

MINUTES OF THE STANDARDS COMMITTEE
Tuesday, 13th October, 2009 at 6.00 pm

PRESENT: John Mann (Chair), Rochelle Gelman (Vice-Chair) and Councillors Bessong, Colwill and J Moher.

Also in attendance were: Claire LeFort (Investigator), Terry Osborne (Monitoring Officer), Anne Reid (Democratic Services) and Kathy Robinson (Legal).

1. Declarations of personal and prejudicial interests

None at this meeting.

2. Hearing

The committee met to conduct a hearing into allegations of breaches of the Councillor's Code of Conduct by Councillor Bertha Joseph. Having confirmed that the meeting was quorate, the Chair opened the meeting and introduced those present. Members confirmed that they had received the Procedure Note for the Hearing.

The committee was advised that Councillor Joseph had contacted Democratic Services that afternoon, and confirmed that she would not be attending the hearing. She had stated that, while not wishing to disrespect the committee, she was concerned that the hearing would take place in public and become a 'political circus'. Additionally, Councillor Joseph advised that earlier in the day she had suffered a bereavement, her brother, and had to attend prayers that evening. The Monitoring Officer advised that the committee needed to decide whether to proceed in her absence. The committee was advised to take into account Councillor Joseph's representations. The committee noted that Councillor Joseph had raised concerns in her pre-hearing questionnaire at the possibility of the press and public being present at a hearing in public and had said in that document she would attend if it was held in private. The Monitoring Officer advised that Councillor Joseph had been written to twice reminding her of the meeting. The committee considered that Councillor Joseph had received sufficient notice of the hearing, indications were that she would not attend a hearing while there was a risk that it could take place in public and, in the absence of further detailed information on her bereavement, the committee decided the hearing should proceed.

The committee AGREED to proceed in the absence of the member concerned.

Councillor Colwill asked that his dissent from the decision to proceed in Councillor Joseph's absence be recorded.

The committee next considered whether to exclude the press and public from the hearing. The Monitoring Officer outlined concerns expressed by Councillor Joseph about holding the hearing in public in both her pre-hearing questionnaire and in a telephone conversation with Democratic Services earlier that day. The Monitoring

Officer set out the test to be applied in deciding whether the hearing should exclude the public, namely whether the public interest in maintaining confidentiality outweighed the public interest in disclosing the information. Reference was made to the Standards for England guidance. Members considered the seriousness of the allegations, the need for transparency, the level of public interest given the profile of the office held by Councillor Joseph at the time the alleged incidents took place and the fact that the report in relation to this matter was already in the public domain. The committee agreed that the press and public would not be excluded from the hearing but would be asked to leave at the stages when the committee deliberated.

The committee went on to consider whether the papers for the hearing should be disclosed and, if so, which papers. The Monitoring Officer recommended that the report from Claire Lefort, the Investigator, be made public but that the appendices remain confidential as they contained information from people who had not agreed for their details to be made public. Further, that they contained information about people who were not directly concerned with the hearing, and personal issues about people which were not relevant to the allegations. The Investigator, Claire LeFort advised on the procedure used for conducting interviews and the warnings given to interviewees that information might fall into the public domain and the relevance of information disclosed insofar as it related to personal interactions.

A view was expressed that all papers should be made public so that Councillor Joseph would be able to refer to them in her defence. Members also asked whether information could have been anonymised in advance of circulation. The Monitoring Officer responded that Councillor Joseph had seen all the information and had been given an opportunity to respond. The Monitoring Officer said that the covering report was sufficiently detailed and where relevant quoted from the background papers including the appendices to the report. It would not be practical to release some parts of the background documentation and not others. It was noted that information on the allegations was already in the public domain following the decision of the Standards Committee on 25 August to release the Investigator's report.

The committee agreed by a majority to disclose the Investigator's report but that the appendices should remain confidential.

Councillor Colwill presented to the Chair additional evidence from Mr Malcolm of Malcolm Butchers. The committee agreed that this would be considered later in the meeting, in accordance with the procedure.

The committee AGREED the following preliminary matters:-

- (i) that the Hearing would take place in public;
- (ii) that the Investigator's report be disclosed to the public but that the appendices remain confidential.

Councillor Colwill expressed the view that consideration should have been given to the additional evidence received at the start of the meeting ie. the letter from Malcolm Butchers, prior to taking the decision to proceed in her absence.

At this stage, the meeting adjourned for five minutes.

When the meeting resumed the Chair invited the Monitoring Officer to outline the pre-hearing summary.

The Monitoring Officer advised that the allegations before the committee were as follows:-

That Councillor Joseph:

- a) failed to register receipt of gifts of £900 from Twinstar Motors and Malcolm Butchers within 28 days of receiving the gifts;
- b) brought her office into disrepute by seeking and obtaining cash gifts which were used by her to buy items that conferred a personal benefit on her;
- c) used her position to gain an advantage for herself by seeking and obtaining cash gifts which were used by her to buy items that conferred a personal benefit on her.

