

DETERMINATIONS AND DISPENSATIONS COMMITTEE
(Devon & Somerset Fire & Rescue Authority)

28 November 2016

Present:-

Councillors Bown, Coles, Edmunds, Julian and Randall Johnson.

* **DDC/1** **Election of Chair**

RESOLVED that Councillor Randall Johnson be elected Chair for the meeting.

* **DDC/2** **Exclusion of the Press and Public**

RESOLVED that, in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in the following Paragraph(s) of Part 1 of Schedule 12A (as amended) to the Act:

- Paragraph 1 (information relating to an individual);
- Paragraph 2 (information likely to reveal the identity of an individual); and
- Paragraph 3 (information relating to the financial and business affairs of any particular person [including the authority holding that information]).

* **DDC/3** **Allegation of Breach of Member Code of Conduct - Councillor Mark Healey**

(An item taken in accordance with Section 100A(4) of the Local Government Act 1972 during which the press and public were excluded from the meeting).

The Committee conducted a hearing into allegations that Councillor Mark Healey had failed to comply with the Authority's approved Members' Code of Conduct ("the Code"). The Committee conducted the hearing in two stages, the first to determine "findings of fact" as to whether or not, on the balance of probabilities, the alleged breaches of the Code had been established. The second stage dealt with the imposition of sanctions – including hearing submissions in mitigation - in the event that breaches of the Code were found to have been established.

STAGE 1 – FINDINGS AS TO FACT

During this stage the Committee:

- considered a report of the Director of Corporate Services (Monitoring Officer) DDC/16/1) to which was appended:
 - a report of the external Investigating Officer summarising the investigation findings into the alleged breaches of the Code;
 - a copy of the Committee's Terms of Reference (which featured, amongst other things, sanctions available to the Committee in the event of a breach of the Code being established);
 - the Authority's approved Members' Code of Conduct; and
 - Guidance on Making a Complaint

- considered a written submission of Councillor Healey circulated with the agenda for the meeting together with a supplementary submission circulated subsequently;
- received presentations from both the Investigating Officer and Councillor Healey; and
- received evidence from two witnesses - Witness A and Witness B - as to fact.

The Investigating Officer, Councillor Healey and Witnesses A and B were also questioned in some depth on their submissions by each of the Committee Members and the Independent Person.

The report of the Investigating Officer detailed that relevant legislation to the investigation included Chapter 7 of Part 1 of the Localism Act and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The investigation itself had been conducted in accordance with guidance previously prepared by Standards for England and which had been judicially tested. The Investigating Officer had concluded at the outset of the investigation that, at all relevant times outlined in the complaint, Councillor Healey was acting in his official capacity as a Member of the Authority and as such was bound by the Code.

The alleged breaches of the Code focussed on the following specific aspects:

Point 1(a) - has there been a failure on behalf of Councillor Healey to register and declare a disclosable pecuniary interest in Firemark Education Community Interest Company (CIC)?

The Investigating Officer's report on this aspect detailed that Councillor Healey took no remuneration for his work with Firemark Education CIC and received nothing other than actual expenses. On this basis, the Investigating Officer did not consider that a disclosable pecuniary interest existed and flowing from this there could be no breach of the Code in terms of failure to register or declare any such disclosable pecuniary interest. This was accepted by the Committee.

Point 1(b) – has there been a further failure to register an interest other than a disclosable pecuniary interest?

Paragraphs 1.3(f) and 2.2 of the Code required the registration and declaration of any private interests which might create a conflict of interest, contrary to the public interest, in carrying out duties as an Authority Member.

The report of the Investigating Officer detailed that, while Councillor Healey did not have a disclosable pecuniary interest relating to his involvement with Firemark Education CIC, the sponsorship received by the CIC from several organisations had the potential to create conflicts of interest contrary to the Code and as such should have been, but had not been at the time of the investigation, included in Councillor Healey's Register of Interests.

As part of his submissions, Councillor Healey acknowledged that his involvement with Firemark Education CIC, together with details of companies sponsoring the CIC, should have been included in his Register of Interests from the outset and apologised for not having done so. Councillor Healey indicated that his failure to include this in his Register of Interests was not deliberate but a genuine oversight, that he had never sought to conceal his involvement and that he considered this to be common knowledge both locally and nationally. Since the investigation, and prior to this hearing, however, Councillor Healey had amended his published Register of Interests to include details of his involvement with Firemark Education CIC and the companies sponsoring Firemark.

