

STANDARDS COMMITTEE AGENDA



28th June 2011

at 4.00 p.m.

in Committee Room 'A'

MEMBERS: STANDARDS COMMITTEE:

Councillors Barclay, Fleet, Griffin, Morris, Preece, Shaw and Sutheran.

Co-opted Members: B Footitt, B Gray and T Jackson

Parish Councillors: A Bell, Hart Parish Council and 2 vacancies

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. MINUTES**
 - 3.1 To confirm the minutes of the meeting held on 12th April 2011
- 4. ITEM FOR DECISION / INFORMATION**
 - 4.1 Business Paper – *Chief Solicitor (to follow)*
- 5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

STANDARDS COMMITTEE

MINUTES AND DECISION RECORD

12 April 2011

The meeting commenced at 4.00 pm in the Civic Centre, Hartlepool

Present:

Barry Gray (Independent Member) (In the Chair)

Councillors Sheila Griffin, Dr Morris, Jane Shaw, Chris Simmons

Ted Jackson and Professor Footitt (Independent Members)

Parish Councillor: Alan Bell (Hart Parish Council)

Officers: Alyson Caman, Legal Services Manager
Denise Wimpenny, Principal Democratic Services Officer

34. Apologies for Absence

An apology for absence were submitted on behalf of Councillor Lillian Sutheran.

35. Declarations of interest by members

None

36. Confirmation of the minutes of the meeting held on 14 December 2010

Confirmed.

37. Business Paper - Standards for England – Case Review 2010 *(Chief Solicitor)*

The Legal Services Manager reported that the Standards Board for England had issued their annual review of cases which reflected upon a “paragraph by paragraph analysis” of the Members Code of Conduct, copies of which were tabled at the meeting. The new version had been issued at the request of Monitoring Officers to enable them to have an up to date on line resource. The report included details of how to use and access the case reviews.

Decision

That the contents of the report be noted.

38. Business Paper – The Localism Bill *(Chief Solicitor)*

The Legal Services Manager referred to the background to the Localism Bill and the Government's intention to abolish the Standards Board regime.

Members were advised that following the abolition of the Standards Board regime, Members would be required to continue to register and declare personal interests. However, there would be no requirement for local authorities to adopt a model code of Members' Code of Conduct or maintain a Standards Committee. They may, however, establish voluntary standards committees, which would consider complaints about the conduct of Elected and co-opted Members and it would become a criminal offence if a member failed to register or declare an interest or deliberately mislead the public about an interest. It was likely that Standards for England would cease to investigate complaints in late 2011 and would be formally abolished in early 2012.

The report provided details of the Standards for England response to the changes and this would be updated as the Bill made its passage through Parliament.

Members expressed disappointment regarding the Government's decision to abolish the Standards Board Regime and the implications of this decision were discussed.

Members went on to discuss the letter from the Local Government Minister Bob Neill, attached at Appendix A, setting out the Government's proposition in detail together with the memorandum submitted by Taunton Deane Borough Council to Parliament. The Committee did not accept the Government's reasons for abolition and that the regime was a vehicle for vexatious or politically motivated complaints and indicated that this had not been the case in Hartlepool. The strengths of the current arrangements and how well the system had operated in Hartlepool were outlined.

Whilst the importance of accountability to the community and the right and responsibility of the electorate to determine who represented them was supported, the Committee stated that the proposals to abolish Standards Committee did not address this issue or provide any additional powers to the electorate. Members were of the view that the proposals presented additional risks to Elected Members and the public, would deny the public a prompt response to complaints and that this was a detrimental step in terms of addressing Members behaviour and conduct.

Concerns were expressed regarding the proposal to introduce a criminal offence if a Member failed to register or declare an interest and the Committee supported the views of Taunton Deane in relation to this issue.

The Committee suggested that a letter in support of Taunton Deane's response to the proposals be submitted to the Select Committee to include the concerns of Members.

Decision

- (i) That the contents of the report be noted.
- (ii) That authority be granted to the Legal Services Manager, in consultation with the Chair, to finalise a letter to the Select Committee in support of Taunton Deane's response to the proposals to include the concerns of Members as set out above.

39. Business Paper – Bulletin 48 (*Chief Solicitor*)

Members had previously been provided with bulletins relating to the Standards for England's schedule of activities for the coming year. The latest bulletin, published in August 2010, was attached at Appendix E. It was reported that Standards Board for England were continuing to operate and provide advice and information and update guidance.

Decision

That the information given, be noted.

40. Business Paper – Convening of Assessment Sub-Committee of the Standards Committee

It was reported that the Deputy Monitoring Officer was in receipt of a number of complaints against Members and these were currently being heard by Assessment Sub-Committees between March and April 2011. Members were reminded that on receipt of a formal complaint an Assessment Sub-Committee was not required to decide if the Code of Conduct had been breached. It was only considering if there was enough information which demonstrated a potential breach of the Code of Conduct that warranted referral for investigation or other action. The briefing paper included details of what other actions could be taken by Assessment Sub-Committees.