The Monitoring Officer set out the findings of fact agreed by the Investigator and by Councillor Joseph in her response to the pre-hearing questionnaire:

- a) Councillor Joseph actively sought financial contributions from local businesses for the Mayor's Charity Balls during her Mayoralty in 2006/07 which Councillor Joseph described as 'sponsorship';
- b) Councillor Joseph received £400 in cash from Twinstar Motors in February 2007;
- c) Councillor Joseph received £500 in cash from Malcolm Butchers in November 2006;
- d) the money did not pass through any bank accounts;
- e) no receipts were issued by the Mayor's Office for the money;
- f) Councillor Joseph told Malcolm Butchers that in return for any sponsorship their name would appear in the brochure;
- g) the cash gifts from Twinstar Motors and Malcolm Butchers amounting to £900 in total were used by Councillor Joseph to purchase clothes;
- h) Councillor Joseph obtained a personal benefit from the purchase of these clothes;
- i) the Mayor's Spring Ball 2007 Brochure showed Twinstar Motors and Malcolm Butchers as sponsors;
- j) Councillor Joseph registered receipt of the cash gifts from Twinstar Motors and Malcolm Butchers as 'sponsorship' on 6 November 2007.

The Monitoring Officer advised the committee that the fact in dispute was whether Mr Malcolm considered his donation to be sponsorship of the Mayoral Charity, or whether it was a personal gift to a friend. The Monitoring Officer drew attention to the record of the interview with Mr Malcolm set out in the bundle in which he stated he was not able to recall what the money would be used for. The Monitoring Officer circulated a copy of a letter from Mr Malcolm dated 12 October 2009 received earlier in the day in which he confirmed that he offered to sponsor Councillor Joseph's outfit for her ball. Also circulated was Councillor Joseph's pre-hearing questionnaire completed by her and dated 21 September 2009. Councillor Joseph

stated in that document that 'it was very clear to me and Mr Malcolm that the sponsorship was for the Mayor's Ball Gown'.

The Monitoring Officer advised that there was no doubt that gifts were received and not declared with the statutory 28 days. The question was, firstly, whether the contributions were sponsorship and should have gone to the Mayoral Charity or personal gifts which could be used for the Mayor's personal use. Secondly, was it appropriate for the Mayor to make personal approaches for funding and to use that money for clothing. The committee then invited the Investigator, Claire LeFort, to comment. Ms LeFort referred to the comments made by Mr Malcolm in the interview, a record of which had been sent to him but not signed, and to his subsequent letter. The Investigator felt it was not necessary to resolve facts in relation to the intended purpose of the gift because, in her view, even if Mr Malcolm was aware that the contribution was for a gown, it was questionable whether this would be perceived as an appropriate use of the money obtained by the Mayor in the circumstances described. Ms LeFort advised that it was for the committee to consider whether Councillor Joseph's actions in accepting the gifts brought the authority into disrepute.

Members in considering the evidence noted that there was no evidence of any other mayoral funding having been used inappropriately. The letter submitted by Mr Malcolm dated 12 October was taken into account. In the light of the comments from the Investigator and the fact that Councillor Joseph had approached the business herself, it was apparent to the committee that the donation had been given in return for publicity in the Mayor's Charity Ball brochure. The committee considered the use of the term 'sponsorship' which Councillor Joseph seemed to have interpreted in a manner outside of its normal usage.

At 8.15pm the press and the public were excluded while members deliberated the findings of fact. The press and public were then readmitted to the meeting so that the meeting could proceed in public.

In addition to the findings of fact agreed by Councillor Joseph which the committee accepted, the committee decided the following findings of fact:

- (a) Councillor Joseph asked for money from Malcolm Butchers in the context of the Mayor's Ball
- (b) Mr Malcolm offered to give £500 in cash to Councillor Joseph
- (c) the money was described by Mr Malcolm in his letter of 12 October 2009 as 'sponsorship' in the context of the Mayor's Ball;
- (d) Councillor Joseph also described the money as 'sponsorship' in the context of the Mayor's Ball;
- (e) the money was used by Councillor Joseph to purchase clothing and accessories for her personal use;
- (f) Malcolm Butchers received an acknowledgement as a sponsor of the Mayor's Ball in the brochure for the event.

The committee then considered whether a breach of the Code had occurred. The Monitoring Officer reminded members of the three breaches of the code which it was alleged had occurred. The Investigator was invited to comment on whether the findings constituted a breach.

In relation to failure to register the cash within 28 days of receipt Ms LeFort stated that it was not disputed that Councillor Joseph had failed to declare receipt of the gifts within the required 28 days. Councillor Joseph was acting in her official capacity as Mayor at the times in question and it was clear that the declarations of interests, when completed, referred to gifts received nine and eleven months previously. As such it was clear to Ms. LeFort that a breach of the Code had occurred.

