

Notice of Meeting

STANDARDS SUB-COMMITTEE (HEARING)

Friday, 26 March 2010 - 9:00 am
The Council Chamber, Civic Centre, Dagenham

Members: Fiona Fairweather (Chair), Councillor N S S Gill and Mr F Dignan

Date of publication: 18 March 2010

R. A. Whiteman
Chief Executive

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AGENDA

1. **Apologies for Absence**
2. **Declaration of Members' Interests**

In accordance with the Council's Constitution, Members are asked to declare any personal or prejudicial interest they may have in any matter which is to be considered at this meeting.
3. **Minutes - To confirm as correct the minutes of the meeting held on 14 January 2010 (Page 1)**
4. **Monitoring Officer's Report (Pages 3 - 109)**
5. **Any other public items which the Chair decides are urgent**
6. **To consider whether it would be appropriate to pass a resolution to exclude the public and press from the remainder of the meeting due to the nature of the business to be transacted.**

Private Business

The public and press have a legal right to attend Council meetings such as the Executive, except where business is confidential or certain other sensitive information is to be discussed. The list below shows why items are in the private part of the agenda, with reference to the relevant legislation (the relevant paragraph of Part 1 of Schedule 12A of the Local Government Act 1972 as amended). **There are no such items at the time of preparing this agenda.**

7. **Any other confidential or exempt items which the Chair decides are urgent**

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STANDARDS SUB-COMMITTEE (HEARING)

Thursday, 14 January 2010
(2:30 - 3:10 pm)

Present: Councillor N S S Gill, Mr F Dignan and Mrs F Fairweather

19. Apologies for Absence

There were no apologies for absence.

20. Appointment of Chair

Fiona Fairweather was appointed as Chair.

21. Declaration of Members' Interests

There were no declarations of interest.

22. Private business

Agreed to exclude the public and press for the remainder of the meeting, as the business was confidential.

23. Monitoring Officer's Report - MC6-09

Received and noted the Monitoring Officer's report which sought views on pre-hearing issues in relation to a complaint against a councillor.

It was **agreed** that the Monitoring Officer arrange:

1. to call to attend the hearing the witnesses listed in her report and that no further witnesses be permitted;
2. to have the hearing tape recorded;
3. for the hearing to take place at the earliest opportunity in late February/March 2010 at the Civic Centre on a date to be agreed, and to commence at 9am.

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STANDARDS SUB-COMMITTEE (Hearing)

26 MARCH 2010

REPORT OF THE STANDARDS COMMITTEE

COMPLAINTS AGAINST COUNCILLOR ROBERT BAILEY REF: MC6/09	FOR DETERMINATION
<p>Summary</p> <p>On 3 August 2009 two separate but similar complaints were received against Councillor Robert Bailey (the Subject Member) concerning alleged comments made by him during the discussion of a planning application at a Development Control Board (DCB) meeting on 27 July 2009.</p> <p>In summary the two complaints are as follows:</p> <ol style="list-style-type: none"> 1. Jointly from four councillors (Councillors Barns, Denyer, McKenzie and Rush) who alleged that the Subject Member made degrading comments about the race and religious beliefs of the planning applicants and adopted a racist and confrontational position. 2. Singly from one of the joint complainants, Councillor McKenzie who, as Chair of the meeting, had had his request to the Subject Member to refrain from making such comments, ignored. <p>A Standards Sub-Committee (Assessment) met on 6 August 2009 and decided that the complaints should be referred to the Monitoring Officer for investigation. Mr. Winston Brown, Legal Partner in the Council's Legal Practice (the Investigating Officer), was appointed by the Monitoring Officer to carry out the investigation.</p> <p>A Standards Sub-Committee (Consideration) met on 17 December 2009 to consider the Investigating Officer's report (dated 14 December 2009) into the complaints and accepted his finding of failure to comply with the Members' Code of Conduct. The Sub-Committee agreed that the matter be determined at a hearing of the Standards Committee conducted under Regulation 18 of the Standards Committee (England) Regulations 2008.</p> <p>A copy of the Investigating Officer's report is attached at Appendix A.</p> <p><i>(Note: the evidence bundle compiled by the Investigating Officer and related to his report is confidential pursuant to Parts 1 to 3 of Schedule 12A to the Local Government Act 1972 and has been provided only to the Sub-Committee members, the Subject Member and his representative, the Monitoring Officer and Deputy Monitoring Officer advising the hearing, and the Democratic Services Officer for the meeting. References may be made to this bundle during the course of the hearing and every attempt will be made by relevant speakers to explain what is being referred to in order for others in the audience to understand the proceedings.)</i></p> <p>A copy of the London Borough of Barking and Dagenham Members' Code of Conduct is attached at Appendix B.</p>	

The hearing must be conducted in accordance with the Standards Committee (England) Regulations 2008 (the Regulations) and guidance issued by Standards for England. The Regulations provide that a Standards Sub-Committee may conduct a hearing using such procedures as it considers appropriate in the circumstances. The Standards for England Guidance requires the Standards Sub-Committee to hear the evidence relating to the complaint before reaching its decision.

