

STANDARDS COMMITTEE - HEARING SUB-COMMITTEE

13th October 2009

Present: Mrs. Sheila Garner, Independent Member
in the Chair.
Councillors Berry and Burton.

Miss Doreen Porter, Deputy Monitoring Officer.

Mr. Peter Cruden, Independent Investigator.

Councillor David Clark.

The Complainant, Mr. Michael Foster MP, had written to say that he would not attend but that he wished the matter to be determined at this hearing.

Councillors Berry and Burton declared that they were fellow Councillors of Councillor Clark, but would determine this matter in a proper and professional manner.

1 CONSIDERATION OF WHAT IF ANY, ACTION SHOULD BE TAKEN IN RESPECT OF A COMPLAINT THAT A MEMBER BREACHED THE CODE OF CONDUCT FOR MEMBERS

The Chairman introduced the Members of the Sub-Committee, and requested all other persons present to introduce themselves.

As only Councillor Clark, the Councillor the subject of the complaint was present, he was asked if he wished the matter to be heard in public or private, and if in private, for what reason.

Councillor Clark confirmed that he wished the matter to be heard in public.

The Editor of Worcester News had written to the Chairman of the Sub-Committee requesting that this matter be heard in public, and expressing the wish that if this was not to be the case, that he be furnished with the reasons for this course of action.

The decision of the Sub-Committee was that the matter should be heard in public.

At the last meeting of the Sub-Committee it had been requested that a full copy of the letter from Councillor Clark on behalf of Whelan and Coll be provided in its entirety. The copy included in the paper was a copy of the draft, not the final version and a copy of the final version was tabled for completeness.

The Chairman asked if Councillor Clark was content for the hearing to be conducted in accordance with the suggested procedure. Councillor Clark indicated that he was, but felt disadvantaged by not being able to question the complainant on points raised during the course of the investigation. He felt there was no appropriate place for him to make the necessary points he wished to respond to.

The Deputy Monitoring Officer advised that the procedure was sufficiently flexible to ensure that Councillor Clark had an opportunity to raise all the issues he wished during the course of the hearing.

The Deputy Monitoring Officer then set out the complaint:-

It is alleged that Councillor Clark (a) used or attempted to use his position as a member improperly to confer on or secure for himself or another person an advantage or disadvantage and (b) failed to properly register an interest in the Register of Financial and Other Interests kept by the Monitoring Officer.

The previous Sub-Committee had considered the report of the Independent Investigator. His recommendation had been that there was a case to answer in respect of (a) but that there was no case to answer in respect of (b). The Sub-Committee referred both issues to this Sub-Committee for determination.

The Deputy Monitoring Officer requested Councillor Clark to confirm whether or not he agreed with the recommendations and findings in the report of the Independent Investigator. Councillor Clark stated that he agreed that in his view he had completed the Register of Financial or Other Interests within the required timeframe, and in respect of the other allegation he did not feel that he had used his office to gain any advantage either for himself or others.

Mr. Cruden, the Independent Investigator, presented his report and findings. He explained why he had included the secondary correspondence from both the complainant and Councillor Clark. The complainant had raised queries in respect of the Investigator's provisional report. The Investigator had responded to the questions raised by the complainant and had been requested by the monitoring officer to include that correspondence in the documentation to be considered by the Sub-Committee as part of the report. In the interests of fairness, the comments received from both parties in respect of his report had been included.

Mr. Cruden explained the allegations and the conclusions he had reached.

In respect of the allegation regarding the failure to complete the Register of Financial or Other Interests within the appropriate time scale, Mr. Cruden explained that the period over which the alleged interest of Councillor Clark in the company should have been registered was short, at most from the 17th September to 30th October 2008. The Code required the completion of the register within 28 days of the interest being acquired. This left only 16 days which could be considered as being a breach of the Code, even if Councillor Clark had acquired the interest on 17th September 2008. This would be a very minor breach.

During the initial period in question, it appeared that Councillor Clark was acting as a representative of the firm and this would not be an interest which needed to be entered in the Register. However a declaration at a meeting would have been necessary if that meeting was to consider anything relevant to that company. The period when Councillor Clark became a partner in the company, not merely a representative, was unclear, but the first date that such a title was used was early October, which would indicate that the declaration in the Register was completed in the appropriate timescale, therefore Mr. Cruden had concluded that there was no breach.

In respect of the allegation that Councillor Clark used or attempted to use his position as a member improperly to confer on or secure for himself or another person an advantage or disadvantage, Mr. Cruden stated that the initial email dated 17th September, which Councillor Clark had signed off as a Councillor of Bedwardine Ward was the issue in question. The email gave the impression that Councillor Clark was acting on behalf of the Council, but it was not council business, therefore that could be considered a breach.

From the perspective of Mr. and Mrs. Hartley, the constituents who had made the complaint to Mr. Foster, they were involved in a contract dispute relating to work undertaken by Whelan and Coll. By receiving a communication from a Councillor, the perception could have been that this was being sent on behalf of the Council, which could reasonably lead to the belief that the actions of the Building Control team would be influenced by him.

Councillor Clark had agreed that he had been acting privately for the company, but had signed the email off as a Councillor to in his words "give the situation a little more clout". This is what had led to the conclusion that it was an improper use of his position.

Councillor Clark responded that he had been trying to promote an exchange of communication in the process.

Mr. Cruden proceeded to explain that there was no definition of any degree of breach in the Code of Conduct; it did not differentiate between major or trivial. Neither did the Code give any gauge on how to deal with differing levels of seriousness.

