

**Committee: Standards**

**Agenda Item**

**Date: 3 March 2014**

**8**

**Title: High Court decision on standards**

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Item for decision

### **Summary**

1. This report is to inform members of a recent High Court decision concerning the Code of Conduct.

### **Recommendations**

2. That Members note this report

### **Financial Implications**

3. None.

### **Background Papers**

4. None.

### **Impact**

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

### **Situation**

6. In December 2013 the High Court gave judgement in the case of R. (on the application of Benjamin Dennehy) –v- London Borough of Ealing.
7. Councillor Dennehy maintained a blog site under the heading ‘Cllr Benjamin Dennehy (Conservatives) putting Hanger Hill residents first’. In March 2012 he published an item on that blog entitled ‘the Southall Card’. Under this heading the following passages were included:-

“Back to Southall and how this all came about. Southall is a constant on the public purse in Ealing. It is home to the worst concentration of illegal immigrants in the UK. It has gambling, drinking, drug, prostitution and crime issues unlike many other parts of London. It is an arguably Indian community who say they deplore this behaviour but yet it is that very same community that harbours and exploits their own people in squalid third-world living conditions. A simple rule: supply and demand. If there was no demand for gambling in Southall, why then does it have such concentration of gambling shops? I can say the same for prostitutes, drugs and drinking. Betting shops want to make money and usually exclusivity is the best way, but not in Southall though, one shop, two shops, three shops more can’t stem the demand. I heard that it is the most lucrative area threatening shops in the UK. I suspect that illegal rent money is letting people live it up. The exploding population of illegal immigrants is a constant on the public purse. Illegal immigrants don’t pay tax. The legitimate immigrants exploiting them in these squalid bed sheds don’t pay tax on their rental income. If these sort of people exploit the desperate what other scams are they perpetrating I ask? Criminality is endemic in Southall”.

8. A complaint was made to the Standards Committee of Ealing Borough Council. Although the complaint fell to be dealt with under the old code of conduct as the complaint was made in the transitional period for the purposes of the Localism Act 2011, the hearing procedure would have been under the new arrangements. The Standards Committee found that Councillor Dennehy had failed to treat the residents of Southall with respect by the posting on his blog and had also brought his council into disrepute. The sanction imposed by the Standards Committee was to ask Councillor Dennehy to issue an appropriate apology.
9. Although based on the old code the case has a relevance to this council as the relevant provisions of the old code are carried forward to that which applies today.
10. The first point of interest is that the High Court upheld the finding of the Standards Committee that Councillor Dennehy had failed to treat others with respect. This finding goes against decisions of the First Tier Tribunal, formerly the Adjudication Panel, in previous cases. It had previously been held that the requirement to treat others with respect related to identifiable individuals and not groups of people. Thus a councillor who was severely and unjustifiably critical of a council department was held not to have breached the code of conduct by treating others disrespectfully. It does not appear from the judgement that this point was argued before the court and the decision cannot therefore be taken as being binding authority on this point. Further, even if the

decision of the standards committee had not been upheld on this point, the finding of bringing the council into disrepute may well still have stood.

11. As is frequently the position with these cases Councillor Dennehy argued that his right to freedom of expression contained in the Human Rights Act was infringed. Not surprisingly the court found that Article 10 of the European Convention on Human Rights guaranteeing freedom of speech was engaged, that the code of conduct did interfere with that right, but that the interference was justified in all the circumstances. The court held that Councillor Dennehy comments “were not the expression of a political view, but an unjustified personal and generic attack on a section of the public. The subjects of the speech were not politicians, but ordinary members of the public and, as such, the comments did not attract the higher level of protection applicable to political expressions and the comments would plainly have undermined confidence in local government, the preservation of which is a recognised aim of the code”. This approach is now long established in dealing with the code of conduct and is not capable of being criticised.
12. The case is illustrative of the fact that notwithstanding the absence of effective sanctions councillors do still take the code of conduct seriously. As mentioned this case was dealt with under transitional arrangements. At the time the matter came before the standards committee of Ealing Borough Council there was no power of suspension and it was not possible to refer members to a higher tribunal with a view to disqualification. The only sanction available to the council was one of censure. Instead of applying a sanction the standards committee asked Councillor Dennehy to apologise. Councillor Dennehy refused to do so. The matter could have rested there. However, instead of accepting this Councillor Dennehy incurred expense by way of instructing solicitors and counsel to pursue his ultimately failed attempt to secure judicial review. Although the law report does not state as much it is probable that in addition to his own costs Councillor Dennehy was also ordered to pay at least part of the cost of the London Borough of Ealing.

### **Risk Analysis**

13. There are no risks attached to this report