A full copy of the Council's Procedures for Local Standards Hearings is attached at Appendix C. This is quite detailed and covers aspects that will not be of relevance during this hearing. Therefore, for simplicity, an abridged version is attached at Appendix D. With the Sub-Committee's agreement, in consultation with relevant parties (i.e. the Subject Member and the Investigating Officer), it is suggested that this be used to guide the proceedings during the course of the hearing

In accordance with pre-hearing procedures, the Subject Member was provided with various forms which he completed and this assisted the Standards Sub-Committee (Hearing) on 14 January 2010 to make decisions in advance of the hearing in relation to such matters as witnesses etc.

Correspondence has since been sent to the Subject Member and to the complainants on 8 February 2010, outlining the date for the hearing and the procedures.

In addition to the four complainants, the following individuals have been invited to attend the hearing to give evidence and/or to answer questions by the Investigating Officer and/or the Subject Member :

Councillor C Fairbrass MBE, Councillor T Justice, Councillor Mrs C Knight, and Councillor Mrs J Rawlinson (all members of the Development Control Board).
Pastor T Aderounmu (the spokesperson for the planning applicants).
Miss M Ahmed, Mr P Feild and Mr D Mansfield (officers present at the DCB meeting).

The Hearing Sub-Committee has pre-determined that no further witnesses will be allowed on the basis that those named above provide a comprehensive representation of the persons who witnessed the events complained of and are sufficient in number to assist the Sub-Committee in its decision-making at the hearing.

The Subject Member has notified that he will be represented at the hearing, in a personal capacity, by Mr Patrick Harrington.

The Investigating Officer will attend the hearing to present his investigation report.

The Monitoring Officer, Ms Nina Clark, and a Deputy Monitoring Officer, Ms Yinka Owa, will be in attendance to advise the Sub-Committee as to procedure.

The meeting will be clerked by Mrs Margaret Freeman, Senior Democratic Services Officer. An external recording and transcript service has been engaged to record the proceedings.

After hearing all the evidence the Standards Sub-Committee is required to make a finding of fact as to whether or not the Subject Member has failed to comply with the Code of Conduct, and if it finds a breach it must also determine whether any sanction(s) should be imposed.

Under Regulation 19(3) of the Regulations, the Standards Sub-Committee may impose any one of, or any combination of, the following sanctions in the event that it finds that the Subject Member breached the Code:

- (a) censure of that Member;
- (b) restriction for a period not exceeding six months of that Member's access to the premises of the authority or that Member's use of the resources of the authority provided that those restrictions –
 - (i) are reasonable and proportionate to the nature of the breach; and
 - (ii) do not unduly restrict the person's ability to perform the functions of a Member;
- (c) partial suspension of that Member for a period not exceeding six months.
- (d) suspension of that Member for a period not exceeding six months;
- (e) that the Member submits a written apology in a form specified by the Standards Sub-Committee;
- (f) that the Member undertakes such training as the Standards Sub-Committee specifies;
- (g) that the Member participates in such conciliation as the Standards Sub-Committee specifies;
- (h) partial suspension of that Member for a period not exceeding six months or until such time as the Member submits a written apology in a form specified by the Standards Sub-Committee;
- (i) partial suspension of that Member for a period not exceeding six months or until such time as a Member has undertaken such training or has participated in such conciliation as the Standards Sub-Committee specifies;
- (j) suspension of that Member for a period not exceeding six months or until such time as the Member has submitted a written apology in a form specified by the Standards Sub-Committee;
- (k) suspension of that Member for a period not exceeding six months or until such time as that Member has undertaken such training or has participated in such conciliation as the Standards Sub-committee specifies.

It is a matter for the Standards Sub-Committee as to which sanction(s), if any, is appropriate in the light of any finding regarding breach. The Standards for England Guidance in relation to sanctions is attached at Appendix E to assist the Sub-Committee in this regard.

Recommendation:

The Standards Sub-Committee is asked to hear the case and make one of the following findings:

1. that the subject Member has not failed to comply with the Members' Code of Conduct;
2. that the subject Member has failed to comply with the Members' Code of Conduct; but that no action needs to be taken, or;
3. that the subject Member has failed to comply with the Members' Code of Conduct and that a sanction or sanctions should be imposed which will be defined.

