

HEARINGS SUB-COMMITTEE

Tuesday, 15th February, 2011 at 7.30 pm
in Committee Room 4 at The Council House, Dudley

PRESENT

The Bishop of Dudley (Independent Chairman)
Councillors Burston and Ms Harris

Officers

Monitoring Officer (Mr P Tart) and the Democratic Services Manager
(Mr S Griffiths) - Directorate of Corporate Resources

Also in attendance

Ms H Kidd – Investigating Officer appointed by the Monitoring Officer

Mr C V Fraser-Macnamara (Solicitor representing the Subject Member -
Councillor K Turner) together with his Clerk

Three Members of the public were also in attendance.

1 APOLOGIES FOR ABSENCE

Apologies for absence from the meeting were submitted on behalf of
Councillors Hanif and Mrs P Martin.

The Sub-Committee was advised that the Member who was the subject of
the complaint, Councillor K Turner, was unable to attend due to health
issues and that he had appointed Mr Fraser-Macnamara as his
representative in this matter.

2 SUBSTITUTE MEMBERS

It was reported that Councillors Burston and Ms Harris had been
appointed as the Substitute Members for Councillors Mrs P Martin and
Hanif respectively for this meeting of the Sub-Committee only.

3 DECLARATIONS OF INTEREST

Members of the Sub-Committee indicated that they knew Mr Fraser-
Macnamara as a former Member of Dudley Metropolitan Borough Council.
However, no Member was required to declare an interest in accordance
with the Members' Code of Conduct in respect of any matter to be
considered at this meeting.

4 MINUTES

RESOLVED

That the minutes of the meeting of the Sub-Committee held on 16th February, 2010, be approved as a correct record and signed.

5 EXCLUSION OF THE PUBLIC AND PRESS

At this juncture, the Sub-Committee considered the issue of whether the public and press should be excluded from the remainder of the meeting in the light of the exempt information contained in the report.

In accordance with the relevant Guidance from the Standards Board, the Independent Chairman was of the view that the hearing should be held in public session. All parties to the hearing indicated their consent and it was

RESOLVED

That the remainder of the meeting be considered in public session.

6 DETERMINATION OF A COMPLAINT AGAINST COUNCILLOR
K TURNER

A report of the Monitoring Officer was submitted on a complaint brought against Councillor K Turner regarding an alleged breach of the Members' Code of Conduct.

Attached to the report was the final report of the Investigating Officer setting out her findings on the matter.

An agreed procedure for the hearing had been circulated. In accordance with that procedure, the Chairman invited those present to introduce themselves and then explained how the hearing would be run.

Mr Fraser-Macnamara explained that Councillor K Turner could not attend the hearing due to reasons of medical incapacity and he accepted that the matter could be dealt with in his absence. No objections to this course of action were raised by the Sub-Committee or the Investigating Officer.

Accordingly, the Sub-Committee proceeded with the hearing in the following stages:-

(a) Matters of Fact

The Sub-Committee gave consideration to the Investigator's report, including the summary of the material facts of the case. The Sub-Committee's attention was drawn to two paragraphs in the Investigators report, where Councillor K Turner had made comments and requested amendments as follows:-

6.27 - The paragraph be amended to state 'that the e-mail which apparently was racist.'

6.29 – The paragraph be amended by the inclusion of additional words 'Councillor Turner accepts that his actions were inappropriate in the circumstances.'

The Investigating Officer confirmed that the above amendments were acceptable to her.

The Monitoring Officer also drew the attention of the Sub-Committee to an e-mail from the complainant, Councillor Crumpton, dated 15th February, 2011 in which he entirely refuted any suggestion that the complaint was politically motivated. Mr Fraser-Macnamara indicated that whilst he noted the e-mail, this did not necessarily indicate any agreement by Councillor K Turner. The Monitoring Officer advised that the comments made in the e-mail should be noted for the record, however, it was not a matter on which the Sub-Committee was required to make a finding of fact for the purposes of determining the case.

Following consideration, the Sub-Committee determined that they agreed with the summary of material facts as set out in paragraphs 5.1 to 5.6 of the Investigating Officer's report, in that:-

- Councillor K Turner did forward an e-mail, the content of which was alleged by the complainant to be racist, to all Conservative, Labour and Liberal Democrat Members of the Council on 2nd December, 2010.
- Councillor K Turner did apologise for sending the e-mail of 2nd December, 2010, by e-mail on 3rd December, 2010.
- Councillor K Turner had undertaken training on the Code of Conduct, and had signed a declaration, which contained an undertaking to observe the Code of Conduct.
- Councillor K Turner sat on the Councillors' ICT working group.

