

COUNCIL 23 APRIL 2002

Agenda Item No: 6(i)
Title: Standards Committee 9 April 2002
Author: Tony Forrow (01799) 510402 and Michael Perry (01799) 510416

Summary

- 1 In accordance with minute S9(i) of the meeting of the Standards Committee on 9 April 2002, this report informs Members of the advice received from counsel in relation to the validity of Council decisions taken on 24 April and 8 May 2001 following recommendations by the Standards Committee on 17 April 2001.

Background

- 2 The Council is aware of the decisions it took on 24 April and 8 May 2001 in relation to Councillor G W Powers, following recommendations by the Standards Committee.
- 3 Councillor Powers considered that the implementation of Part III of the Local Government Act 2000 (Conduct of Local Government Members and Employees) meant that the actions of the Committee and the Council were *ultra vires*. He requested that external advice be sought and advice was sought from the DTLR and the Local Government Association. The latter gave access to a letter from the DTLR to another authority setting out the Department's view that, in general, a Standards Committee established before Part III of the 2000 Act took effect could continue with its existing terms of reference until after the Council concerned had adopted a Code of Conduct as required by the Act. This letter did not, of course, relate to the specific circumstances of Councillor Powers and this Council.
- 4 In early February this year, the DTLR, while not directly addressing the issues raised with it, drew attention to a case involving Broadland DC. Having read the judgement issued in the High Court, Councillor Powers requested that leading counsel's opinion be sought. The Council's officers remained of the view that the action taken by the Council was *intra vires*. Councillor Powers still considered that the Council had discriminated against him and had infringed his human rights, in particular preventing him from fully representing his constituents. Following further correspondence between Councillor Powers and the officers, counsel's opinion was sought.
- 5 It had originally been hoped to make a full report to the Standards Committee on 9 April. Since this had not proved possible, it was agreed that a full report

be made to the first meeting of the Council after Counsel's opinion was received.

Counsel's Opinion

- 6 Counsel was requested to answer the following specific questions: -
- a Whether the establishment of a Standards Committee in May 2000 was *intra vires* the Council.
 - b Whether the Standards Committee was acting *intra vires* in considering the complaint.
 - c Whether the Standards Committee had power to censure Councillor Powers.
 - d Whether the Standards Committee had power to resolve that Councillor Powers should apologise in accordance with the resolution.
 - e Whether the Standards Committee had power to recommend to Full Council that other sanctions be imposed in addition to the censure of the Standards Committee.
 - f Whether the Full Council had power
 - (i) to resolve that Councillor Powers be not appointed to outside bodies on behalf of the Council and to Committees and Sub-Committees of the Council
 - (ii) to suspend Standing Orders to give effect to that resolution
 - g Whether the Council in the exercise of those powers should have had regard to a test of appropriateness and/or proportionality and/or a procedural test of fairness
 - h Whether any (and if so which) of Councillor Powers' rights under the Human Rights Act (HRA) 1998 or the European Convention on Human Rights had been infringed.
- 7 Counsel's advice may be summarised as follows: -
- a The Standards Committee was *intra vires* and issues of misconduct which occurred before 19 December 2000 but considered thereafter were within its remit.
 - b The Standards Committee was acting *intra vires* in considering the complaint.
 - c The Committee had power to censure Councillor Powers.

- d The Committee did not have an enforceable power to require an apology but as asking for an apology is not a sanction it could in any event request one as to ask for an apology is not a sanction.
- e The Committee did have power to make recommendations to Full Council regarding further sanctions including (based on the Court of Appeal decision in Broadland) removal from Committees.
- f The Council has power to appoint to committees and therefore has power to take into account the conduct of a member (including whether he had given a requested apology) before making such appointment. The Council was therefore acting within its powers in reaching the decisions on 24 April and 8 May 2001. Furthermore, Counsel saw no reason why Standing Orders should not be suspended to give effect to the Council's resolutions.
- g On the issue of fairness Counsel looked at two issues. The first is that Councillor Powers should know the case against him. Counsel makes the point that Councillor Powers had notice of the meeting on 17 April 2001. If he knew of the matters which were to be discussed at the meeting there was no unfairness. If, however, issues were discussed of which he had not been given notice then he did not have proper notice of the case and was treated unfairly. In this connection, counsel noted that the Head of Legal Services was invited to give a statement and did so. The second matter is that the committee ought to be seen to be free from bias. In that respect Counsel advises that if any members of the Standards Committee were present at the Licensing meeting on 6 September 2000 then there would be an impression of bias which would render that decision unfair. With regard to proportionality, Counsel advises that he considers the penalty imposed severe and disproportionate.
- h Counsel considers that the Code of Conduct issued under the Housing and Local Government Act 1989 does not restrict the freedom of expression given by Article 10 Schedule 1 of the HRA which Counsel considers extends to "intemperate criticism of staff". Counsel also considers, however, that Article 6 (the right to a fair hearing before an independent tribunal) is not engaged as there was not a determination of civil rights or obligations.

Conclusion

- 9 Counsel points out that the only way that Councillor Powers could have sought redress was by way of judicial review. Such proceedings must be brought promptly and in any event within 3 months. Although the Court can extend the time to apply Counsel advises that the Court would be unlikely to entertain an application at this stage. Counsel recommends, however, that the restrictions on Councillor Powers being appointed to committees and outside bodies be lifted.

Officer comment

- 10 Paragraph 7g of this report mentions the statement made to the Standards Committee by the Head of Legal Services. That statement referred to matters mentioned in the report to the Committee, and raised nothing new. In the same paragraph there is reference to a possible problem of bias. One Member of the Standards Committee was present at the Licensing meeting on 6 September 2000, but stood down from the Standards Committee for the meeting on 17 April 2001, and was replaced by another member of the political group concerned.
- 11 Counsel's recommendation, in the last sentence of paragraph 9, that the restrictions on Councillor Powers be lifted, is not relevant since they lapse at the end of the current council year.

FOR INFORMATION

Background Papers: Letter from DETR to Peterborough City Council Dated 26 March 2001.

Letters from Assistant Chief Executive UDC to the LGA and DTLR dated 20 July 2001

Email from DTLR to Assistant Chief Executive dated 6 February 2002

Judgements in Queen v Broadland DC ex parte Lashley (16 June 2000 at first instance, 7 February 2001 on appeal)

Instructions to counsel dated 9 April 2002

Counsel's opinion dated 12 April 2002