

BRIGHTON & HOVE CITY COUNCIL
STANDARDS COMMITTEE HEARING PANEL

10.00am 20 DECEMBER 2011

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors: Littman, Lepper and A Norman

Independent Members: , Dr M Wilkinson

Apologies: Mr Peter Rose

PART ONE

1. APPOINTMENT OF CHAIR

- 1.1 The Panel noted that in regard to the procedure rules for the meeting, there was a need to appoint an Independent Member from the Standards Committee as Chair and therefore Dr. Wilkinson was proposed and seconded by Councillors Lepper and Littman respectively.
- 1.2 Dr. Wilkinson was duly appointed as the Chair of the Panel.

2. PROCEDURAL BUSINESS

- (a) Declarations of Substitutes
- 2.1 There were no declarations of Substitutes; however the Chair noted that Mr. Rose had given his apologies.
- (b) Declarations of Interest
- 2.2 There were no declarations of interest.
- (c) Exclusion of the Press and Public
- 2.3 The Chair stated that the Standards Committee held a general presumption that should a matter come before a Hearing Panel, it would be held in public unless there were extraordinary reasons for it to be in private. He also noted that the final decision as to whether or not a matter would be heard in public or private session rested with the Hearing Panel itself on the day of the meeting.

- 2.4 The Chair noted that the papers relating to the matter had been withheld from the press and public under exempt category 1, which related to the disclosure of information relating to an individual. However, he was mindful of the level of public interest in the matter and the fact that a lot of information had already been in the public domain. He therefore sought the views of the Councillor Barnett as the Member who was facing the complaint, the Investigation Officer and the Monitoring Officer's representative as to whether the matter should be conducted in closed session.
- 2.5 Councillor Barnett, the Investigating Officer and the Monitoring Officer's representative all confirmed that they had no objection to the matter being held in open session and the papers relating to the case being made available to the press and public.
- 2.6 The Chair noted that the Panel Members had no objections and therefore moved that the matter as listed under Item 3 on the agenda be held in open session.
- 2.7 The Panel agreed and the Chair asked the Head of Democratic Services to circulate copies of the papers to the public gallery.

**3. CONSIDERATION OF A COMPLAINT MADE AGAINST A MEMBER CASE
REFERENCE: BHC-006219 - EXEMPT CATEGORY 1**

- 3.1 The Chair welcomed everyone to the meeting and introduced the Panel Members and officers present. He also noted that Councillor Theobald would be representing Councillor Barnett and that Ms. Weller had been invited to act as a witness for Councillor Barnett.
- 3.2 The Chair then invited the Investigating Officer to present his report and outline the complaint against Councillor Older had his findings in relation to the possible breach of the Code of Conduct.
- 3.3 The Investigating Officer thanked the Chair and stated that a complaint had been made by Councillor MacCafferty against Councillor Barnett, in regard to various statements and articles that had appeared in the local press relating to an encampment of travellers in Hangleton & Knoll Ward. He stated that the complaint had been received on the 6th July and made the case that Councillor Barnett had acted in a discriminatory way towards a recognised and protected community group and had sought to encourage aggravated trespass. An Assessment Panel was held on the 25th July which concluded that if the complaint was proven there would be a breach of the Code of Conduct. The Assessment Panel therefore requested that an investigation be undertaken and the resultant report was presented to the Consideration Panel on the 28th November 2011. The Consideration Panel accepted the report's findings that there was no breach of paragraphs 3(1) or 3(2)(a) of the Code, but that there was a breach of paragraph 5, i.e. that Councillor Barnett had brought her office into disrepute.
- 3.4 The Investigating Officer noted that Councillor Barnett had expressed her disagreement with three paragraphs of his report and that her comments were detailed in appendix 7 to the report. In relation to paragraph 5.23 she felt it was inaccurate as she would not treat all travellers in the same way, however the newspaper article clearly indicates she intended to hand out direction notices to all travellers. In respect of paragraph 6.5

Councillor Barnett argues that the impact of the travellers on the two sites would not have been minimal. In regard to paragraph 7.29, Councillor Barnett argues that she did not imply residents in her ward were less tolerant of travellers; however the article of the 10th June does show that she felt community relations would be better served if the travellers were in wards served by Green Councillors.

- 3.5 The Investigating Officer confirmed that his findings had found no breach of the code in relation to paragraphs 3(1) and 3(2)(a) and therefore his report dealt solely with the possible breach of paragraph 5, You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute. He stated that Councillor Barnett has accepted that the newspaper articles accurately reflected her comments and actions which included the distribution of direction notices to wards served by Green Councillors. She had also made it clear that she would not accept travellers into her ward no matter how they conducted themselves and that she was in favour of more permanent sites along the south coast, rather than them having access to parks and open spaces in general.
- 3.6 The Investigating Officer noted that the complaint of aggravated trespass was one that could not be investigated as it related to a criminal offence and therefore he had looked at the issue of encouraging unauthorised trespass. He also noted that it was a very difficult case and one which he had thought long and hard about in view of the finely balanced arguments for and against a possible breach. There were a number of factors to take into consideration such as Councillor Barnett's rights under the Human Rights Act and her freedom of opinion, and her role as an elected councillor and a duty to foster good relations. It was clear that Councillor Barnett felt that the incursion onto the two sites was unacceptable and that she was concerned for the safety of the children because of the proximity to the link road. However, it was also clear that she had acted in a pre-determined way by issuing the direction notices on the arrival of the travellers, even though she would have been aware of the appropriate council procedures to be followed in such circumstances. In conclusion he believed that there had been a breach of paragraph 5 of the Code.
- 3.7 The Chair thanked the Investigating Officer and opened the session to questions from the Panel and/or Councillor Theobald.
- 3.8 Councillor Theobald referred to the complaint submitted by Councillor MacCafferty and questioned whether it had been appropriate to investigate a breach of the code under paragraph 5 as it was not referred to in the complaint.
- 3.9 The Investigating Officer stated that the report outlined the fact that aggravated trespass could not be investigated but that the Assessment Panel had felt that the question of unauthorised trespass should be looked at as if proven it could be regarded as a breach of the code.
- 3.10 The Chair noted that there were no other questions and invited Councillor Theobald to present Councillor Barnett's case.
- 3.11 Councillor Theobald thanked the Chair and stated that he believed the process had been too long and had not been a pleasant experience for Councillor Barnett. He welcomed the affirmation that there had been no breach of the code under paragraphs

