has breached the Code of Conduct, the Committee is required to either accept a Monitoring Officer Investigator's finding that there has been no breach of the Code of Conduct, or agree to hold a hearing to determine whether there has been a breach of the Code of Conduct.

2. RECOMMENDATIONS

That members:

- 2.1 Agree that the public interest in holding the meeting in public outweighs the public interest in having the meeting in private and that the meeting should be held in public and this report and the Investigator's report should be published.
- 2.2 Agree that there has been no breach of the Code of Conduct on the part of Councillor John.

3. DETAIL

Attendance of the press and public

- 3.1 Section 63(1) and (4) of the Local Government Act 2000 makes the Investigator's report attached as **Appendix 1** confidential and the disclosure of it an offence for which a term of imprisonment can be imposed. However the report can be disclosed to the Standards Committee to enable it to perform its functions.
- 3.2 At the meeting of Standards Committee the information presented, including the Investigator's report, becomes 'exempt' information by virtue of Regulation 8 of the Standards Committee (England) Regulations 2008. The press and public may be excluded from a meeting where exempt information is considered but only if the committee considers that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In such circumstances the information is also exempt from publication.
- 3.3 In considering whether to exclude the public, and keep the information private, members are advised to take into account the necessity not to prejudice a fair hearing for the member who has been complained of. Members will also bear in mind the effect of Regulation 17(4) which allows the subject member to prohibit the publication of a notice stating that the Standards Committee has found that there has been no failure to comply with the Code.
- 3.4 It is therefore for the Committee to decide whether the public interest favours the disclosure of the Investigator's report, in which case the meeting and discussions about the report will be held in public and confidentiality over the report will be waived, or whether the public interest favours maintaining the confidentiality of the report, in which case in so far as detail in the report is discussed, the meeting will be held in private and the press and public excluded.
- 3.5 Standards Board guidance states that in most cases the public interest will favour holding the meeting in public because the complaints process should be as transparent and open as possible. In this case, where there has already been considerable publicity in the press, members may feel that the investigation report is very unlikely to prejudice a fair hearing for Councillor John. Councillor John has confirmed that she wishes the report to be in the public domain and the meeting to be held in public. Members are advised that the public interest favours disclosure of the Investigator's report and the conduct of the meeting in public.
- 3.6 If Members agree that the meeting should be held in public then copies of the relevant reports will be made available to any members of the press and public who are present at the meeting.

What the committee is required to do

- 3.7 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 (for the avoidance of doubt the Committee can make a different finding in relation to each of the different allegations);

- a) That it accepts the Investigator's findings 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;
- 3.8 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 has to be held before the Committee can reach such a conclusion.
- 3.9 A brief summary of the investigation, the allegations and the Investigator's findings is set out below.

Summary of the investigation

- 3.10 On 6th February 2012 the Standards (Initial Assessment) Sub-Committee referred the allegations that Councillor John had breached the Code of Conduct to the Monitoring Officer for investigation.
- 3.11 The Monitoring Officer appointed Hazel Salisbury, Consultant Solicitor, Wilkin Chapman Goolden Solicitors. Ms Salisbury is a former Monitoring Officer of Nottinghamshire and Lincolnshire County Councils from 2007 to 2009 and was a Director of Casework for the Standards Board for England (later Standards for England) where she was responsible for accepting and managing complaints relating to the Code of Conduct for Councillors and as part of that role was also an Ethical Standards Officer.
- 3.12 Ms Salisbury has conducted a thorough and detailed investigation of the allegations and her draft report was made available to Councillor John, Councillor Kataria and Councillor Lorber to make comments. Any additional comments were taken into account by the Investigator and included in her report.

Summary of the Allegations

- 3.13 On 23rd December 2011 Councillor Lorber, Leader of the Liberal Democratic Party, received a copy of an email from Councillor Kataria, a Labour Party Councillor, to Councillor John, Leader of the Labour Party. The email alleged that Councillor John had sought to interfere with the proper consideration of a planning application for a Hindu temple in that she:
- (a) telephoned him on 14 December 2010 to instruct him to vote against a planning application for the Sai Baba Temple;
 - (b) told him on the evening after the planning committee that she wanted to meet him for disciplinary action for what happened at the planning meeting;
 - (c) forced him to agree not to attend a later committee meeting in February 2011 at which the Application was scheduled to be considered again; and
 - (d) that three councillors had been removed from considering the Application in planning committee and replaced with Christians, implying that this was instigated by Councillor John and was for the purpose of preventing the approval of the Application