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Consultees:

Yinka Owa – Deputy Monitoring Officer
 Margaret Freeman – Senior Democratic Services Officer

Background Papers Used in the Preparation of the Report:

Standards for England Guidance

**Final Report of an Investigation under Section 59 of the
Local Government Act 2000 into an allegation concerning
Councillor Robert Bailey - Case Reference: MC6/09**

This report has been prepared for the Standards Committee of the London Borough of Barking & Dagenham and has been prepared by Winston Brown, Legal Partner and Deputy Monitoring Officer.

Date of report **14th December 2009**

Contents

1. Executive Summary
2. Councillor Bailey's official details
3. The relevant legislation and protocols
4. The evidence gathered
5. Summary of and conclusion on the material facts
6. Reasoning as to whether there has been a failure to comply with the Code of Conduct
7. Findings

Appendix A

Schedule of Evidence

1. Executive Summary

1.1 Councillor Robert Bailey is an elected member of the London Borough of Barking & Dagenham Council (the "Council") and a member of the British National Party which is the minority political group on the Council. He is a member of the Assembly, Ceremonial Council, Development Control Board and Living and Working Select Committee. He is also a member of the Eastbrook, Heath and Alibon Community Housing Partnership

1.2 Two very similar complaints were received by fellow Councillors against Councillor Bailey as follows:

An undated complaint was received by hand on 3 August 2009. The names of Councillor John Denyer, Councillor Fred Barns, Councillor Valerie Rush and Councillor Milton McKenzie appear as the complainants and the form is signed off (pp') by Councillor Rush.

A separate complaint (dated 2 August 2009) and covering the same ground was made by Councillor Milton McKenzie in relation to Councillor Bailey's conduct.

The complaints relate to comments allegedly made by Councillor Bailey during a Development Control Board (DCB) meeting on 27 July 2009, in relation to an application for planning permission brought forward by The Redeemed Christian Church of God ('the church'). It is of relevance to this complaint to note that the membership of the church is predominantly Nigerian.

- 1.3** All the complainant Councillors and Councillor Bailey are among the members of the Development Control Board. Councillor McKenzie is the Chair of the Development Control Board (“DCB”).
- 1.4** On 27 July 2009, all the complainant Councillors, Councillor Bailey and some other Councillors who have not been cited in this complaint were sitting on the DCB. (The full list of councillors in attendance as well as those who submitted apologies for non attendance appears in the minutes of the meeting in the bundle of evidence). An application had been made by the church for planning permission to convert office premises which they were already using at Rima House, Ripple Road, Barking to use the said premises as a place of worship and for community education and training purposes with ancillary offices and construction of a front entrance to the first floor.
- 1.5** It is alleged that during the course of the meeting Councillor Bailey made a number of comments in relation to the applicants and their application which were derogatory on racial and religious grounds. The complainants specifically alleged that Councillor Bailey said in the meeting that, “there are too many Nigerian churches in this Borough” and “we don’t want any more Nigerian churches here”. It was alleged that Councillor Bailey also made a series of comments which were offensive on racial and religious grounds.

1.6 The complaints were presented to the Assessment Sub-Committee of the Council's Standards Committee on 6 August 2009. The Sub-Committee there decided to refer the complaint to the Monitoring Officer for investigation because potential breaches of the Code of Conduct had been disclosed.

1.7 The Sub-Committees specifically required investigation into the following potential breaches of the Code of Conduct:

- Paragraph 3 (1) - You must treat others with respect.
- Paragraph 3 (2) (a) - You must not do anything which may cause your authority to breach any of the Equality Laws.
- Paragraph 5 - You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

1.8 The group complaint asserted and the Sub-Committee also considered that the alleged conduct may have conflicted with the general principles in the Code of Conduct relating to objectivity, respect for others, and leadership.

1.9 Councillor Bailey made a series of comments which were expressed in a derogatory tone. The comments were intended to cause and did in fact cause offence on racial grounds. The comments were as follows:

- 'There are too many Nigerian churches in the Borough'
- 'We do not want any more Nigerian churches in the Borough'. That this was said is undisputed. I find it was made in an offensive tone.
- These people eat off the ground. I am sure there must be some hygiene regulations which would prevent this'
- The church had no right to be in the Borough and it was time to call a halt to churches of other nationalities coming into the Borough
- He (Councillor Bailey) had visited the applicants' church and had seen them eating on the floor
- They (the applicant church/Nigerian churches generally) did not want to integrate into society
- 'We don't want the amount of black children'
- 'We don't want black churches here'
- 'There are too many black churches here'
- 'There are too many Nigerian churches in this place-you wait and see. Wait until next year's election. You wait and see'
- Why was the council 'giving way' to these people? (the applicants).