Decision

- (i) That the information given be noted.
- (ii) The outcome of the Assessment Sub-Committees be reported to the next meeting of Standards Committee.

The meeting concluded at 4.50 pm.

CHAIR

STANDARDS COMMITTEE

28 June 2011



Report of: Legal Services Manager

Subject: BUSINESS PAPER

1. THE LOCALISM BILL – UPDATE

- 1.1 As Members are aware the Localism Bill proposes abolishing the Standards Board regime and the model code of conduct and introducing local accountability and a criminal offence of deliberate failure to declare a personal interest in a matter.
- 1.2 The bill has made its passage through the House of Commons without any major changes to these proposals and is now making its passage through the House of Lords with a first reading in the House of Lords on 19 May 2011. It is currently at committee stage in the House of Lords until 7 July 2011. The Committee stage is where a detailed examination of the Bill takes place. The Committee is also able to take evidence from experts and interest groups from outside Parliament.
- 1.3 At its meeting of 14 April 2011, it was proposed that a submission from the Council's Standards Committee should be made to Parliament setting out the Committee's concerns at the proposed changes to the Standards regime as referred to above and in previous reports to this Committee.

Attached at **Appendix 1** is a proposed response based on the Committee's suggestions at its meeting in April.

Recommendation

For members to note and discuss

2. ASSESSMENT SUB-COMMITTEES – PROGRESS REPORT

As reported at the last meeting a number of complaints to the Standards Committee were due to be heard by the Assessment Sub-Committees of the Standards Committee. Eight complaints have now been considered by the

Assessment Sub-Committees and in the main indicate a breach of the general obligations of the code namely paragraph 3, failure to treat others with respect. The result in all cases but one was to refer the matter to the Monitoring Officer for investigation and these are ongoing. The eighth case was referred to the Standards for England, due to its potential seriousness, complexity and sensitivity. A decision notice has been received from Standards for England, who have decided that no action needs to be taken in this case. However, the general issues that arise from this case are relevant and of interest to this Committee and are set out below:-

Standards for England referral reference no SFE 000239

In summary this case related to comments made on a social networking site and whether or not these were in a official capacity as a councillor and as such would amount to a breach of the Code of Conduct. In the case of APE 421, (**Appendix 2**) a First Tier Tribunal (Local Government Standards in England) the tribunal stated that even if it became clear that an individual who was posting on a forum was a councillor the Code of Conduct would not automatically be engaged. The question was whether in the posting on the forum the councillor was deemed to be, or gave the impression that he or she was acting in the role of councillor. The tribunal said that this was fact sensitive and would very much depend on the content of the posting. In this case it was deemed that none of the examples referred to by the complainant demonstrated that the councillor was acting in his official capacity as a councillor or conducting the business of the authority and many of the entries made had no connection at all to either the Council or other Councillors.

However, the Standards for England decision notice sets out their position in relation to such matters

“This organisation would expect a member to at least aspire to act with decorum and does not condone the use of gratuitous insults even where these occur in their private capacity. We would advise members to consider the fragmented nature of the forum and similar website postings and warn that even where clarification in terms of private v official capacity occurs, during a series of postings damage can have been done or harm caused both to individuals and/or the reputation of you and your authority.”

Recommendation

For members to note and discuss

3. BRIBERY ACT 2010

The Standards Committee function as set out in Part 3 of the Council's constitution is to promote and maintain high standards of conduct by members and inter alia to monitor the operation of the Council's Anti-Fraud

and Corruption Policy so far as it relates to the actions of members of the Council.

The Bribery Act 2010 comes into force on 1st July 2011. There are 4 key offences under the Act:

- Bribery of another person (section 1)
- accepting a bribe (section 2)
- bribing a foreign official (section 6)
- failing to prevent bribery (section 7)

The offences carry criminal penalties for individuals and organisations. For individuals, a maximum prison sentence of ten years and/or an unlimited fine can be imposed; for organisations an unlimited fine can be imposed.

Risk

In terms of risk to the Authority, the Authority's existing procedures and implications of the Act have been considered by the Corporate Management Team and relevant departments and examples of the possible risks have been identified in relation to procurement and gifts and hospitality.

The contract procedure rules are being reexamined in light of this legislation. However, we already have in place robust anti-corruption policies and clauses within our contract procedure rules which will need very little by way of change. Of relevance to this Committee is the council's policy on gifts and hospitality and officers and members requirement to register any gifts and hospitality. The legislation does not require a change to the Council's position on gifts and hospitality but does reinforce its provisions in that it is unacceptable to give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a business advantage will be received. Also that no gift or hospitality is to be offered or accepted; nominal gifts and hospitality up to £25 are acceptable and that reasonable, proportionate gifts and hospitality made in good faith and that are not lavish are acceptable.

