

DECISION OF HEARINGS SUB-COMMITTEE

<u>The Subject Member</u> Name : Address :	Councillor John Perry (from January 2010, Mr John Perry) c/o The Council House, Priory Road, Dudley, West Midlands, DY1 1HF	
<u>The Complainant</u> Name :	Mr Sean Percival	
<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 brought an office or authority into disrepute.	
<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 : 22nd January 2010 Reference : PT/KG/32170	
<u>Our Details</u> Name : Philip Tart Position : Director of Corporate Resources Address : Dudley MBC Directorate of Law, Property & Humans Resources 3 St James's Road Dudley West Midlands DY1 1HZ	<u>Hearing Details</u> Date : 16th February 2010 Time : 6.00 pm Venue : The Council House Priory Road Dudley West Midlands DY1 1HF	
Date of this Notice	25th February 2010	

Members of the Local Determination Panel	
Chairman :	The Bishop of Dudley, The Right Reverend David Walker
Other Members :	Father Alan Williams Councillor Dave Tyler

Officers in Attendance	
Legal Advisor :	Mohammed Farooq, Interim Assistant Director, Legal and Democratic Services.
Clerk of the Hearing :	Josef Jablonski, Assistant Principal Officer, Democratic Services

Others in Attendance	
Subject Member :	Did not attend
Representatives :	None
Witnesses :	None

Other Interested Parties	
Complainant :	Mr Sean Percival

1. Preliminary Matters

- 1.1 A complaint was made by Mr Sean Percival dated 29th October 2009 alleging that Councillor John Perry failed to comply with Dudley Metropolitan Borough Council's ("Dudley MBC") Code of Conduct in that he failed to treat others with respect and brought an office or authority into disrepute. The case was subsequently referred for local investigation and determination by Dudley MBC's Referrals Sub-Committee on 3rd December 2009.
- 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 16th February 2010 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 Failed to respond to e-mails, telephone messages and letters from the complainant, Mr Sean Percival, and the complainant's wife, Dr Sam Badger, and it is alleged, from other members of the public from March 2009 onwards.
 - 2.1.2 Failed to attend any meetings of North Dudley Area Committee and the Select Committee of Regeneration, Culture and Adult Education, in the current year.
- 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 5 – you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

3. Pre-Hearing Process

- 3.1 The Legal Advisor confirmed that the Subject Member had been provided with a copy of the Investigating Officer's report, had been asked to comment, and had been made aware of the arrangements for the hearing.
- 3.2 The Legal Advisor confirmed that the Subject Member had been advised of his right to representation at the hearing and that the meeting may go ahead in his absence.
- 3.3 It was noted that the Subject Member had not responded to any of the correspondence sent to him by post and e-mail in connection with the hearing. The Sub-Committee received legal advice on proceeding with the hearing in the Subject Member's absence, and noting that the Subject Member had failed to provide reasons for his failure to attend, determined to continue with the hearing in the Subject Member's 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 Investigating Officer confirmed that the Subject Member had not challenged any part of the information submitted and that he had not submitted any written representations.
- 4.3 The Sub-Committee gave consideration to the Investigating Officer's report, specifically paragraph 4 - "*The Evidence Gathered and the Investigator's Consideration of It*" and paragraph 5 - "*Summary of the Material Facts*". The Sub-Committee also considered the Investigating Officer's responses to the Sub-Committee's questions.
- 4.4 The Sub-Committee received legal advice that any decisions on the evidence would need to be made on the balance of probabilities and not proof beyond reasonable doubt. The Sub-Committee also received legal advice that hearsay evidence was admissible but that lesser weight should be accorded to it than direct evidence.

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

5.1 Following consideration, the Sub-Committee determined on balance, that they agreed with the summary of the material facts as set out in paragraphs 5.1 to 5.8 of the Investigating Officer's report, in that:-

5.1.1 Councillor Perry failed to respond to five e-mails and a letter from the complainant/his wife during the period mid-March 2009 onwards.

5.1.2 Councillor Perry failed to return telephone messages left on his telephone by the complainant.

5.1.3 There is no direct evidence to say that Councillor Perry failed to respond to other members of the public.

5.1.4 Councillor Perry failed to attend any meetings of the North Dudley Area Committee and the Select Committee on Regeneration, Culture and Adult Education in the municipal year 2009/2010.

5.1.5 Councillor Perry did attend the North Dudley Area Committee and the Select Committee on Regeneration, Culture and Adult Education in the calendar year 2009, albeit sporadically (30% attendance rate).

5.1.6 Councillor Perry's attendance record at committee meetings of the Authority is not in breach of Section 85 of the Local Government Act 1972.

5.1.7 Councillor Perry spoke to the Monitoring Officer and assured him that he would e-mail the complainant but failed to do so.

5.1.8 Councillor Perry signed a form of Declaration of Acceptance of Office on the 8th May 2008, which included an undertaking to observe the Code of Conduct.

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 Legal Advisor referred to verbal guidance recently received from the Standards Board that the Standards Board did not regard failure to answer telephone calls, e-mails, etc., as amounting to a breach of the Code of Conduct.
- 6.4 The Sub-Committee noted that in this case, the findings of fact highlighted other issues in addition to the complaint of failing to answer telephone calls, e-mails, etc., and determined that it was appropriate to consider the totality of the evidence.
- 6.5 The Sub-Committee determined that, on the balance of probabilities, the Subject Member had breached paragraph 3(1) of the Code of Conduct and that, taking into account the totality of the evidence referred to in the Investigating Officer's report (specifically at paragraphs 7.2 and 7.3), he had also breached paragraph 5 of the Code of Conduct. In arriving at this view, the Sub-Committee noted that the failure to respond to constituents and failure to attend identified meetings, taken together, amounted to a significant failure to fulfil the key roles of a councillor whilst in receipt of the Members allowance.

7. Sanctions

- 7.1 Having determined that the Subject Member had breached the Code of Conduct, the Sub-Committee considered in consultation with the Legal Advisor, what sanctions, if any, might appropriately be imposed in accordance with guidance issued by the Standards Board of England.
- 7.2 The Legal Advisor advised that as the Subject Member had recently resigned as a councillor with Dudley MBC, the only sanction available, should they wish to adopt it, would be to censure the Subject Member.
- 7.3 The Sub-Committee determined that the sanction would be that of censuring the Subject Member.

8. Action to be Taken

8.1 That the Subject Member be censured.

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;
- Mr Percival;
- 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.

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The Right Reverend David Walker,
Bishop of Dudley

Dated : 26th February, 2010