The complainant had contended that the terminology used in communications from Councillor Clark had shown that there was a relationship which was not "unfamiliar" between Councillor Clark and staff in the Building Control Team. Mr. Cruden explained that this could not be construed from the use of first names in communication, as it was not uncommon for letters to be addressed using first names, when neither party was acquainted.

The complainant had suggested that the use of terms such as "we" and "our" in communications suggested a connection between Councillor Clark and the firm of Whelan and Coll and showed that he had an interest. Mr. Cruden accepted in his report that Councillor Clark had been acting as a representative of the Company, but pointed out that this, in itself, would not require registration. Councillor Clark had taken on the role of Partner to provide a level of expertise which the Company lacked.

No evidence had been found that Councillor Clark had tried to or had exercised any influence of the Building Control team. Evidence that the Building Control team were aware that they were dealing with a Councillor was provided in the communication with the legal department setting out this fact, the staff within the Building Control Team had not been influenced by the fact that Councillor Clark was a member of the authority and the work which had been done was in line with normal practice as required.

Councillor Clark then addressed the Sub-Committee. Councillor Clark wished to point out that he only used the term Councillor on one communication, all other communication was addressed in his private capacity.

Mr. Cruden explained that the work undertaken by Building Control was of a statutory nature, and was not dependent on approval of Members, therefore there was little or no regular contact with members, officers may have known Councillors, but not necessarily, it was not inevitable and it was wrong to assume a close relationship between Councillors and Building Control staff.

Councillor Clark felt that Mr. Foster had made strong allegations which undermined his character, and that he resented some of the accusations. Mr. Cruden stated that he had disagreed with some points raised in the letter from Mr. Foster and had dealt with these in his reply to that letter.

Councillor Clark expanded on the issue of use of first names, he cited a letter from Mr. Hartley, who he had never met, which was addressed as "Dear David".

Councillor Clark asked Mr. Cruden if the further comments in the letter from Mr. Foster had brought about a change of opinion in respect of the registering of his interest, to which Mr. Cruden responded that he had made his recommendation on the evidence he had obtained, and this had not changed.

Councillor Clark pointed out to the Sub-Committee that the only item of correspondence on which he had used the title Councillor had been addressed to the solicitors acting for the Hartleys, and this was in an attempt to get the lines of communication working again. He felt that he could not understand what advantage or disadvantage had been gained by that letter being signed off with the title Councillor.

The members of the Sub-Committee asked questions of Councillor Clark. The Sub-Committee agreed that regarding contact with the Building Control team it was not an automatic that a close working relationship existed. Building Control did not rely on member decisions to operate as it was a statutory service which did not need to seek amendments to its operation.

The Sub-Committee noted that there was no indication in the Code of Conduct as to the range of severity of a breach, it was either a breach of the code or not.

Mr. Cruden raised a general point that when the issues were dealt with by the Standards Board for England the Ethical Standards Officer had the authority to dismiss a minor breach and agree no further action was needed. That power was not available to the Investigating Officer.

The process for assessing a complaint was briefly explained: the first hearing was merely to establish whether the matter the subject of the complaint was capable of being a breach of the code and to decide whether or not to request an investigation into the complaint.

Councillor Clark in his summing up, pointed out that although the complainant Michael Foster MP, signed his letters as an MP, this did not mean that he was acting on behalf of the government it just indicated he was the MP for Worcester, therefore by signing his correspondence as a Councillor he did not feel that meant that he was purporting to be acting on behalf of the Council. He contended that to the general public, the title Councillor indicated that this was a person who was able to assist. He further commented that he considered that Mr. Cruden had conducted a thorough examination of all the evidence in this case, but he considered that the motivation for the complaint was political. He regretted that Mr. Foster had not attended the hearing. Councillor Clark felt that Mr. Foster had done some investigations himself. Councillor Clark stated that he felt he had been disadvantaged as he was unable to directly question the complainant.

The Sub-Committee was reminded that it had to consider the allegations as submitted, and the findings in the report. The motives behind the complaint should not be taken into account.

All parties to the hearing with the exception of the members of the Sub-Committee withdrew to enable the Sub-Committee to reach a decision.

All parties were recalled and the Chairman gave the decision of the Sub-Committee:-

The Sub-Committee find that Councillor Clark:-

- 1. did breach the Code of Conduct for Members in respect of the allegation that "he used or attempted to use his position as a Member improperly to confer on or secure for himself or another person as advantage or disadvantage";**
- 2. did not breach the Code of Conduct for Members in respect of the allegation that "he failed to properly register an interest in the Register of Financial or Other Interests kept by the Monitoring Officer.**

Mr. Cruden asked the Sub-Committee to take into account his recommendation that the breach as found was a relatively minor technicality, and that that prior to the changes to the regulations to require such issues to be determined locally, the Ethical Standards Officer of the Standards Board for England would have recommended no further action be taken in a case such as this. However, now it was necessary for the Monitoring Officer to refer all complaints for determination by the Standards Committee. Mr. Cruden's recommendation would be that no action should be taken since the actual breach as found was relatively trivial.

All parties with the exception of the members of the Sub-Committee and the Committee Administrator withdrew to enable the Sub-Committee to consider what if any action to take in respect of this matter.

RESOLVED: That in respect of the found breach of the Code of Conduct for Members in respect of the allegation that Councillor Clark used or attempted to use his position as a Member improperly to confer on or secure for himself or another person as advantage or disadvantage Councillor Clark be required to undertake training on the Code of Conduct, to be conducted by the Monitoring Officer, the content and extent of such training to be at the discretion of the Monitoring Officer, and that no further action be taken in this matter.

Duration of the meeting: 2.00 p.m. to 4.35 p.m.

Chairman at the meeting on
13th October 2009