Attached at **Appendix 3** is an extract from the Council's Financial Procedure rules and from the members Register of Interests on gifts and hospitality.

The intention behind the Bribery Act 2010 is *“to modernise the currently outdated bribery laws of the country and that there is a clear legal framework for combating corruption”*

The Council's current procedures and practices seem to be in accordance with the requirements of the Act and require little by way of update. What is important, is that the Council ensures staff and members are aware of the Act and the implications by reinforcement of its anti-corruption procedures and rules of gifts and hospitality and to ensure that staff and members are vigilant and report any suspected bribery and other forms of corruption.

Recommendation

To note and discuss

4. ROLE OF STANDARDS COMMITTEE IN RESPECT OF APPEALS BY POST HOLDERS WHO ARE POLITICALLY RESTRICTED

- 4.1 Under the Constitution, the Standards Committee have the following function:

“Dealing with the grant and supervision of exemptions from political restrictions in respect of all relevant Council posts.”

- 4.2 The Local Democracy, Economic Development and Construction Act 2009 received royal assent on 12 November 2009. S.30 made amendments to the Local Government and Housing Act 1989 (LGHA 1989) in respect of the approach to identifying posts which are politically restricted by removing the duty to maintain a list of posts earning above a nominated salary. This took effect from 12 January 2010 with the result that authorities needed to review the posts previously considered to be politically restricted by virtue of salary level to assess whether they should be genuinely politically restricted by virtue of the duties they actually perform.

Which posts are politically restricted?

Each local authority is under a duty to draw-up and regularly update a list of those posts which are politically restricted.

With effect from 12 January 2010 politically restricted posts fall into two broad categories: specified posts and sensitive posts.

Specified posts :

- the Head of the Paid Service (HoPS) (s4 LGHA)
- the statutory chief officers, (including the director of children’s services and director of adult social services in England, and the chief education officer and director of social services in Wales, the chief officer of a fire brigade, the chief finance officer (s.151 LGA 1972)
- non-statutory chief officers (officers reporting to the HoPS excluding secretarial/clerical support staff)
- deputy chief officers (officers reporting to a Chief Officer excluding secretarial/clerical support staff)
- the monitoring officer (s 5 LGHA)
- officers exercising delegated powers, i.e. persons whose posts are for the time being specified by the authority in a list maintained in accordance with s 100G(2) of the LGA 1972
- assistants to political groups

All these post holders are politically restricted without rights of appeal for exemption to the local authority’s standards committee (in England) or to the Independent Adjudicator to Local Authorities in Wales.

'Sensitive' posts

A sensitive post is one which meets one or both of the following duties-related criteria:

- giving advice on a regular basis to the authority itself, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented; or where the authority are operating executive arrangements, to the executive of the authority; to any committee of that executive; or to any member of that executive who is also a member of the authority
- speaking on behalf of the authority on a regular basis to journalists or broadcasters

These post holders can appeal to the Standards Committee to be exempted from the list, on the grounds that the authority has wrongly applied the criteria.

Teachers, headteachers and lecturers are all exempt from political restrictions under s 2(10) LGHA, and will not be regarded as holding 'PoRPs' whatever their role or remuneration level.

A review has been undertaken and a report taken to the relevant Portfolio Holder and attached at **Appendix 4** is a list of posts that are politically restricted with Hartlepool Borough Council. All relevant employees have been informed.

Recommendation

To note and discuss

5. CONTACT OFFICER

Alyson Caman
Legal Services Manager/Solicitor

APPENDIX 1

Dear

**LOCALISM BILL
HOUSE OF LORDS - COMMITTEE STAGE**

The Standards Committee of Hartlepool Borough Council was established further to the Local Government Act 2000 and has delegated responsibility for 17 functions relating to the promotion and maintenance of not only the high standards of conduct by its 47 members, through its Code of Conduct but also for the promotion and maintenance of high ethical standards within the Authority including its officers.

The Committee unanimously resolved to write to Parliament, through its MP and set out its grave concern at the proposed changes relating to the abolition of the Standards for England and to the Standards Committee framework in particular the provisions relating to the revocation of the model code of conduct adopted by the Authority and the removal of the requirement for an Authority to have a Standards Committee.

The Standards Committee of Hartlepool Borough Council, believe the proposed changes to be a retrograde step and contrary to the localism agenda the government is promoting.

