

STANDARDS COMMITTEE

(Devon & Somerset Fire & Rescue Authority)

26 October 2018

Present:-

Councillors Ellery (Vice-Chair, in the Chair), Bown, Drean, Hannaford (vice Thomas), Prowse and Trail BEM.

Apologies:-

Councillor Redman.

* **SC/4** **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).

* **SC/5** **Standards Committee Hearing – Councillor Mark Healey MBE**

(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 MBE (“the Subject Member”) 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 (SC/18/2) to which was appended:
 - a report of the external Investigating Officer summarising the complaint and the investigation findings into the alleged breaches of the Code; and
 - a copy of the complaint itself;
- considered a written submission of Councillor Healey, with supporting documentation including a written statement from witness A and a written statement from Character Witness B as circulated with the agenda for the meeting;

- considered a written witness partial statement and accompanying documentation submitted by witness C in support of Councillor Healey. This supplementary documentation had been provided to the Committee on 24 October, 8 days after the deadline for submission of witness statements and on the day of the Committee's pre-hearing process;
- received presentations from both the Investigating Officer and Councillor Healey, who was accompanied by a legal consultant;
- received evidence from one witness (the Complainant) as to the findings of fact (this witness was given permission to attend by the Committee at its pre-hearing on 24 October and following a properly submitted request from the Investigating Officer); and
- considered a request from the Subject Member that witness C be allowed to give evidence as witness C had made special arrangements to be available. In considering this request the Committee was of the view that it had determined, as part of the pre-hearing on 24 October, that whilst the late statement from witness C would be allowed as evidence, witness C would not be given permission to attend because the Committee had not been afforded the clearly prescribed time to assess whether it was necessary to ask witness C any questions. The Committee was of the view that the position had not changed and the Subject Member's request for permission for witness C to be allowed to be present to give evidence was refused.

The Investigating Officer, Councillor Healey and the Complainant were also questioned in some depth on their submissions by each of the Committee Members and the Independent Person. Additionally, the legal consultant supporting Councillor Healey was afforded the opportunity to question both the Investigating Officer and the Complainant as to the findings of fact.

The report of the Investigating Officer detailed that relevant legislation to the investigation included Chapter 7 of Part 1 of the Localism Act 2011. 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 hearing focussed on the following alleged breaches of the Code as identified in the Investigating Officer's report:

1. an unauthorised disclosure by Councillor Healey to a third party of information discussed during that part of a Resources Committee meeting from which the press and public had been excluded, where Councillor Healey knew, or ought reasonably to have known, that the information was of a confidential nature (including exempt information as defined in Schedule 12A [as amended] of the Local Government Act 1972). The Investigation report concluded that this was in breach of paragraph 4.27 of the Code of Conduct;
2. An e-mail sent by Councillor Healey to the Complainant on 18 May 2018 containing an implied threat. The Investigation report concluded that this was contrary to paragraphs 4.1(1), 4.1(2) and 4.2(9) of the Code; and
3. the making by Councillor Healey on 31 May 2018 of an aggressive telephone call to the Complainant. The Investigation report concluded that this was contrary to paragraphs 4.1(1), 4.1(2) and 4.2(9) of the Code, specifically:
 - a. a requirement for conduct consistent with the Authority's duty to promote and maintain high standards of conduct by its members (paragraph 4.1(1));

- b. a requirement to treat others with courtesy and respect (paragraph 4.1(2)); and
 - c. a requirement not to conduct oneself or behave in such a way as to give a reasonable person the impression that you have brought your office or the Authority into disrepute (paragraph 4.2(9)).
4. That, on 17 April 2018, Councillor Healey attended a meeting at which the Complainant was present smelling strongly of alcohol. The Investigation report concluded that this was contrary to paragraphs 4.1(1) and 4.2(9) of the Code.

