

DECISION OF HEARINGS SUB-COMMITTEE

<u>The Subject Member</u> Name : Address :	Councillor Ken Turner c/o The Council House, Priory Road, Dudley, West Midlands, DY1 1HF
<u>The Complainant</u> Name :	Councillor Tim Crumpton
<u>Nature of Complaint</u>	An allegation that the Subject Member failed to comply with the Council's Code of Conduct in that he failed to treat others with respect and he caused the authority to breach the equality enactments.
<u>The Investigating Officer</u> Name : Miss H Kidd Address : c/o Dudley MBC Legal & Democratic Services 5 Ednam Road Dudley West Midlands DY1 1HL Telephone: 01384 815315	<u>The Report</u> Date : 7 th February 2011 Reference : PT/KP/32170
<u>Our Details</u> Name : Philip Tart Position : Director of Corporate Resources Address : Dudley MBC Directorate of Corporate Resources The Council House Priory Road Dudley West Midlands DY1 1HF	<u>Hearing Details</u> Date : 15th February 2011 Time : 7-30 pm Venue : The Council House Priory Road Dudley West Midlands DY1 1HF
Date of this Notice	16th February 2011

Members of the Local Determination Panel	
Chairman :	The Bishop of Dudley, The Right Reverend David Walker
Other Members :	Councillor Rachel Harris Councillor Ray Burston

Officers in Attendance	
Legal Advisor :	Philip Tart, Monitoring Officer,
Clerk of the Hearing :	Steve Griffiths, Democratic Services Manager
Investigating Officer	Miss Helen Kidd

Others in Attendance	
Subject Member :	Did not attend
Representatives :	Charles Fraser-Macnamara, Solicitor

Other Interested Parties	
Complainant :	None

1. Preliminary Matters

- 1.1 A complaint was made by Councillor Tim Crumpton dated 6/12/10 alleging that Councillor Ken Turner failed to comply with Dudley MBC's Code of Conduct in that he failed to treat others with respect and caused the authority to breach equality enactments. The case was subsequently referred for local investigation and determination by Dudley MBC's Referrals Sub-Committee on 5th January 2011.
- 1.2 The Monitoring Officer, Mr Philip Tart, Director of Corporate Resources, appointed Miss Helen Kidd, Solicitor, to carry out an investigation into the complaint on his behalf.
- 1.3 The Monitoring Officer referred the report containing the findings of the investigation to Dudley MBC's Hearing Sub-Committee on 15th February 2011 to determine the complaint made against the Subject Member.

2. Summary of the Allegation

- 2.1 The allegation put before the Sub-Committee was that the Subject Member:-
 - 2.1.1 Forwarded an e-mail the content of which was racist to all Conservative, Labour and Liberal Democrat Members of the Council on 2nd December 2010.
- 2.2 Relevant paragraphs of Dudley MBC's Code of Conduct :-
 - 2.2.1 Paragraph 3(1) – you must treat others with respect.
 - 2.2.2 Paragraph 3(2)(a) – you must not do anything which may cause your authority to breach any of the equality enactments.

3. Pre-Hearing Process

- 3.1 The Legal Advisor confirmed that the Subject Member and his representative had been provided with a copy of the Investigating Officers report. He had been asked for comments and had been made aware of the arrangements for the hearing.
- 3.2 The Subject Member had instructed a solicitor to represent him at the hearing.
- 3.3 It was noted that the Subject Member was unable to attend the hearing due to recent surgery and had instructed his solicitor to proceed with the matter in his absence.

4. The Evidence

- 4.1 No witnesses were called.
- 4.2 Written evidence was presented in the form of the Investigating Officer's report. The solicitor for the Subject Member confirmed that the contents of the report were accepted save for two minor points:-

- Paragraph 6.27. The Investigating Officer statement that the e-mail was clearly racist. The solicitor for the Subject Member suggested that the e-mail was apparently racist
- Paragraph 6.25 reads "whilst it is accepted that Councillor Turner took all steps to mitigate matters this does not in itself amount to a clear indication of acceptance though Councillor Turner does in fact accept that his actions were inappropriate".

The solicitor for the Subject Member suggested the following additional wording: "Councillor Turner accepts that his actions were inappropriate in the circumstances".

- 4.3 The representations highlighted in Paragraph 4.2 were accepted by the Investigating Officer and the Sub-Committee.