- 3.14 Early in January 2012 Councillor Lorber passed a copy of this email to the Monitoring Officer and on 19th January 2012 Councillor Lorber made a formal complaint to the Standards Committee.
- 3.15 During the course of the investigation Councillor Kataria also alleged that Councillor John had;
- (e) procured legal advice that prevented other Councillors from participating in consideration of the planning issue
 - (f) put pressure on officers to change their advice on the planning merits of the application
- 3.16 *The Investigator made the following findings in relation to the above allegations:*
- (a) The Investigator is not satisfied that the alleged phone conversation of 14th December 2010 with Councillor John took place. Even if there was a telephone conversation on 14th December 2010, the Investigator found that Councillor John did not attempt to influence Councillor Kataria's decision on whether or not to support the application in the planning committee.
 - (b) The Investigator is not satisfied that the alleged conversations on the evening after the planning committee took place and the Investigator found that Councillor John did not threaten Councillor Kataria with disciplinary action in December 2010 or at all.
 - (c) Councillor Kataria alleged that at the meeting on 18th February 2011 he was forced not to attend the subsequent planning committee consideration of the Sai Baba Temple. The Investigator is satisfied that Councillor John did not make the demands alleged.
 - (d) The Investigator considered that the only changes made to the Labour group representation on the Planning Committee were administrative in nature
 - (e) The Investigator found that the legal advice on the question of interests relating to the Sai Baba temple was correct, that it was properly sought by the Chair of Governors of Pavitt Hall, that Councillor John played no part in obtaining it, and that there would have been nothing improper if she had done so.
 - (f) The Investigator is satisfied that officers reached a valid view on the use of the building by a proper consideration of the arguments
- 3.17 Councillor Kataria complained during the investigation that Councillor John slandered him at the Labour Group meeting on 20th February 2012 by indicating that he had copied his 23rd December 2011 email to Councillor Lorber. The Investigator noted that even if Councillor John had insinuated that Councillor Kataria had sent the email, which the investigator is satisfied she did not, it would only be slanderous if untrue. It is true that Councillor Kataria sent Councillor Lorber the email; at the outset of the investigation it was unclear who had sent the email to Councillor Lorber. Councillor Kataria had denied it was him. Technical advice on the email system and admission

by Councillor Kataria on 5th April 2012 to the investigator confirms that it had in fact been sent to Councillor Lorber by Councillor Kataria.

- 3.18 The Investigator found that, for the reasons set out in her detailed report and outlined above, none of the alleged offending actions took place. The Investigator found that there was no corroborating evidence for any of Councillor Kataria's allegations and that his evidence is not to be relied upon. Where the alleged offending actions are found not to have taken place they cannot have caused a breach of any kind in Councillor John's compliance with the Council's Code of Conduct. The Investigator considered that Councillor John has not failed to comply with the Council's Code of Conduct in respect of the complaint.

Next steps

- 3.19 The next steps depend on whether the Committee accepts the Investigator's finding in relation to Councillor John that there has been no breach of the Code of Conduct, or whether the Committee considers that a hearing should be held to determine whether there has been a breach of the Code of Conduct.
- 3.20 If the Committee accepts the Investigator's finding that there has been no breach of the Code of Conduct in relation to the allegations then Councillor John will be given the choice as to whether a notice stating that there has been a finding of no breach of the Code of Conduct and the matters that it relates to is published in the newspaper and placed on the Council's website.
- 3.21 If the Committee decides to hold a hearing in relation to the allegations then a hearing will be held by the Standards Committee.

Councillor Kataria

- 3.22 The Investigator considered the actions of Councillor Kataria and whether to recommend to the Standards Committee to refer his actions to the Monitoring Officer for investigation in relation to the Code of Conduct's requirement to treat others with respect and not to bully any person.
- 3.23 The Code of Conduct does not apply to Members of Local Authorities at all times, but only when acting in an "official capacity". For the reasons set out in her report the Investigator is not convinced that Councillor Kataria's action in sending the 23 December 2011 email to Councillor John, Councillor Lorber and others, in seeking to blame other members of his group for its disclosure; in lying in this investigation and elsewhere about that disclosure and in complaining of slander by Councillor John in the group meeting falls within the definition of "official capacity".
- 3.24 No recommendation is made by officers to members of this Committee in respect of Councillor Kataria's actions. This matter is for members to consider and decide.

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.

7.2 Section 63(1)(aa) of the Local Government Act 2000 provides an exemption for the Standards Committee from the strict requirement not to disclose the Investigator's report.

Background Information

Standards Committee (England) Regulations 2008

*'Standards Committee Determinations' – Guidance issued by Standards for England
'How the Council will deal with complaints that a member of the Council has breached the Code of Conduct' – Procedure note issued by Brent Council*

'Local Determinations of Allegations of Misconduct against Members of the Council' – Procedure note issued by Brent Council

Should any person require any further information about the issues addressed in this report, please contact Fiona Ledden, Director of Legal and Procurement on 0208 937 1292.

**Fiona Ledden
Director of Legal and Procurement**