- Councillor K Turner was currently voluntarily suspended from the Conservative Party, and could not therefore attend, as a Councillor, the Select Committee on Regeneration, Culture and Adult Education (Chairman); or the Taxis Committee.
- Councillor K Turner, as a result of this matter being brought to his attention, attended equality training in December 2010.

Having determined the facts of the matter the Sub-Committee then proceeded to consider whether Councillor K Turner had failed to follow the Code of Conduct.

(b) Consideration of whether there had been a failure to follow the Code of Conduct

Reference was made to paragraph 6 of the Investigating Officer's report (reasoning as to whether there have been failures to comply with the Code of Conduct). Particular reference was made to paragraphs 3(1) of the Code of Conduct which stated that 'you must treat others with respect' and paragraph 3(2)(a) of the Code of Conduct which stated that 'you must not do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006)'.

Paragraph 7 of the Investigating Officer's report set out her findings that Councillor K Turner had breached paragraph 3(1) of the Code of Conduct but that he had not breached paragraph 3(2)(a) of the Code for the reasons set out in the report.

Mr Fraser-Macnamara indicated that he accepted this interpretation subject to the amendments to the report as dealt with under the Sub-Committee's findings of fact.

Subsequently, the Sub-Committee determined that, on the balance of probability, Councillor K Turner had breached paragraph 3(1) of the Code of Conduct in that he had failed to treat others with respect and that he had not breached paragraph 3(2)(a) of the Code of Conduct in relation to the equality enactments.

(c) Consideration of the Issue of Sanctions in the light of a failure to follow the Code of Conduct

Having determined that Councillor K Turner had breached paragraph 3(1) of the Code of Conduct, consideration was then given to whether a sanction should be applied and if so what form any sanction should take.

The Investigating Officer stated in paragraph 7.2 of her report that, because of the mitigation in this case and the steps taken by Councillor K Turner to make amends for his actions, she was of the view that this would appear to be a case where no further action was required. Mr Fraser-Macnamara addressed the Sub-Committee in this regard and reiterated the mitigating actions taken by Councillor K Turner following his sending of the e-mail on 2nd December, 2010.

Ms Kidd, Mr Fraser-Macnamara and his Clerk, together with the members of the public were then asked to leave whilst the Sub-Committee considered the issue relating to a sanction.

Following its private deliberations on this matter, all persons were invited to return to the meeting.

Prior to announcing the formal decision, the Chairman noted that Dudley Metropolitan Borough Council fully recognised its duty to deprecate racism in all its forms and had policies in place to uphold standards of equality and diversity in all areas of activity.

The Chairman then announced that, in view of the circumstances of this case, the Sub-Committee considered that no further action was required in view of the various mitigating factors, namely that Councillor K Turner had issued an immediate and unreserved apology; had suspended himself from the Conservative Party and had undertaken equality training. The Sub-Committee was also minded to make recommendations concerning the need for all Members to be made aware and undertake the Council's on line equality training in the near future and that all Councillors be reminded of the Council's policy on use of the internet and e-mails.

The Monitoring Officer would take the necessary steps to comply with the Standards for England guidance in connection with the notification of the decision and advising of the right of appeal.

In his concluding remarks the Chairman thanked all persons for their attendance and placed on record his appreciation for the clarity of the paperwork placed before the Sub-Committee.

RESOLVED

- (1) That the Sub-Committee, having found that there has been a breach of paragraph 3(1) of the Code of Conduct (failure to treat others with respect), determines that no further action be taken in view of the circumstances of the case as set out above, namely that the Subject Member issued an immediate and unreserved apology; suspended himself from the Conservative Party and undertook Equality training.

(2) That the Sub-Committee recommends:-

- (a) That all Dudley MBC Councillors be made aware of, and undertake, the Council's on line equality training that will be available to Members and Officers in the near future; and
- (b) That all Councillors be reminded of the Council's policy on use of the Internet and e-mails.

The meeting ended at 8.19 p.m.

CHAIRMAN