In relation to (1), the Committee heard arguments advanced by the legal consultant supporting Councillor Healey and which included, amongst other things:

- whether or not confidential information had been disclosed;
- that the information had been relayed to Councillor Healey by a Member or Members of the Resources Committee and that other Members of the Resources Committee had also contacted the third party to discuss the information but that those Members were not being subject to Code of Conduct allegations;
- that, in any event, the third party to whom Councillor Healey had disclosed the information was subject to a non-disclosure agreement; and that there had been incorrect application of the legislation relating to exempt information at meetings.

The Committee also heard from the Investigating Officer, however:

- That, during the course of the Investigation, endeavours had been made to identify which of the Resources Committee Members had discussed the information with Councillor Healey and which Members had spoken to the third party about the information. Both Councillor Healey and the third party (witness C) had refused to divulge the identities of these Councillors and the written partial statement provided by witness C had confirmed the telephone conversation with Councillor Healey had taken place and that Councillor Healey was the first person to contact witness C about the discussions at the Resources Committee. One of the requirements prior to establishing any breach of the Code was that the complaint was against a named Member of the Authority. In relation to the other Members, the report of the Investigating Officer commented:

“It may never be established who provided the information to the Subject Member and this breach is something that Authority will need to address outside of this process”;

- That, during the course of the investigation, the Investigating Officer had spoken to the third party recipient of the information (witness C) and considered, on the basis of this responses of the third party as referenced at paragraph 4.13 of the Investigation report, that the information was of a confidential nature. This was corroborated in the written partial statement provided by witness C (the third party recipient of the information);

- That, at the time of the disclosure, there was no contractual relationship between the third party (witness C) and the Authority and that a non-disclosure agreement would only usually safeguard information exchanged during such a relationship. In any event, the allegation was that Councillor Healey had breached the Code by the unauthorised disclosure of the information in circumstances that did not accord with the exceptions provided for by the Code;
- That the Resources Committee had correctly passed a resolution to exclude the press and public from the meeting while the information in question was discussed. As to whether this was exempt information, the Investigating Officer advised that its nature was such that, even if it was subsequently the subject of a Freedom of Information Act request, this request could be resisted by virtue of the exemption at Section 43(2) of that Act and, consequently, that the application of the legislation relating to exempt information at meetings was correct;
- That Councillor Healey was an experienced Councillor who would have known, or ought reasonably to have known, that the information was of a confidential nature.

In relation to (2), the e-mail of 18 May 2018 was reproduced in the report of the Investigating Officer. There was no dispute as to its contents. The legal consultant supporting Councillor Healey advanced arguments that this e-mail was sent from Councillor Healey's personal e-mail address. The Committee also noted, however, that the e-mail itself referenced the Resources Committee. Additionally, the Complainant, when being questioned, indicated that they would have no reason to believe that the e-mail sent by Councillor Healey was in any capacity other than his being a Member of the Authority. The Investigating Officer had advised that the Code applied when a Member behaved in such a way as to give a reasonable person the impression that they were acting as a representative of the Authority. In this respect, the Investigating Officer contended that the actual e-mail address the e-mail originated from was irrelevant and not a determining factor.

In relation to (3), the Committee noted that there was no dispute that a telephone conversation had taken place. The Committee heard arguments advanced by the legal consultant supporting Councillor Healey that the Complainant's reaction to the telephone call was perception. The Committee noted, however, that in his written statement Councillor Healey stated that he regretted any offence and upset caused. Additionally, in response to questions from the Committee following his submission, Councillor Healey commented that, while he did not entirely agree with the transcript of the telephone conversation as produced by the Complainant and appended to the Investigating Officer's report, he did regret his actions and that some of the language used during the conversation may have come across as threatening.

In relation to (4), the Committee heard from the Investigating Officer that two other witnesses in addition to the Complainant had confirmed, during the course of the investigation, that there was a smell of alcohol from Councillor Healey on the day in question (17 April 2018). The Committee also noted, however, the arguments advanced by the legal consultant supporting Councillor Healey and in Councillor Healey's written statement, that if there was any such smell it would have been from the consumption of wine the evening before and that there was no question either that Councillor Healey was intoxicated or his functioning impaired on the day in question.