The view of the Committee are as follows:-

- The mandatory Code of Practice should remain in place as a 'voluntary code' would have little effect and one of the main reasons for the mandatory Code was to give the General Principles set out in the Relevant Authorities (General Principles) Order 2001 some teeth to ensure that members would be subject to sanction should they not observe them.
- That it was ironic that in his letter to Standard Committees Chairs, the CLG Minister, Bob O'Neill refers to 'empowering communities' when in effect the changes would effectively deter local residents from making a complaint, in the knowledge that Standards Committees could only 'censure' their members and not have any power to sanction members further.
- That it seemed a huge loss to the authority, if a Standards Committee ceased operation, due to the training and knowledge of the members on ethical governance issues; the role of independent members and the overall standing of the Standards Committee has within the Authority (see attached functions delegated to the Standards Committee taken from the Council's constitution). It was considered that a voluntary committee would cease to function as it would not have the legislative backing and authority it once had.
- The imposition of a criminal sanction for the failure to register interests was an extreme measure and somewhat draconian and might deter people from becoming councillors.

The Standards Committee of Hartlepool Borough Council would be grateful if the House of Lords at its Committee Stage consider these representations when examining the provisions of the Localism Bill in respect of the changes to the Standards regime.

Yours etc

THE
ADJUDICATION PANEL
FOR ENGLAND

Appeals Tribunal Decision

Case Ref:	APE 0421
Appeals Tribunal Date:	29 April 2009
Relevant Standards Committee:	Middlesbrough Council
Date of Standards Committee decision:	22 January 2009
Name of member concerned: <i>(Appellant)</i>	Councillor McTigue
Monitoring Officer:	Mr Richard Long
Independent Investigator:	Mrs Katharine Metcalfe
<u>Appeals Tribunal Members</u>	
Chairwoman:	Mrs Beverley Primhak
Member:	Mr Richard Enderby
Member:	Mr Chris Perrett

1. The Appeals Tribunal has considered an appeal from the Appellant about the above decision.
2. The Appeals Tribunal has considered written and oral submissions from Councillor McTigue and Mr Richard Long and has heard evidence from Mr Anthony Warren.

The decision appealed against

3. The Appellant had appealed against the Standards Committee's finding that she had failed to comply with paragraphs 3(1), 5 and 6(b)(i) of the Council's Code of Conduct.
4. The complaint against the Appellant arose from an earlier complaint by the Complainant, Ms Sharon Bawden, in relation to waste collection services at her home. That complaint was heard at a meeting of the Council's Complaints and Appeals Committee on 18 June 2008, at which both the Complainant and the Appellant were present. Subsequently the Complainant submitted a complaint in relation to the Appellant's conduct at that meeting and in the days following that meeting in respect of a series of postings by the Appellant on the forum of the Middlesbrough Evening Gazette. It is the allegations in the subsequent complaint that have led to these proceedings.
5. The Council's Standards Committee Hearings Subcommittee considered the matter on 22 January 2009. They concluded:

- 5.1. that the Appellant had failed to treat the Complainant with respect in relation to the posts on the Evening Gazette forum contrary to paragraph 3 of the Code of Conduct.
 - 5.2. that the Appellant's actions were likely to have diminished public confidence in, and harmed the reputation of, the member: consequently she had brought her office into disrepute contrary to paragraph 5 of the Code of Conduct.
 - 5.3. that the Appellant failed to use the Council's resources in accordance with its reasonable requirements; however they considered that this was merely a technical breach contrary to paragraph 6(b)(i) of the Code of Conduct.
 - 5.4. They also concluded that, in respect of the complaints relating to the Appellant's conduct at the Complaints and Appeals Committee meeting, the Appellant was not acting in an official capacity, and thus was not subject to the Code of Conduct at that meeting. In relation to allegations of bullying, intimidation and breach of confidentiality there was no case to answer. These matters are not the subject of these appeal proceedings.
6. The Appellant has also appealed against the action which the Standards Committee decided to take in the light of their decision that she had failed to follow the provisions of the Code of Conduct. That action was to suspend Councillor McTigue for two months.

Preliminary Issues

7. In her application to appeal the Appellant expressed some criticism of the way the decision of the Standards Committee was notified to her. However, even if valid, those criticisms would not affect the issue of whether the conduct which gave rise to the investigation was a breach of the Code of Conduct nor be relevant to the question of sanction. The matter was therefore not considered by the Appeals Tribunal.
8. The Appellant indicated in her appeal papers, both in her initial appeal documents and a supplementary bundle that she considered the Standards Committee process had been flawed. However, again this was not an issue that affected whether there had been a breach of the Code of Conduct and any real or apparent bias would be overreached by the appeal being heard before the Appeals Tribunal. The Chair explained that the Appeals Tribunal would be reaching its own decision on the merits and would not be considering the detail of the proceedings before the Standards Committee.

Findings of Fact

9. Councillor McTigue has been an elected Middlesbrough Borough Councillor since May 2003. She was re-elected in 2007 and currently sits on the Licensing Committee, the Community Safety and Leisure Scrutiny Panel and the Corporate Parenting Board.
10. Paragraph 3 (1) of the Code provides:

“You must treat others with respect.”
11. Paragraph 5 of the Code provides:

“You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.”