1.10 Councillor Bailey's tone was antagonistic and offensive towards the applicants. That offence was racially motivated. He was biased against their application and had predetermined their application. This was part of an ongoing campaign against more Nigerian churches being established in Barking and Dagenham.

1.11 I do not find that he made any comments which were offensive on religious grounds.

1.12 In so acting I find that Councillor Bailey acted in breach of the following provisions of the Code of Conduct:

- Paragraph 3 (1) - You must treat others with respect.

- Paragraph 3 (2) (a) - You must not do anything which may cause your authority to breach any of the Equality Laws.

- Paragraph 5 - You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

1.12 I do not find that he made comments offensive on religious grounds.

2. Councillor Bailey's Official Details

- 2.1** Councillor Bailey was first elected on 4th May 2006 and his current term of office runs from 4 May 2006 to 9 May 2010. He is a member of the Alibon Ward in the London Borough of Barking & Dagenham.
- 2.2** Councillor Bailey sits on the Assembly, Ceremonial Council, Development Control Board and Living and Working Select Committee. He is also a member of the Eastbrook, Heath and Alibon Community Housing Partnership
- 2.3** Councillor Bailey signed an undertaking to abide by the Code of Conduct for Members on 5th May 2006.
- 2.4** Councillor Bailey received training on the new Code of Conduct for Members on 24 September 2007 and 9 January 2008. In relation to the Development Control Board (DCB), Councillor Bailey received training on the role of Members of DCB on 24 June 2008. A copy of the training material used at the DCB appears in the bundle of evidence.

3. The relevant legislation and protocols

3.1 At the time of the complaint, the Council had adopted the Model Code of Conduct as set out in the Schedule to the Local Authorities (Model Code of Conduct) Order 2007 as its Code of Conduct.

3.2 The Relevant Authorities (General Principles Order) Order 2001 sets out the principles which are to govern the members of relevant authorities in England, which include the Council. The Council has these principles in its preamble to the Code of Conduct for Members which are reproduced below:

Selflessness – *Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.*

Honesty and integrity – *Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should, on all occasions, avoid the appearance of misbehaviour.*

Objectivity – *Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.*

Accountability – *Members should be accountable to the public for the actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.*

Openness – *Members should be as open as possible about their actions and those of their authority and should be prepared to give reasons for those actions.*

Personal judgement – *Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them, acting in accordance with those conclusions.*

Respect for others – *Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.*

Duty to uphold the law – *Members should uphold the law and, on all occasions, act in accordance with the trust the public are entitled to place in them.*

Stewardship – *Members should do whatever they are able to do to ensure that their authority use their resources prudently and in accordance with the law.*

Leadership – *Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.*

3.3 The following provisions of the Code of Conduct are relevant to this investigation:

- Paragraph 2 (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you- (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or (b) act, claim to act or give the impression you are acting as a representative of your authority

- Paragraph 3 (1) - You must treat others with respect

- Paragraph 3 (2) (a) - 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 5 - You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

3.4 In addition to the Member Code of Conduct the council has adopted a 'Members' Code of Conduct for Planning Matters' appearing in Part E of the council's constitution. This Code sets out in more detail the requirements for members' conduct when handling planning matters. Paragraph 8.1 of the Members' Code of Conduct for Planning Matters provides:

- Failure to comply with this Code of Conduct for Planning Matters could lead to a Member being in breach of the Members' Code of Conduct. Breaches of the Code will be referred to the Standards Board for England^{*1}.

3.5 I also consider the following principles from the preamble to the Member Code of Conduct to be relevant to this complaint:

- Honesty and integrity
- Objectivity
- Respect for others
- Duty to uphold the law
- Leadership

3.6 I do not consider there to be any other provisions of the Code of Conduct which are of relevance to this complaint

¹ The standards committee has now taken over the role of assessment of complaints and this provision of the Member Code of Conduct for Planning Matters would be so applied

4. The evidence gathered

4.1 I gathered evidence in the form of interviews from the following persons some of whom also provided supporting documentation which appears in the bundle of documents with this report.

