

**NORTHAMPTON BOROUGH COUNCIL**

**STANDARDS COMMITTEE**

Your attendance is requested at a meeting to be held at the Jeffery Room on Wednesday, 20 February 2008 at 10:00 am.

**D. Kennedy**  
**Chief Executive**

**AGENDA**

1. APOLOGIES
2. DECLARATIONS OF INTEREST
- .... 3. LOCAL DETERMINATION- ALLEGED FAILURE TO FOLLOW THE CODE OF CONDUCT R. Lyon  
x 7956  
Report of Interim Legal Services Manager (copy herewith)
4. EXCLUSION OF PUBLIC AND PRESS  
THE CHAIR TO MOVE:  
"THAT THE PUBLIC AND PRESS BE EXCLUDED FROM THE REMAINDER OF THE MEETING ON THE GROUNDS THAT THERE IS LIKELY TO BE DISCLOSURE TO THEM OF SUCH CATEGORIES OF EXEMPT INFORMATION AS DEFINED BY SECTION 100(1) OF THE LOCAL GOVERNMENT ACT 1972 AS LISTED AGAINST SUCH ITEMS OF BUSINESS BY REFERENCE TO THE APPROPRIATE PARAGRAPH OF SCHEDULE 12A TO SUCH ACT."

## Standards Committee

### AGENDA STATUS:PUBLIC

<b>Report Title</b>	<b>LOCAL DETERMINATION –ALLEGED FAILURE TO FOLLOW THE CODE OF CONDUCT</b>
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<b>Date of Meeting:</b>	20 February 2008
<b>Directorate:</b>	Legal and Democratic Services
<b>Ward(s)</b>	St James

### 1. Summary

The Monitoring Officer appointed Mr Simon Aley, Solicitor, Head of Legal Services at Corby Borough Council to investigate an allegation that former Councillor Terry Wire had acted in breach of Northampton Borough Council's Code of Conduct. The finding of the Investigating Officer is that the matters which were subject to investigation should be referred for hearing by the Standards Committee in accordance with Regulation 5 (7) (d) of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (as amended). The Committee has a legal duty to determine this matter under Regulation 6(2) (b) (ii) of the 2003 Regulations (as amended)

### 2. Recommendations

**2.1 That the Committee consider the Report and the findings and make a decision pursuant to the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (as amended) in relation to the alleged breaches of the Code of Conduct by former Councillor Wire as set out at paragraphs 4-9 of the Report**

### 3. Report Background

- 3.1 Pursuant to Section 66 of the Local Government Act 2000 and associated Regulations, the Standards Board for England is able to refer allegations of failure to comply with the Council's Code of Conduct back to the Council for local investigation.
- 3.2 An allegation against former Councillor Wire was referred back to the Monitoring Officer of Northampton Borough Council for local investigation. Section 82A of the Local Government and Housing Act 1989 provides that the Monitoring Officer may nominate a person to carry out an investigation, where the Monitoring Officer considers that in a particular case he himself ought not to be involved in an investigation( eg for reasons of conflict of interest, having already advised in the matter which is the subject of the allegations). The nominated investigator was Mr Simon Aley , Head of Legal Services at Corby Borough Council.
- 3.3 The framework for these investigations is set by the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003,as amended by the 2004 Regulations, issued by

the Standards Board for England. The Committee must have regard to that Guidance when carrying out its function.

3.4 The Regulations require that:

“5(7) Where a monitoring officer of a authority conducts an investigation he shall, following such an investigation:

- (a) make one of the following findings:
  - (i) that he considers that there has been a failure to comply with the code of conduct of the authority (“a finding of failure”)
  - (ii) that he considers that there has not been a failure to comply with the code of conduct (“a finding of no failure”)
- (b) prepare a written report concerning his investigation and his findings;
- (c) send a copy of that report to the member who was the subject of the investigation
- (d) where the report concerns a finding of failure, refer that report to the standards committee of the authority for a hearing under the provisions of the Regulations.
- (e) where the report concerns a finding of no failure ,refer that report to the Standards Committee of the authority.

3.5 The relevant Code of Conduct in connection with the local determination hearing is the Council’s Code of Conduct 2001. The final report of Mr Aley concluded that there had been a technical breach of the Code of Conduct in that former Councillor Wire failed to declare a personal interest at the start of the Planning Committee meeting on 14 February 2007.

3.6 Following the issue of the final report, a pre-hearing process has been initiated and a letter sent to former Councillor Wire to determine whether

- There was any disagreement with any of the findings of fact in the Investigating Officer’s Report and if so, to respond accordingly;
- The former Councillor wished to be represented at the hearing by a solicitor, barrister, or any other person;
- The former Councillor wished to give evidence to the Standards Committee whether verbally or in writing;
- The former Councillor wished to call relevant witnesses to give evidence to the Standards Committee;
- The former Councillor wished any part of the hearing to be held in private;
- The former Councillor wished any part of the Investigating officer’s report or other relevant documents to be withheld from the public.

3.7 In considering all information submitted the Local Determination Panel is required to determine whether the following apply:

- (a) the member has not failed to follow the code of conduct
- (b) the member has failed to follow the code of conduct
- (c) action consequent upon a failure to comply with the code of conduct.

3.8 As required copies of the final report have been sent to former Councillor Wire ,the complainant and the relevant Standards Board for England Ethical Standards Officer. As the final report of Mr Aley and supporting documents are likely to disclose exempt information under Paragraph 16 of schedule 12 A of the Local Government Act 1972 (information relating to the personal circumstances of any person), copies of these background documents shall not be provided to the public and press in advance of the

hearing, nor permit any inspection in advance thereof. Attached as Appendix 1 is the Standards Committee procedures for carrying out Local Determination Hearings.