12. Paragraph 6(b)(i) of the Code provides:

“You must, when using or authorising the use by others of the resources of your authority— (i) act in accordance with your authority’s reasonable requirements;”

13. The hearing on 18 June 2008 arose from a complaint that the Complainant had raised about the standard of the wheelie bin collection from her home (the wheelie bin complaint). The complaint had been long-standing and the hearing was part of a process of trying to bring the wheelie bin complaint to resolution.
14. It was alleged by the Complainant that Councillor McTigue’s behaviour at the Complaints and Appeals Committee meeting was inappropriate. Councillor McTigue denies this.
15. On 19 June 2008 the Complainant sent an email to Councillor McTigue at her Middlesbrough Council email address expressing her views on Councillor McTigue’s actions at the Complaints hearing and including the phrase, “*Think on at the next meeting and behave like the Councillor you should be, rather than the “low life” you were yesterday. Don’t bother to reply*”. Councillor McTigue replied on 20 June 2008 acknowledging receipt of that email. She said she would not be entering into further discussions and that she had arranged for any further emails from the complainant to go directly to her junk folder, for deletion before they were opened.
16. On 20 June 2008 the first of a series of forum postings making reference to the Council’s hearing of the wheelie bin complaint was posted on forums.gazettelive.co.uk. This was an on-line forum hosted by The Evening Gazette. There followed a series of postings by different contributors on the issue until 7 July 2008. In all there were nearly 130 postings on the topic within the eighteen day period.
17. Councillor McTigue initiated the topic on the forum using the pseudonym “Indie”. She has been a contributor to the ‘gazettelive’ forum in the past under the same pseudonym.
18. The forum postings by Indie (35 of the 127) can be grouped into 3 types:
 - 18.1. General postings – not directed to any particular individual.
 - 18.2. Those directed to the complainant (after she entered the forum under the pseudonym cynic2008).
 - 18.3. Those directed to other individual forum participants (as replies to their entries). The other users are identified only by their usernames and generally no further details are known about them. Mr Warren in evidence identified himself as “Tosha”.
19. In the forum exchanges between Councillor McTigue (as Indie) and the Complainant (as cynic2008) each was aware of the other’s true identity.
20. The first posting on the topic of the wheelie bin complaint was posted by Councillor McTigue under the pseudonym “Indie” and was headed: “*The Marton woman and her wheelie bin!*”. It then went on to say: “*I attended the hearing and this woman stated*”

that having her wheelie bin place on her drive had almost brought on a nervous breakdown and had almost brought her to her knees".

21. There followed a series of postings by various people, with differing views on the subject of the wheelie bin complaint, councillors, rubbish collection etc. There are several blogs by people who were clearly concerned about the way that the public site had been used by Councillor McTigue in relation to the wheelie bin complaint.
22. Mr Warren in evidence said that he was a regular blogger and had not connected "Indie" with being a councillor. However he accepted that he became aware at one point in the series of postings that she was in fact a councillor.
23. It is clear from the postings that it was well-known that "Indie" was Councillor McTigue's pseudonym. On 25 June 2008, in the 11th posting of the forum series relating to the wheelie bin complaint, Ms Bawden posting as cynic2008 stated: *"Hey "INDIE" you obviously have not made it clear that you are actually Councillor Joan McTigue".* The Appellant responded on the same day: *"Everyone on this site knows who I am".*
24. The Appellant referred to the Council, other councillors and specifically her role as councillor in various ways in her postings on the forum.
25. Councillor McTigue's postings continued well after it had been made clear to her by the Complainant and other bloggers that her postings were inappropriate.

Findings as to whether the Appellant failed to follow the Code

26. The first matter to be determined is whether the Appellant was acting in her official capacity when she was engaged in the series of posts on the Evening Gazette forum. If she was not, then she would not have been in breach of the Code of Conduct in respect of these matters.
27. If it is concluded that she was acting in her official capacity, it then has to be determined whether by her actions she
 - 27.1. failed to treat Ms Bawden with respect and/or
 - 27.2. could reasonably be regarded as bringing her office into disrepute and/or
 - 27.3. when using the Council computer failed to act in accordance with the Council's reasonable requirements.

Official capacity

28. The Appellant argued that she was not acting in her official capacity as all her comments on the forum were made in her private time and all using the pseudonym of "Indie".
29. The Appeals Tribunal accepted that even if it became clear from the forum that an individual who was posting on the forum was a councillor, the Code of Conduct would not automatically be engaged. The question was whether in the postings on the forum the councillor was deemed to be, or gave the impression that he or she was, "acting in the role of councillor". This was fact-sensitive and would very much depend on the content of the postings.