In relation to bringing her office into disrepute, the Investigator outlined the meaning of disrepute. The Investigator advised that conduct which could reasonably be regarded as reducing public confidence in the member being able to fulfil their role, or adversely affecting the reputation of members generally in being able to fulfil his or her role would be considered to bring that member's office into disrepute. Conduct which could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties, would bring the authority into disrepute. The Investigator raised the appropriateness of a Mayor seeking sponsorship in this way rather than in a controlled environment, with official requests from the Mayor's Office. Additionally, there was no proper record of cash amounts being received, no receipts given and no traceable cheques. Furthermore, the Investigator felt that a reasonable member of the public might consider £900 to be an excessive amount to spend on clothing in the circumstances, and that the sums should have gone direct to the Mayor's Charity or the Ball to raise funding for the Charity. The Investigator considered that Councillor Joseph failed to operate within a proper environment, and that by using the funds for her personal benefit, this brought her judgement into question and her office into disrepute.

In relation to whether Councillor Joseph had used her position to confer an advantage on herself, the Investigator referred members to the Standards for England guidance. The Investigator commented that to use her public position to further her private interest, to the detriment of the public interest, would be improper. The Investigator commented that had Councillor Joseph not been the Mayor then local businesses would have been less likely to give money in the way they had.

The Monitoring Officer drew members' attention to the submissions from Councillor Joseph in her pre-hearing questionnaire which set out factors she would like the committee to take into account including that no personal gain had been intended.

The press and public were asked to leave for the deliberations on whether a breach of the Code of Conduct had occurred. The press and public were then readmitted to the meeting.

The Monitoring Officer read out the committee's findings. Firstly that there was a breach of paragraph 17 of the Code of Conduct in that gifts were not duly registered in accordance with the 28 day deadline. Secondly, there was a breach of paragraph 4 of the Code which states that a member must not conduct themselves in a manner that would reasonably be regarded as bringing their office or authority into disrepute. The committee found Councillor Joseph was in a high profile position as Mayor of the borough. When Councillor Joseph approached Twinstar Motors and Malcolm Butchers she was acting in her official capacity as Mayor of the borough. As set out in the findings of fact, Councillor Joseph personally sought money for

'sponsorship' in the context of the Mayor's Charity Ball. In relation to the money from Malcolm Butchers there was a lack of clarity over exactly how the money would be used and precisely what the term 'sponsorship' meant. In both cases the cash was taken by Councillor Joseph and was not handed to the Mayor's office. No receipt was issued for the money and nor did the money pass through any official bank account. The money, totalling £900, was used by Councillor Joseph to purchase clothing and accessories for her personal use. The committee felt that the money would probably not have been given to her had she not been acting in her capacity as Mayor seeking sponsorship. The committee found that members of the public would reasonably regard this behaviour as bringing the authority or office into disrepute. Thirdly, that there was a breach of paragraph 5(a) of the Code which states a member must not in his official capacity, or in any other circumstance, use his position as a member improperly to confer on, or secure for himself, or any other person an advantage or disadvantage. The committee found that Councillor Joseph was in a high profile position as Mayor of the borough and that she used her position as Mayor to obtain £900 which she used to buy clothing and accessories for her personal use. The committee found that even if Mr. Malcolm was a friend of Councillor Joseph, and even if Mr Malcolm knew the money would be used by Councillor Joseph to purchase a gown or gowns for the ball, the money would probably not have been given if it was not for the fact that Councillor Joseph was the Mayor and that the money was sought in the context of the Mayor's Charity Ball. The committee found that Councillor Joseph breached paragraph 5(a) of the 2001 Code because she used her position as Mayor to improperly confer or secure for herself an advantage.

The committee were advised that they needed to consider what, if any, sanction to impose. The Monitoring Officer referred members to the sanctions available to it. The Monitoring Officer outlined the types of mitigating factors that could be taken into account by the committee and circulated brief details of some Adjudication Panel decisions and decisions of the Standards for England to give an indication of the range of sanctions imposed by tribunals in other cases.

The Investigator drew members' attention to Councillor Joseph's response in the pre-hearing questionnaire relating to her demanding mayoral year and the reliance she apparently placed on the Mayor's Office. However, the Investigator emphasised that members had a personal obligation to ensure adherence to the Code of Conduct. The Investigator referred to Councillor Joseph's 23 years of service and her past good record. The Investigator doubted whether Councillor Joseph had a full understanding of the issues, or why they would be perceived so seriously. Ms LeFort emphasised the importance of transparency and for members to be seen to be acting with integrity.

The Monitoring Officer set out the submissions from Councillor Joseph as stated in her pre-hearing questionnaire, including her submissions that no dishonesty was intended, the clothing had been given to charity, she had voluntarily declared the interests and the lateness of the submissions was an honest mistake. Additionally, members' attention was drawn to a letter from Councillor Joseph (page 107 of bundle) wherein she had referred to the various demands placed on her during the year in question and that she had apologised for the omission.

At 10.30pm, the press and public were excluded while the committee deliberated on sanctions.

The press and public were re-admitted to the meeting and the Chair announced the committee's decision.

RESOLVED:

The committee agreed that Councillor Bertha Joseph breached the Code of Conduct on three counts and agreed that she be suspended from office for a six month period commencing forthwith. The committee also recommended that Councillor Joseph be invited to pay the £900 donated by the two local businesses to the current Mayoral Charity.

Councillors Bessong and Colwill asked that their dissent from the six month suspension be recorded.

The meeting ended at 11.35pm.

John Mann
Chair

The meeting closed at 11.35 pm

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Chair