3(1) and 3(2)(a) and noted that the Investigating Officer had said it was a finely balanced matter. He believed that as such, there was no breach of the code under paragraph 5 and that Councillor Barnett had acted because of her concern for the Ward, the safety of the children and local residents. She had simply put forward the strength of feeling of her residents with regard to where the travellers should base themselves and had expressed her opinion, which she had a right to do so under Article 10 of the Human Rights Act. As an elected representative she was seeking a solution to a situation on behalf of the residents who had felt intimidated and unable to use the sites for recreational activities because of the mess and presence of the travellers.

- 3.12 Councillor Theobald stated that he believed the Standards process had been used incorrectly to bring forward this complaint and that such matters should not be dealt with in this way. He hoped that the process would be reviewed but in the meantime hoped that the Panel would take account of Councillor Barnett's record and that her actions had been borne out of frustration. He did not believe that there had been a breach and that the Panel should find no breach and enable Councillor Barnett to continue to represent the residents of Hangleton & Knoll Ward.
- 3.13 The Chair thanked Councillor Theobald and opened the session for questions from the Panel and/or Investigating Officer.
- 3.14 The Panel Members sought clarification in regard to the issuing of the direction notices and why they referred to other parks and open spaces in the city if Councillor Barnett felt that such spaces should not be open to travellers.
- 3.15 Councillor Barnett stated that she had given out the direction notices which referred the travellers to areas within wards served by Green councillors and that these areas were not used for organised recreational and sporting activities which the sites in her ward were.
- 3.16 The Panel Members questioned whether the reference at paragraph 7.32 was in relation to her own back garden or those of a number of residents and in regard to paragraph 7.29 of the report, what alternative locations she had in mind if not Green Councillors' Wards.
- 3.17 Councillor Theobald stated that the back gardens of a number of residents were affected by the encampment and not just Councillor Barnett. In regard to other alternatives, Councillor Barnett had made it clear that she felt sites should be provided along the south coast and favoured the proposed site at Horsdean, if a permanent site was to be provided in the city. However, the travellers had made it clear that they did not wish to pay for the use of either a permanent or transit site and therefore the problem of where they could go arose. He stated that she accepted that everyone had a right to live somewhere as long as it was within the law.
- 3.18 The Chair then invited Ms. Weller to address the Panel.
- 3.19 Ms. Weller thanked the Chair and stated that she had experienced the occupation of the sites by the travellers as one of the local residents and could not praise Councillor Barnett enough for her actions in seeking to resolve the matter. She stated that Councillor Barnett was a well respected member of the community who worked

tirelessly for the residents and had simply reflected the general opinion of the local community.

3.20 The Chair thanked Ms. Weller for attending the meeting and noted that there were no further questions. He therefore moved that the meeting be adjourned, in order for the Panel to consider the matter and to take legal advice as necessary.

3.21 The meeting was then adjourned at 11.25am.

3.22 The Chair reconvened the meeting at 12.30pm and stated that the Panel had reached a finding.

3.23 The Panel accepted the findings of fact set out in the Investigating Officer's report and noted that the finding of a breach of the Code under paragraph 5 was disputed by Councillor Barnett.

3.24 **REASONS FOR THE DECISION – Findings as to whether the Member failed to follow the Code of Conduct, including the reasons for that finding:**

(1) On the alleged breach of paragraph 3(1) "You must treat others with respect," and paragraph 3(2), "You must not do anything which may cause your authority to breach any of the equality enactments," the Panel reiterates the findings of the Consideration Panel that there has been no breach of the Code;

(2) On paragraph 5, "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute," the Panel considered carefully the finely balanced arguments presented. The Panel considered that the sole issue was the action of the leaflets given to the travellers. This action was a breach of the Code of Conduct. The Panel unanimously accepted the Investigating Officer's reasoning as detailed in the report.

3.25 The Chair noted that in having agreed that there was a breach of the code, the Panel were minded not to apply any sanction but in accordance with the Hearing Panel's procedures he was required to ask the Investigating Officer for their view on any appropriate sanction and Councillor Theobald to comment.

3.26 The Investigating Officer confirmed that he accepted the Panel's view that no sanction was required.

3.27 Councillor Theobald noted the findings and thanked the Panel for their careful consideration of the matter.

3.28 The Chair noted the comments and stated that in considering the appropriate sanction, the Panel noted:

- Councillor Barnett's previous record of good service,
- Her co-operation with the process of investigation,
- Her compliance with the Code since the events giving rise to the determination,
- Her immediate action in withdrawing the leaflet.

3.29 The Panel therefore imposes no sanction.

3.30 The Chair confirmed that the decision would be notified in writing to Councillor Barnett and that following receipt she had 28 days in which to register an appeal with the 1st Tier Tribunal.

3.31 The Chair then thanked everyone present and closed the meeting.

4. PART TWO ITEMS

4.1 The item had been taken in Part 1 of the meeting and therefore no consideration of part two items was required.

The meeting concluded at 12.35pm

Signed

Chair

Dated this

day of