30. It was noted that Councillor McTigue had used a pseudonym, and that she states in at least one of the postings that she is on the forum as a resident who just happens to be a councillor. However, taking the contents of the postings on the Evening Gazette forum as a whole the Appeals Tribunal concluded that the Appellant did give the impression that she was acting in the role of councillor and thus representing the council. Postings by "Indie" (Councillor McTigue) that resulted in this conclusion include:

- 30.1. 25/6/08: *"I was sitting next to Cllr McPartland (who gave me a sweet!) and other Labour cllrs & I assure you, if my behaviour was even in the least not acceptable I would have been reported to the S Board before my feet touched the ground".*
- 30.2. 25.6.08: *"cynic – you claimed that the council agreed with your complaint – who agreed – name them please so that I can verify it ..."*
- 30.3. 26/6/08: *"BillygangI have suggested that since the council is targeted by the Government on recycling, that we pay people as an incentive – I don't make the decisions though – those above me do & they are appointed by the Labour Group. If you are not happy about your litter situation etc – complain to the right people why don't you – you cannot blame me. Which cllrs do you know who are childish – let's have some real evidence and examples here please – I for one agree but I would be interested in your experience of this. ..."*
- 30.4. 26/6/08: *"I am a councillor as most people know I have no political banner ..."*
- 30.5. 26/6/08: *"As you can appreciate I am limited as to how I can describe what happened – if you see what I mean.*
- 30.6. 27/6/08: *"... do you know who your ward councillors are by any chance? Get to know them and then you can judge them."*
- 30.7. 27/6/08: *"Mon – the residents in my ward are not just a number – I assure you of that. When one of them comes to me with a problem, the first thing I ask them is, how long it's been going on. If they reply – months or ages, I chide them for not contacting me sooner. ..."*
- 30.8. 28/6/08: *"Every single person who uses this site could take their questions/complaints/questions and ask them in person at a full council meeting which is held every 6 weeks where they will be answered – providing the question is accepted by the Head of Legal Services. If they prefer to use this site instead – there is a chance I can answer them or perhaps the other cllrs on here who are anon.What's the difference between this and a public meeting where anything is discussed and aired, apart from the fact that you would see cllrs".*
- 30.9. 28/6/08: *"..before I put anything up here for discussion I have the sense to check first with the legal dept in the Town Hall".*
- 30.10. 29/6/08: *"...my phone is in perfect working order so anyone here can contact me day or night and I have no objections whatsoever to people calling at my home which they do on a daily basis – it helps to live on the ward in some*

respects.We do our cllr work when it needs doing – there are no set hours – I thought everyone knew that."

30.11. 29/6/08: *"..during this hearing/tribunal/appeal whatever you wish to call it I asked the cllr sitting next to me Cllr McPartland what he thought the costs would be and he rolled his eyes heavenwards. Would you like me to find out the approx cost for you & how many man hours have been spent on this?"*

30.12. 29/6/08: *"...as a councillor I cannot deal with them in the same manner. ..."*

31. This conclusion is further supported by the impression that was clearly received by other posts on the blog.

Failure to treat with respect

32. Failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another. The circumstances in which the behaviour occurred is relevant to assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.
33. The Appeals Tribunal accepted that the Appellant had felt wrongly accused by the complainant of bad behaviour at the Council's Appeals Committee and that she had received a strongly-worded email from the complainant which she had taken exception to. However this did not provide a justification for what she did, which was, instead of dealing with the matter privately, to choose to take the issue to a very public blog-site, run by the local newspaper. It was inappropriate for someone with a valid and accepted complaint, which had been taken seriously by the Council, to be subjected to public ridicule and demeaning statements on a public website by a member of that council. The tone of the Appellant's postings was derogatory and disparaging to Ms Bawden, including references to her as *"the wheelie bin woman"*. In addition, the Appellant's postings triggered off abusive responses directed at Ms Bawden from other people, such as: *"Do you think there might be a 'Compo case' in the offing???"*, to which the Appellant replied that he must be a mind-reader. In fact the Claimant was claiming out-of-pocket expenses.
34. The Appeals Tribunal concluded that the Appellant had not treated the complainant with respect in breach of paragraph 3(1) of the Code of Conduct.

Disrepute

35. The Oxford English dictionary defines disrepute as "lack of good reputation or respectability". A member will have failed to comply with the Code if his or her conduct could "reasonably be regarded" by an objective observer as bringing the member's office or authority into disrepute. Anything which diminishes the member's office or their authority, or which harms or could harm the reputation of an authority, will bring that office or authority into disrepute.
36. The Appeals Tribunal considered that the way that the Respondent had behaved was not that expected of a councillor and would diminish the office of councillor. It considered therefore that the Appellant had brought the office of councillor into disrepute in breach of paragraph 5 of the Code of Conduct.

Misuse of Council Property

37. The Appeals Tribunal felt that by implication using a Council computer for such purposes would constitute a breach of paragraph 6(b)(1) of the Code of Conduct. However, this was a technical breach and in itself not significant.