- 4.4 The Sub-Committee also noted that the complainant had made one overall comment in respect of the report which was to refute entirely any suggestion that the complaint was politically motivated.
- 4.5 The Sub-Committee received legal advice that any decision on the evidence would be made on the balance of probability and not proof beyond reasonable doubt. However, in this case the parties had agreed all factual issues save for the comments set out above.

5. The Sub-Committee Finds as Matter of Fact:

- 5.1 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:-
- 5.1.1 Councillor Turner did forward an e-mail, the content of which is alleged by the complainant to be racist, to all Conservative, Labour and Liberal Democrat Members of the Council on 2 December 2010.
- 5.1.2 Councillor Turner did apologise for sending the e-mail of 2 December 2010, by e-mail on 3 December 2010.
- 5.1.3 Councillor Turner has undertaken training on the Code of Conduct, and has signed a declaration which contained an undertaking to observe the Code of Conduct.
- 5.1.4 Councillor Turner sits on the Councillors' ICT working group.
- 5.1.5 Councillor Turner is currently voluntarily suspended from the Conservative Party, and cannot therefore attend, as a councillor, the Select Committee on Regeneration, Culture and Adult Education (Chairman); or the Taxis Committee.
- 5.1.6 Councillor Turner, as a result of this matter being brought to his attention, attended equality training in December 2010.

6. Decision on Whether There was a Breach of the Code of Conduct

- 6.1 Having determined the facts of the matter, the Sub-Committee then went on to consider whether the Subject Member had failed to follow the Code of Conduct.
- 6.2 The Sub-Committee considered paragraph 6 of the Investigating Officer's report *"Reasoning as to Whether There Have Been Failures to Comply with the Code of Conduct"*, and paragraph 7 of the Investigating Officer's report *"Finding"*.
- 6.3 The solicitor for the Subject Member confirmed that he accepted the Investigating Officers findings contained in Paragraphs 7.1 and 7.2 together with the recommendation contained in Paragraph 7.2 of the report.
- 6.4 The Sub-Committee determined that on the balance of probability the Subject Member had breached paragraph 3(1) of the Code of Conduct and had not breached paragraph 3(2)(a) of the Code of Conduct. In arriving at this view, the Sub-Committee noted that the Subject Member agreed with the Investigating Officer's findings as set out in her report.

7. Sanctions

- 7.1 Having determined that the Subject Member had breached the Code of Conduct, the Sub-Committee considered in consultation with the Monitoring Officer, what sanctions, if any, might appropriately be imposed in accordance with guidance issued by the Standards Board of England.
- 7.2 The Sub-Committee determined that no further action was necessary in this case in view of the fact that the Subject Member had issued an immediate and unreserved apology; had suspended himself from the Conservative Party, and had undertaken Equality training.

8. Recommendations

- 8.1 The Sub-Committee recommended that all Dudley MBC Councillor's be made aware and undertake the Council's on line equality training that would be available to Members and Officers in the near future.

- 8.2 The Sub-Committee also recommended that all Councillors be reminded of the Council's policy on use of the internet and e-mails.

9. Right of Appeal

You have a right of appeal to the First-tier Tribunal (Local Government Standards in England) against the Sub-Committee's decision. You will have to obtain the permission of the Tribunal.

An application for permission must be made within twenty one days of your receiving found written notification of the Sub-Committee's decision.

The address of the Tribunal is :-

Address :	The First-tier Tribunal (Local Government Standards in England) Tribunal Service York House 31-36 York Place Leeds West Yorkshire LS1 2ED
Telephone :	0113 389 6086 or 0113 389 6013
Fax :	0113 389 6002
E-mail :	Ap-enquiries@tribunals.gsi.gov.uk


Any correspondence of the Tribunal should be sent to the above address.

10. Notification of this Decision

Public Notice of this decision has been sent to/posted on :-

- Standards Committee;
- Councillor Tim Crumpton;
- Dudley MBC Council Website;
- Dudley MBC Press Office;
- Standards Board for England.

A summary of this Decision Notice will be published in the local press.

A handwritten signature in black ink, appearing to read 'D Walker', is positioned above the printed name of the signatory.

The Right Reverend David Walker,
Bishop of Dudley

Dated : 16th February 2011