Point 2 – has there been a failure on the part of Councillor Healey to have acted in accordance with the Code with regards to matters that may have benefitted a person with whom Councillor Healey has a close association?

The Code required, at paragraph 1.3(a) and 4.2(a), that a Member should not use their position in such a way as to confer an advantage or disadvantage on a person. This particular allegation was that Councillor Healey had a close association with an individual (Witness A) and that this relationship would benefit Witness B in their associated business interests.

The Committee considered the submissions of both the Investigating Officer and Councillor Healey in this respect and also had the opportunity to hear from and question Witness A.

It was acknowledged by both Councillor Healey and Witness A that they had an association. This had developed over time as a result of involvement by both in various aspects, both locally and nationally, of the fire and rescue sector. Witness A did not consider, however, that this association had benefitted them in terms of their business interests and refuted strongly any allegation that this might be the case and that questioning the personal and professional integrity of both Witness A and Councillor Healey in this respect was both unwarranted and illogical.

The Committee considered that the evidence as presented, while it confirmed the close association between Councillor Healey and Witness A, did not indicate in any sense that Witness A, either personally or through any business interests, had benefitted from this close association – particularly given the relative sizes of the businesses with which Councillor Healey and Witness A were associated.

Point 3 – has Councillor Healey disclosed information given to him in confidence?

The allegation here was that Councillor Healey, contrary to paragraph 4.2(f) of the Code, disclosed information to a third party on an initiative which Red One Ltd. was seeking to progress when he knew or should reasonably have believed the information was of a confidential nature and when he did not have the consent of Red One Ltd. to so disclose the information.

The evidence as presented to the Committee referred to a number of e-mails and to minutes of a Red One Board meeting which detailed, amongst other things, that Councillor Healey should not raise the matter with the third party. The Investigating Officer's report and presentation to the Committee also indicated that Councillor Healey had other avenues available to him on this particular issue that would not have required any form of communication with the third party.

For his part, Councillor Healey stated that the Board of Red One Ltd. had been informed at a meeting that the third party was seeking to "block" an initiative currently being pursued by Red One Ltd. Councillor Healey asserted that he was acting in the best interests of Red One Ltd. in seeking to obtain confirmation from the third party as to whether or not this was the case and that – if it were the case – what the reasons might be and whether any way forward might exist. Further, Councillor Healey made the point that – if the third party was indeed blocking the initiative as he had been led to believe at a Red One Ltd. Board meeting – then the third party must already have been aware of the Red One Ltd. initiative meaning that Councillor Healey could not possibly have disclosed "confidential" information or information that had not already been obtained by the third party but from another source.

In giving evidence to the Committee, Witness B confirmed that they had been present at the same Red One Ltd. Board Meeting when the allegation of the third party blocking the initiative had been raised. Witness A had also commented that the nature of the information – relating to accreditation – was of itself not confidential.

Notwithstanding this, the Committee noted that:

- the minutes of the Red One Board meeting clearly indicated that Councillor Healey should not raise this matter directly with the third party;
- that the report of the Investigating Officer and his presentation to the meeting indicated that other avenues existed to Councillor Healey to ascertain the accuracy of the allegation made at the Red One Ltd. Board meeting;
- that Councillor Healey had not denied that he had raised the matter with the third party and when doing so had been accompanied by Witness B.

The Committee concluded that, on the balance of probabilities, Councillor Healey had divulged certain information to the third party in circumstances when he was not so authorised to do so.

Having considered the findings of fact in relation to each of the allegations, the Committee:

RESOLVED that, in light of the evidence as considered at the hearing and on the balance of probabilities, Councillor Healey:

- (a). had breached paragraph 1.3(f) of the Code by not included on his published Register of Interests, at the time of the investigation, a personal (albeit non-pecuniary) interest that might be perceived as giving rise to conflicts contrary to the public interest;
- (b). had not breached the Code with regard to matters which may have benefitted a person with whom he had a close association and which would have been contrary to paragraphs 1.3(a) and 4.2(a) of the Code; and
- (c). had breached paragraph 4.2(f) of the Code by having disclosed to a third party information which he believed or ought reasonably to have been aware of was confidential and where he was not authorised to so disclose such information.