Human Rights

38. In considering whether Councillor McTigue breached the Code of Conduct the Appeals Tribunal has had regard to Article 10 of the European Convention on Human Rights which provides:

“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of ..the protection of the reputation or rights of others,..”.

39. In the recent case of *Mullaney v The Adjudication Panel for England* [2009] EWHC 72 (Admin) Charles J considered how the code fitted with Article 10. He stated at paragraph 101: *“I agree with Collins J in Livingstone at paragraph 34 and Wilkie J in Sanders (accepting the stance there of the Councillor) that in principle the Code satisfies Article 10(2). Also as so indicated I agree that it is important that the restraints should not extend beyond what is necessary to maintain proper standards in public life and that political expression attracts a higher level of protection.”*
40. This is a case where proper standards in public life have not been maintained. It is not a case where there is a need to protect political expression. The disrespect shown was not to a councillor or other politician but to a member of the public in a public arena. The Appellant continued with the postings even after there were clear objections to the series of postings from other bloggers on the grounds that they were inappropriate. Most importantly there was nothing to stop the Appellant from raising the issue of wheelie bins on the forum in a proper manner to elicit views without, as she did, vilifying the complainant personally.
41. The Appeals Tribunal considered therefore that Article 10 did not assist the Appellant in this case.

Sanction

42. The Standards Committee in considering a sanction took into account the mitigating circumstances of the Complainant's behaviour towards the Appellant and the Appellant's previous history of breaches of the Code of Conduct. It then resolved to suspend the Appellant for a period of two months, with immediate effect.
43. The Appeals Tribunal made it clear to the Appellant what the possible sanctions were and received submissions and evidence from both parties. Mr Long submitted documents relating to previous breaches of the Code of Conduct by Councillor McTigue, namely:
- 43.1. A finding of the Adjudication Panel for England (APE 329) in 2006 that the Appellant had breached the Code by not declaring a personal interest at two meetings. No penalty was imposed, although the Tribunal stated that *“the*

Respondent should be left in no doubt that the Tribunal deprecated her behaviour”.

- 43.2. A finding by Middlesbrough Council Standards Committee on 22 May 2006 that she had not treated Council officers with respect. Councillor McTigue was required to write a letter of apology.
- 43.3. A finding of Middlesbrough Council Standards Committee on 18 September 2007 that she had not treated a person with respect. The sanction was one month's suspension.

Councillor McTigue had not appealed against any of these findings, although she indicated that this was because she had no faith in the appeal system.

- 44. Mr Long submitted that in his view the two month suspension imposed by the Standards Committee was in fact too lenient in the circumstances. Councillor McTigue made submissions as to why the previous breaches were not as serious as might have been considered; including providing a letter from a witness in one of the cases to the effect that he had been coerced to give evidence.
- 45. The Appeals Tribunal took all these matters into account. From the evidence before it the Appeals Tribunal was satisfied that Councillor McTigue is a committed and zealous councillor. However it was felt that this was a case where there was a fairly serious breach of the Code of Conduct, based as it was on an unwarranted personal attack against a member of the public in a series of postings on a public website. In that respect they felt that the circumstances were clearly different from the *Livingstone* case which had been referred to by the Appellant.
- 46. It was clear that Councillor McTigue had a significant history of involvement in proceedings for breaching the Code of Conduct. The Appeals Tribunal considered that it might be expected that she would have learnt from this and adjusted her behaviour accordingly. However this had not happened and the Appeals Tribunal considered that the two month suspension imposed by the Standards Committee was appropriate.
- 47. The Appeals Tribunal was not convinced that the Appellant fully appreciates the requirements of the Code of Conduct. It appears that, although training on the Code has been offered by the Council, the Appellant has not participated in it for some time. The Appeals Tribunal therefore decided to impose an additional sanction of the requirement for training on the Code of Conduct within three months of the date of the hearing, with a recommendation that this be one-to-one training if possible, to ensure that the Appellant fully understands the Code and so that any misconceptions she currently has are addressed.
- 48. The Appeals Tribunal has upheld the finding of the Standards Committee.
- 49. The decision of the Appeals Tribunal was unanimous.
- 50. The Standards Committee is required to impose the penalties specified at paragraph 44 and 45 above.
- 51. A copy of this determination is being given to the Appellant, the Standards Board, the Standards Committee, and any person who made the allegation that gave rise to the investigation.