Having considered all the submissions, the Committee adjourned to consider the findings of fact. On reconvening, the Committee

RESOLVED that, on the balance of probabilities having considered all the submissions received:

- (a). That Councillor Healey had made an unauthorised disclosure to a third party of information that he knew, or ought reasonably to have known, was of a confidential nature. This was a breach of 4.27 of the Code of Conduct;
- (b). That the e-mail from Councillor Healey to the Complainant was a breach of paragraphs 4.1(1) and 4.1(2) of the Code. The Committee did not consider that this represented a breach of paragraph 4.2(9) of the Code as the Committee did not consider the contents of the e-mail so extreme as to bring Councillor Healey's office into disrepute and that it had very limited circulation (i.e. only to the Complainant);
- (c). That the telephone call from Councillor Healey to the Complainant was a breach of paragraphs 4.1(1) and 4.1(2) of the Code. The Committee did not consider that the telephone call represented a breach of paragraph 4.2(9) of the Code as the Committee did not consider the nature of the telephone conversation so extreme as to bring Councillor Healey's office into disrepute, having been made to only one individual (i.e. only to the Complainant);
- (d). That the allegation of attending a meeting smelling of alcohol did not represent a breach of paragraphs 4.1(1) and 4.2(9) of the Code as the Investigating Officer had concluded that there was no evidence of additional aggravating factors (e.g. intoxication; inability to discharge his duties). The Committee did not consider that smelling of alcohol alone constituted a breach of the Code. (**NOTE** the Independent Person did not agree with this decision, considering, on the balance of probabilities in light of the submissions, that the allegation did represent such a breach of the Code).

STAGE 2 – SUBMISSIONS IN MITIGATION AND SANCTIONS

Having established, on the balance of probabilities having considered all the submissions received, breaches of the Code of Conduct, the Committee then went on to consider submissions in mitigation and the imposition of sanctions.

The Committee considered the written statement provided by Character Witness B, together with submissions by the legal consultant supporting Councillor Healey. These centred around Councillor Healey's long service as a councillor and as a Member of the Devon & Somerset Fire & Rescue Authority, during which time Councillor Healey had always endeavoured to serve in the best interests of the Authority. The Committee took note of the backdrop to the e-mail and telephone call, as described by Councillor Healey, and Councillor Healey's frustration in relation to other matters which he perceived were in some way attributable to the Complainant. The Committee also noted that, in his written submission and in the course of the hearing, Councillor Healey had expressed regret for his actions and apologised for any distress that he may have caused the Complainant. Given this, the legal consultant supporting Councillor Healey asked that any sanctions imposed be proportionate to the nature of the breaches of the Code of Conduct established.

Having considered the submissions in mitigation, the Committee then

RESOLVED that, by way of sanctions:

- (a). That Councillor Healey write a meaningful letter of apology to the Complainant both for the e-mail on 18 May and the telephone call on 31 May;

- (b). That Councillor Healey write a letter to the Devon & Somerset Fire & Rescue Authority acknowledging and apologising for his actions that represented breaches of the Code of Conduct;
- (c). that the letters referred to at (a) and (b) be agreed by the Chair of the Committee hearing;
- (d). That Councillor Healey agree to undertake individual refresher training, to be arranged by the Authority's Monitoring Officer, on the handling of confidential information (including his responsibilities under the Authority's Code of Conduct).

SC/6

Action in the Event of Failure to Comply with Sanctions (Minute *SC/5)

RESOLVED That, in the event of Councillor Healey not complying with all of the sanctions as identified at (a), (b) and (d) of Minute SC/5 above within 28 days of this decision, the Authority be recommended to authorise the Monitoring Officer to write to the Monitoring Officer of Somerset County Council requesting that Councillor Healey be removed from the Authority for a period of four months.

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