STAGE 2 - MITIGATION

Having established breaches of the Code (see (a) and (c) above) as findings of fact on the balance of probabilities, the Committee then went on to consider submissions in mitigation in relation to the imposition of any potential sanctions to the breaches.

The Committee had previously heard from Councillor Healey that he had now included personal interests relating to Firemark Education CIC and sponsors of that company in his published Register of Interests.

The Committee also noted the comments of Councillor Healey and Witness A as to the nature of the information disclosed to a third party without the consent of the Board of Red One Ltd.

The Committee also received a submission as to the character of Councillor Healey from Witness C. Witness C considered Councillor Healey to be a person of utmost integrity who espoused the principles of public life and worked tirelessly both locally and nationally to promote fire safety generally and specifically the best interests of both the Devon & Somerset Fire & Rescue Authority and Red One Ltd. (the commercial trading arm of the Authority). Councillor Healey had recently been awarded the Member of the Order of the British Empire in recognition of his endeavours.

Witness C felt that Councillor Healey's general business acumen and connections with the fire and rescue service both locally and nationally added considerable benefit and value to the Authority and Red One Ltd. and contributed positively to the ability of both the Authority and Red One Ltd. to realise their goals and ambitions. As a corollary to this, Witness C considered that – were Councillor Healey not to be involved with either the Authority or Red One Ltd. – this would be detrimental to both organisations.

The Committee was also cognisant of the views of the Investigating Officer on the potential number of conflicts faced by Councillor Healey and – given these – the ability of Councillor Healey to manage these appropriately. The Committee accepted the mitigation offered by Witness C as to the significant integrity of Councillor Healey (as evidenced by his willingness to co-operate both with the investigation, this hearing and in relation to addressing - prior to the hearing - the first Code breach) and light of this considered that – with appropriate training - there was no reason to assume that Councillor Healey would not be equipped to manage potential conflicts at both Authority and Board level. Also, the Committee considered the contributions Councillor Healey afforded to Red One Ltd. by virtue of his national contacts far outweighed the arrangements that would need to be put in place to assist Councillor Healey in managing any conflicts of interest. Consequently, the Committee felt there was no reason for the Authority to consider imposing any further sanctions other than the requirement for Councillor Healey to receive training on the handling of confidential information and the implications and limitations associated with Non-Disclosure Agreements.

The Committee found these submissions to be both credible and persuasive and consequently, in determining appropriate sanctions in consultation with the Independent Person,

RESOLVED

- (a). that, in relation to the breach of the Code on failure to register a personal interest, given Councillor Healey had, following the investigation but prior to the hearing:
 - (i). amended his published Register of Interests to include those interests that were the subject of the complaint;
 - (ii). held several discussions with the Authority's Monitoring Officer on the requirement to and importance of declaring all relevant interests; and
 - (iii). voluntarily entered onto his Register, in accordance with the required timescales, further interests that had arisen post- the investigation but prior to the hearing;
- no further action was required; and

- (b). that, in relation to the breach of the Code on disclosure of information in circumstances where Councillor Healey was not authorised to do so, Councillor Healey should receive training (to be arranged by the Monitoring Officer) both in the appropriate handling of confidential information and in Non-Disclosure Agreements (NDAs).

DDC/4 General Recommendations to the Authority

(An item taken in accordance with Section 100A(4) of the Local Government Act 1972 during which the press and public were excluded from the meeting).

Having dealt specifically with the allegations into breaches of the Code of Conduct by Councillor Healey, the Committee then went on to consider whether – arising from the investigation and hearing – any general recommendations should be made to the Authority. The Committee

RESOLVED that the Authority be recommended to approve:

- (a). the undertaking of a review of the Code of Conduct by this Committee, in consultation with the Independent Person, to ensure compliance with current best practice; and
- (b). that, upon adoption of any revised Code, the provision of training to all Authority Members on the revised Code in general and on the registration and declaration of interests in particular.

***DENOTES DELEGATED MATTER WITH POWER TO ACT**