52. This determination will be published in a newspaper circulating in the area of the relevant local authority and also published on the Adjudication Panel's website at www.adjudicationpanel.tribunals.gov.uk

Beverley Primhak

Chairwoman of the Appeals Tribunal

10 May 2009

APPENDIX 3

EXTRACT FROM CODE OF CONDUCT

Personal Interests

- 8. —(1)** You have a personal interest in any business of your authority where either—
- (a) it relates to or is likely to affect—
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body—
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;**
 - (ix) any land in your authority's area in which you have a beneficial interest;
 - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
 - (b) a decision in relation to that business might reasonably be regarded as

EXTRACT FROM FINANCIAL PROCEDURE RULES

2.11 Gifts and Hospitality

2.11.1 The Council's policy for Gifts/Hospitality is included in the Staff Information and Personal Development Pack which is provided to all current and new employees.

2.11.2 Officers must be careful not to accept any gift or hospitality, which might interfere with or be perceived as impacting on Council business or services. This does not include gifts of minor value, which are used at work .i.e. diaries, pens, calendars etc and genuine working lunches or functions attended in an official capacity.

However, any other gifts or hospitality offered should be reported to the appropriate Director or Chief Officer who will then determine the action to be taken. In the case of gifts, these may be then returned, donated for the Mayor's charity use, or when appropriate, donated to a Christmas or leaving party organised for employees. Where a gift is not returned the donor will be advised of the use to which it has been put.

2.11.3 Employees should not accept significant personal gifts from contractors and outside suppliers.

2.11.4 Employees should only accept offers of hospitality if there is a genuine need to impart information or represent the Council in the community. Offers to attend purely social or sporting functions should normally be declined, unless they are part of the life of the community or where the Council should be seen to be represented. They should be properly authorised and recorded.

2.11.5 When hospitality has to be declined, those making the offer should be courteously but firmly informed of the procedures and standards operating within the Council.

2.11.6 When receiving hospitality, employees should be particularly sensitive as to its timing in relation to decisions which the Council may be taking affecting those providing the hospitality. When visits to inspect equipment etc are required, employees should ensure that the Council meets the cost of such visits to avoid compromising the integrity of subsequent purchasing decisions.

2.11.7 Responsibilities of Directors and Chief Officers:

- i) To ensure compliance with the Councils' policy and Codes of Conduct in respect of gifts, hospitality and personal interests;
- ii) To maintain a register of staff interests, gifts and hospitality.

4.1 Appendix 4

List of Politically Restricted Posts and Post holders

Reason For Political Restriction	Appeal Rights	Post Occupied	Comments
The Head Of The Authority's Paid Service	No right of appeal for exemption	Chief Executive	
Statutory And Non Statutory Chief Officers	No right of appeal for exemption	Director of Regeneration and Neighbourhoods	
		Director of Child and Adults	
		Assistant Chief Executive	
		Chief Solicitor	
		Chief Finance Officer	
		Chief Customer and Workforce Services Officer	
Deputy Chief Officers	No right of appeal for exemption	Assistant Director Resources	
		Assistant Director Transportation and Engineering	
		Assistant Director Regeneration & Planning	
		Assistant Director Neighbourhood Services	
		Chief Emergency Planning Officer	Until 31 May 2011
		Assistant Director Adult Social Care	
		Assistant Director Community Services	
		Asst Director Prevention, Safeguarding & Specialist Services	
		Asst Director Performance and Achievement	

4.1 Appendix 4

	No right of appeal for exemption	Legal Services Manager	
		Principal Registration & Members' Services Officer	
		LSP Manager	
		Performance and Consultation Manager	
		Corporate ICT Manager	
		Public Relations Manager	
		Scrutiny Manager	
		Democratic Services Manager	
		Head of Finance	
		Head of Finance	
		Head of Finance	
		Head of Finance	
		Head of Audit and Governance	
		Chief Finance & Customer Services Officer	
		HR Business Partner	
		HR Business Partner	
		HR Business Partner	
		Health Safety and Wellbeing Manager	
		Organisational Development Manager	
Giving advice on a regular basis to the authority itself, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented; or where the authority are operating executive arrangements, to the executive of the authority; to any committee of that executive; or to any member of that	Right of appeal for exemption	Scrutiny Support Officer	Regularly advises Scrutiny Committees
		Scrutiny Support Officer	Regularly advises Scrutiny Committees
		Scrutiny Support Officer	Regularly advises Scrutiny Committees
		Neighbourhood Manager	Regularly advises Neighbourhood Consultative forums

4.1 Appendix 4

	Right of appeal for exemption	Neighbourhood Manager	Regularly advises Neighbourhood Consultative forums
		Neighbourhood Manager	Regularly advises Neighbourhood Consultative forums
		Chief Emergency Planning Officer	Prepares and presents reports in own name to Emergency Planning Joint Committee and Cleveland Local Resilience Forum from 28 July 2011
		Solicitor	Regularly advises Planning Committee
		Solicitor	Regularly advises Licensing Committee
Speaking on behalf of the authority on a regular basis to journalists or broadcasters	Right of appeal for exemption	Public Relations Officer	Regularly speaks to journalists/broadcasters
		Public Relations Officer	Regularly speaks to journalists/broadcasters