



# DEVON & SOMERSET FIRE & RESCUE AUTHORITY

M. Pearson  
CLERK TO THE AUTHORITY

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To: The Chair and Members of the Standards  
Committee

(see below)

SERVICE HEADQUARTERS  
THE KNOWLE  
CLYST ST GEORGE  
EXETER  
DEVON  
EX3 0NW

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Your ref :  
Our ref : DSFRA/MP/SY  
Website : www.dsfire.gov.uk

Date : 27 November 2018  
Please ask for : Steve Yates  
Email : syates@dsfire.gov.uk

Telephone : 01392 872200  
Fax : 01392 872300  
Direct Telephone : 01392 872329

## **STANDARDS COMMITTEE**

**Monday, 3 December, 2018**

A meeting of the Standards Committee will be held on the above date, **commencing at 12.00 pm in Conference Rooms, Service Headquarters, Exeter** to consider the following matters.

M. Pearson  
Clerk to the Authority

## **A G E N D A**

***PLEASE REFER TO THE NOTES AT THE END OF THE AGENDA LISTING SHEETS***

**1 Apologies**

**2 Minutes (Pages 1 - 10)**

of the meetings held on 24 and 26 October 2018 attached.

**3 Items Requiring Urgent Attention**

Items which, in the opinion of the Chair, should be considered at the meeting as matters of urgency.

### **PART 1 - OPEN COMMITTEE**

**4 Exclusion of the Press and Public**

***RECOMMENDATION*** 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 items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A (as amended) to the Act, namely information relating to an individual.

**PART 2 - ITEMS WHICH MAY BE CONSIDERED IN THE ABSENCE OF THE PRESS AND PUBLIC**

**5 Standards Committee Hearing - Subject Member X (Pages 11 - 20)**

Report of the Director of Corporate Services (SC/18/3) attached.

**MEMBERS ARE REQUESTED TO SIGN THE ATTENDANCE REGISTER**

Membership:-

Councillors Thomas (Chair), Bown, Drean, Ellery (Vice-Chair), Prowse, Redman and Trail BEM

**NOTES**

<b>1.</b>	<b><u>Access to Information</u></b> Any person wishing to inspect any minutes, reports or lists of background papers relating to any item on this agenda should contact the person listed in the “Please ask for” section at the top of this agenda.
<b>2.</b>	<b><u>Reporting of Meetings</u></b> Any person attending a meeting may report (film, photograph or make an audio recording) on any part of the meeting which is open to the public – unless there is good reason not to do so, as directed by the Chair - and use any communication method, including the internet and social media (Facebook, Twitter etc.), to publish, post or otherwise share the report. The Authority accepts no liability for the content or accuracy of any such report, which should not be construed as representing the official, Authority record of the meeting. Similarly, any views expressed in such reports should not be interpreted as representing the views of the Authority.  Flash photography is not permitted and any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chair or the Democratic Services Officer in attendance so that all those present may be made aware that is happening.
<b>3.</b>	<b><u>Declarations of Interests at meetings (Authority Members only)</u></b> If you are present at a meeting and you are aware that you have either a disclosable pecuniary interest, personal interest or non-registerable interest in any matter being considered or to be considered at the meeting then, unless you have a current and relevant dispensation in relation to the matter, you must: <ul style="list-style-type: none"><li>(i) disclose at that meeting, by no later than commencement of consideration of the item in which you have the interest or, if later, the time at which the interest becomes apparent to you, the existence of and – for anything other than a “sensitive” interest – the nature of that interest; and then</li><li>(ii) withdraw from the room or chamber during consideration of the item in which you have the relevant interest.</li></ul> If the interest is sensitive (as agreed with the Monitoring Officer), you need not disclose the nature of the interest but merely that you have an interest of a sensitive nature. You must still follow (i) and (ii) above. Where a dispensation has been granted to you either by the Authority or its Monitoring Officer in relation to any relevant interest, then you must act in accordance with any terms and conditions associated with that dispensation. Where you declare at a meeting a disclosable pecuniary or personal interest that you have not previously included in your Register of Interests then you must, within 28 days of the date of the meeting at which the declaration was made, ensure that your Register is updated to include details of the interest so declared.
<b>4.</b>	<b><u>Part 2 Reports</u></b> Members are reminded that any Part 2 reports as circulated with the agenda for this meeting contain exempt information and should therefore be treated accordingly. They should not be disclosed or passed on to any other person(s). Members are also reminded of the need to dispose of such reports carefully and are therefore invited to return them to the Committee Secretary at the conclusion of the meeting for disposal.
<b>5.</b>	<b><u>Substitute Members (Committee Meetings only)</u></b> Members are reminded that, in accordance with Standing Order 37, the Clerk (or his representative) must be advised of any substitution prior to the start of the meeting. Members are also reminded that substitutions are not permitted for full Authority meetings.