#### **4. Implications (including financial implications)**

##### **4.1 Resources and Risk**

There are no direct financial implications arising from this report.

##### **4.2 Legal**

The deliberations of a Standards Committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of Section 60 (2) or (3) of the 2000 Act is exempt information under Paragraph 19 of the provisions of Schedule 12 A of the Local Government Act 1972. There are no further legal implications identified as arising directly out of this report beyond those already stated in the body of the report itself, other than the importance of compliance with obligations under the Local Government Act 2000 and associated Statutory Instruments

##### **4.3 Other Implications**

The presumption is that local determination hearings should be made in public, reflecting the requirements of Article 6 under the Human Rights Act 1998, and only in private where permitted by the provisions permitted in the 2003 Regulations. The Regulations incorporate Schedule 12A of the Local Government Act 1972 for Standards Committees with additional provisions for exempting the public and press concerning hearings. (See Legal Implications section)

#### **5. Background Papers**

1. Final Report of Mr Simon Aley

2. Bundle of supporting documents

(Both documents exempt information under paragraph 16 of Schedule 12A of the Local Government Act 1972)

**Report Author and Title:** Rosemary Lyon Interim Legal Services Manager

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**NORTHAMPTON BOROUGH COUNCIL**  
**PROCEDURE FOR HEARINGS**  
**BEFORE THE STANDARDS COMMITTEE**

**PART I**

**Interpretation**

1. 'Member' means the member of the Council who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also include the Member's nominated representative.
2. 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the Council, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the Investigator mean the Monitoring Officer or other investigating officer, and his or her nominated representative.
3. 'Committee' also refers to a Standards sub-committee.
4. 'Legal Advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council.

***Modification of Procedure***

5. *The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness and to accommodate the individual circumstances*

**Representation**

6. The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person.

**Legal advice**

7. The Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome.

**Setting the scene**

8. After all the Members and everyone involved have been formally introduced, the Chair should explain how the Committee is going to run the hearing.

**Preliminary procedural issues**

- 9.(a) The Committee should then resolve any issues or disagreements about how the hearing should continue which have not been resolved during the pre-hearing process.

(b) *Proceeding in the absence of the Member.*

*If the Member is not present at the start of the hearing:*

- (i) *the Chairman shall ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the hearing;*
- (ii) *the Committee shall then consider any reasons which the Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;*
- (iii) *if the Committee is satisfied with such reasons, it shall adjourn the hearing to another date;*
- (iv) *if the Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Committee shall decide whether to consider the matter and make a determination in the absence of the Member or to adjourn the hearing to another date.*

(c) *Exclusion of Press and Public*

*The Chairman shall ask the Member, the Investigator and the Legal Adviser to the Committee whether they wish to ask the Committee to exclude the Press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Committee shall then determine whether to exclude the press and public from all or any part of the hearing.*

## **Part II**

### **Disputes on findings of fact**

10. After dealing with any preliminary issues, the Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.
11. If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing. (Paragraph 20)
12. If there is a disagreement, the Investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Committee may at its election give the Member an opportunity to challenge *through the Chairman* any evidence put forward by any witness called by the Investigator.
13. The Member will then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, call any necessary witnesses to give evidence.
14. At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigator *through the Chairman* to challenge any evidence put forward by witnesses called by the Member.

15. If the Member disagrees with most of the facts, it may be appropriate for the Investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
16. If the Member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigator is not present, the Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then:
  - a) continue with the hearing, relying on the information in the Investigator's report
  - b) allow the Member to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary; or
  - c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if he or she is not already.
17.
  - (i) *The Committee shall be entitled to refuse to hear evidence from the Investigator, the Member or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the code of conduct.*
  - (ii) *Any member of the Committee may address questions to the Investigator, to the Member or to any witness.*
18. The Committee will usually adjourn or move to another room to consider the representations and evidence in private.
19. On their return, the Chairman will announce the Committee's findings of fact.

### **Part III**

#### **Did the Member fail to follow the Code?**

20. Unless the Member admits to a breach of the Code, the Committee then will consider whether or not, based on the facts it has found, the Member has failed to follow the Code of Conduct.
21. The Member should be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code.
22. The Committee will then consider any verbal or written representations from the Investigator.
23. The Committee may, at any time, question anyone involved on any point they raise in their representations.
24. The Member will be invited to make any final relevant points.
25. The Committee will then adjourn and if appropriate move to another room to consider the representations.



26. On their return, the Chair will announce the Committee's decision as to whether or not the Member has failed to follow the Code of Conduct.

#### **If the Member has not failed to follow the Code of Conduct**

27. If the Committee decides that the Member has not failed to follow the Code of Conduct, the Committee may, if it considers it appropriate, consider whether it should make any general recommendations to the Council.

#### **If the Member has failed to follow the Code**

28. If the Committee decides that the Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigator and the Member as to:
  - a) whether or not the Committee should set a penalty; and
  - b) what form any penalty should take.
29. The Committee may question the Investigator and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
30. The Committee will then adjourn privately to consider whether or not to impose a penalty on the Member and, if so, what the penalty should be.
31. The Chair will then announce the Committee's decision.

#### **Recommendations to the Council**

32. After considering any verbal or written representations from the Investigator, the Committee may then consider whether there is any need to make any general recommendations to the Council, with a view to promoting high standards of conduct among Members.

#### **The written decision**

33. The Committee will announce its decision on the day and provide a short written decision as soon as possible thereafter.