

**STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON ROAD  
SAFFRON WALDEN at 6.00 pm on 8 MAY 2002**

Present:- Councillors Mrs C A Cant, Mrs M A Caton and Mrs C D Down.  
Mr S A Brady and Mr M A Hall (Independent Persons).

Also present at the invitation of the Chairman:- Councillor A Dean.

Officers in attendance:- Mrs E Forbes, A Forrow, M J Perry and M T Purkiss.

S12 **APPOINTMENT OF CHAIRMAN**

RESOLVED that Mr S A Brady be appointed Chairman for the meeting.

S13 **DECLARATIONS OF INTEREST**

Councillor Mrs C A Cant drew attention to her declaration of a non-pecuniary interest in relation to Minute S3, (Conduct of a Member) of the Minutes of the meeting held on 23 January 2002.

S14 **REPORT ON FURTHER ADVICE FROM COUNSEL CONCERNING  
CONDUCT OF A MEMBER**

At the meeting on 9 April 2002 the Committee had resolved that a report be made to Full Council regarding the validity of decisions of the Council taken on 28 April and 8 May 2001 (Minute S9(i)) after Counsel's opinion had been received. Counsel had advised in writing on 12 April 2002 and a report had been prepared for consideration by Full Council on 23 April 2002. However, certain areas of possible ambiguity in Counsel's opinion had been noted. It had therefore been considered prudent to seek clarification from Counsel with regard to these items and report back to this Committee for consideration and possible recommendation to the Annual Council Meeting. The initial advice received from Counsel was 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.

Following this advice clarification was sought from Counsel on the following issues:

1. Whether the requirement to treat officers with respect under the National Code of Conduct issued under s. 31 Local Government Act 1989, in so far as it interfered with a members common law right of freedom of speech, was disproportionate?
2. If so whether the restriction was unlawful?
3. In the light of Counsel's advice that the sanction imposed by the Council was disproportionately severe whether the decision to impose such a sanction was rendered unlawful or merely subject to the risk of the decision being quashed had the Councillor taken proceedings for judicial review?
4. No proceedings having been taken for judicial review, what is the status of the decisions of the Council taken in connection with this matter?

5. What is the status and effect of the National Code of Conduct issued under s.31 Local Government Act 1989 so far as it is pertinent to this case?

Counsel's advice on these further issues was as follows:

1. The requirement under the National Code of Conduct to treat officers with respect was merely guidance and not a restriction on the right of freedom of speech. Even if it were it would not be disproportionate. Counsel has now clarified that it is only the sanction that was disproportionate, not the restriction.
2. For that reason the "restriction" (guidance) is not unlawful.
3. If the Council acts disproportionately it acts unlawfully. Such a decision is capable of judicial review and the decision may be quashed by the court. However proceedings for judicial review not having been commenced in time the Courts would be highly unlikely to entertain an application now. The decision of the Council therefore stands.
4. There is a presumption of legality of decision which operates in favour of the Council. This presumption can only be dislodged by a prompt application for judicial review.
5. The National Code of Conduct's status was one of lawful guidance.

Officers drew attention to paragraph g of Counsel's advice which mentioned the statement made to the Standards Committee by the Head of Legal Services. That statement had referred to matters addressed in the report to the Committee and raised nothing new. In the same paragraph there was reference to a possible problem of bias. One member of the Standards Committee had been present at the Sub-Committee meeting which had given rise to the investigation but had stood down from the Standards Committee for the meeting on 17 April 2001 and had been replaced by another Member of the Political Group concerned.

Counsel had concluded that the decision of the Council to suspend Councillor Powers from membership of Committee and outside bodies for one year was disproportionate and therefore unlawful. In answer to a question from Councillor Mrs Cant the Head of Legal Services said that reference to the word disproportionate was in relation to the right of Councillor Powers' freedom of speech. Councillor Mrs Cant added that there were very few guidelines on which to draw advice on what would be an appropriate sanction in cases of this nature.

Councillor Mrs Caton said that if the Councillor had apologised for his behaviour the sanctions would not have taken effect and she asked whether Counsel had been made aware of this. The Head of Legal Services clarified that this had been drawn to Counsel's attention and was referred to in paragraphs d and e. Councillor Mrs Caton said that the advice given at the meeting of the Standards Committee had been that the sanction proposed was lawful and the Committee felt that it was both reasonable and fair. Mr Brady added that the Committee had dealt with the matter in good faith. It now accepted the advice from Counsel and would treat this as part of the learning process. However, Councillor Mrs Cant expressed some concern at where this advice left the Standards Committee. It had deliberated long and hard over this matter and it now appeared the Council had a Code of Conduct

that was without teeth. The Assistant Chief Executive said that, in future, any complaints of this nature would go direct to the Standards Board in the first instance. The emphasis of the work of the Committee in future would be on providing education, guidance and advice. Recent legislation now made it possible for the Secretary of State to make regulations enabling Councils to suspend a Member for six months but there was as yet no indication of the level of action that would justify such a sanction. Regulations were being prepared and when further guidance was available the Committee would be advised accordingly. The Committee was concerned that the Standards Board should be urged to provide proper guidance to assist Members in their work as soon as possible.

RECOMMENDED to Council that the sanctions imposed on 8 May 2001 be formally lifted forthwith.

Following the vote on the above recommendation, Councillor Mrs Caton expressed the hope that this would draw the matter to a conclusion.

With the consent of the Chairman, Councillor A Dean addressed the Committee. He said that he had been following this case since the outset. He considered that it was unfortunate that it had taken so long to reach this position. He considered that the issue of Member/Officer advice still needed to be resolved and Member/Officer protocol should be looked at again. He urged that the Committee should address the issues which were within its remit as soon as possible.

The meeting ended at 7.05 pm