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## **STANDARDS COMMITTEE**

(Devon & Somerset Fire & Rescue Authority)

24 October 2018

### Present:-

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

### Apologies:

Councillor Redman.

\* **SC/1**

### **Minutes**

**RESOLVED** that the Minutes of the meeting of the Determinations and Dispensations Committee held on 9 April 2018 be signed as a correct record.

(**Note:** at its meeting on 30 April 2018, the Authority had resolved, amongst other things, that the Determinations and Dispensations Committee be renamed as the Standards Committee – Minute DSFRA/72(b) refers).

\* **SC/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).

\* **SC/3**

### **Pre-Hearing Process - Subject Member X**

(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 considered a report of the Director of Corporate Services (SC/18/1) and undertook the pre-hearing process (attached as Appendix A to the report) prior to the scheduled hearing of the Committee to determine, following investigation, alleged breaches by Subject Member X of the Authority's approved Code of Members' Conduct. The pre-hearing process provided an opportunity to consider and determine (where appropriate), in advance of the hearing:

- Whether the Subject Member was to be legally represented;
- Whether the Subject Member disagreed with any of the findings of fact as set out in the Final Investigation report (attached to the report as Appendix D) and, if so, why;
- Whether the Subject Member wished to introduce new evidence and, if so, why;
- Identify, if the Subject Member was to introduce new evidence, whether the Investigating Officer had been given the opportunity to consider this;

- Whether any witnesses (other than a Character Witness) were to be called and, if so, why; and
- Decide which, if any, parts of the hearing should be held in private.

Attached at Appendices B and C to the report was documentation submitted on behalf of the Subject Member by a legal representative. This included, amongst other things:

- A list of agreed and disputed facts;
- A written statement from the Subject Member;
- A document list from the Subject Member;
- Each of the documents as set out in the list (with the exception of one initially corrupted document [subsequently provided again and circulated at the meeting]; and one document included in the list which still remained to be provided); and
- Witness Statements submitted on behalf of the Subject Member, including a Character Witness Statement.

The Committee also had circulated at the meeting hard-copies of a written statement and associated documentation provided on the day of the meeting by another Witness (Witness C) for the Subject Member.

**RESOLVED** that, having undertaken the pre-hearing process:

- (a). It be noted that the Subject Member was to be assisted by a legal consultant at the Hearing;
- (b). That the list of agreed and disputed facts submitted on behalf of the Subject Member be noted and considered at the Hearing;
- (c). That the documentation provided by the Subject Member (including a written statement by the Subject Member with associated documentation, a written statement from Witness A and a written statement from Character Witness B) be admitted as evidence and considered at the Hearing;
- (d). That Witness A be not required to attend the Hearing on the basis that the Committee did not feel that such attendance would add any value to the Hearing;
- (e). That the written statement of Witness C and associated documentation, as provided on and circulated to the Committee on the date of the pre-hearing meeting, be admitted as evidence to the Hearing;
- (f). that, given the lateness of the submission of the written statement of Witness C and associated documentation, no determination be made at this stage on the requirement for Witness C to attend the hearing;
- (g). That it be noted that Character Witness B may be unavailable to attend the Hearing;
- (h). That the request of the Investigating Officer for Witness D (the Complaint) to attend the hearing be approved; and

- (i). That, given the subject matter of the allegations and the contents of the documentation currently before the Committee, the Hearing be considered in the absence of the press and public in accordance with Section 100A(4) of the Local Government Act 1972, specifically Paragraphs 1 (information relating to an individual), 2 (information likely to reveal the identity of an individual) and 3 (information relating to the financial and business affairs of any particular person [including the authority holding that information]) of Part 1 of Schedule 12A to the Act.

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

The Meeting started at 2.00 pm and finished at 3.15 pm

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## **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**

The Meeting started at 9.00 am and finished at 5.27 pm

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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