- Councillor Robert Bailey (the subject Member)
- Councillor Valerie Rush (complainant)
- Councillor Fred Barnes (complainant)
- Councillor Milton McKenzie (complainant and Chair of Development Control Board)
- Pastor Thomas Aderounmu (Pastor of Redeemed Christian Church of God and applicant)
- Councillor John Denyer (complainant)
- Masuma Ahmed (Democratic Services Officer)
- Dave Mansfield (Development Management Manager)
- Paul Feild (Senior Lawyer, Legal Practice)

4.2 Councillor Bailey suggested in interview that Councillor Knight (member of BNP) should have been interviewed. I did not consider it necessary to interview every Councillor but considered that a fair and overall picture could be gleaned from all the complainants and officers in attendance.

Chronology of events as found

- 4.3** The Redeemed Christian Church of God ('the church') is a church of predominantly Nigerian membership. Trustees of the church made an application for planning permission for the development of Rima House, Ripple Road, Barking for a mixed use as a place of worship and for community, education and training purposes with ancillary offices and the construction of front entrances to the first floor.
- 4.4** The application came before the Development Control Board (DCB) on 27th July 2009. It was the second item considered by the Board. The meeting took place in the chamber at Barking Town Hall. Councillor McKenzie chaired the meeting. The chamber's public gallery was full with members from the church.
- 4.5** At the DCB meeting of 27th July 2009, the following groups of persons were in attendance
- Members of DCB Board
 - Officers from planning department
 - Applicants from the church which included Pastor Aderounmu (Pastor of the church) and their solicitor (John Hughes)
 - members of the church congregation
- 4.6** Dave Mansfield, Development Manager presented a report setting out the proposed development, officer recommendations and relevant planning policies. This was accompanied by a power point presentation

showing the site of the proposed development from various angles. Members would have received the report along with other parts of the agenda for the meeting beforehand in accordance with the usual statutory timescales. As members were taken to have read the report themselves Dave Mansfield provided a brief summary with officer recommendations. The officer recommendation was that planning permission be granted subject to a number of conditions. The report noted that there were legitimate pros and cons in relation to the application being granted. It is fair to say the arguments both ways were finely balanced.

- 4.7** The report presented by Dave Mansfield listed the planning policies which were of relevance in determining the application. They were as follows (and appear in the bundle of evidence):

Unitary Development Plan (UDP) Policy

Policy DE1 – Urban Design

Policy DE5 – Facilities for People with Disabilities

Strategic Policy E – Employment

Policy E1 – Employment Development within Employment Areas

Strategic Policy T – Community Facilities

Policy C2 – Premises for Facilities for the Community

Policy C9 – Provision of Childcare Facilities

Policy C15 – Access

Policy C16 - Safety and Security

Policy T1 – Accessibility by Public Transport

Policy T10 – Land Use and Public Transport

Policy T21 – Traffic Generation

**Local Development Framework, Core Strategy and Borough Wide
Development Policy November 2008**

Policy BR9: Parking

Policy BR10: Sustainable Transport

Policy CC3: Social Infrastructure to Meet Community Needs

Policy CE3: Employment Land

Policy CP3: High Quality Built Environment

**The London Plan – Spatial Development Strategy for Greater
London. Consolidated with Alterations since 2004 (February 2008)**

Policy 3A.18 Protection and enhancement of social infrastructure and
community facilities

Policy 3B.4 Industrial Locations

Annex 2 Strategic Industrial Locations

Policy 3C.1 Integrating transport and development

Other policy documents

PPS1 Sustainable Development

PPG4 Industrial and Commercial Development and Small Firms

PPG13 Transport

Planning Advice Note 4 – Religious Meeting Places

- 4.8** After Dave Mansfield completed his presentation Councillor McKenzie allowed members to ask questions of Mr. Mansfield to explore and resolve any planning concerns. The applicants were then allowed to outline their case in support of permission being granted. After this Councillor McKenzie again allowed members to ask questions of the applicant or the officer before voting on the application.
- 4.9** During the periods when Councillor McKenzie invited members to ask questions Councillor Bailey made several outbursts in opposition to the application.
- 4.10** Councillor Bailey repeatedly said during the question and answer session that 'there are too many Nigerian churches in the Borough' or words to that effect. All the witnesses recall him making that statement on at least one occasion. Councillor Bailey himself in interview accepted he made this statement at some point in the meeting. In fact he stood by this statement on a point of principle in his interview insisting that there are indeed 'too many' Nigerian churches in the Borough. In my interview with Councillor Bailey it was clear that he holds firmly to this view and sees nothing objectionable about saying it. It is beyond doubt that the comment was made. A number of witnesses confirm such comments were made on several instances and I find it was.

4.11 Councillor Bailey made a series of derogatory comments about the applicants as a Nigerian church and in relation to Nigerian churches more generally. In assessing what comments were made it is apparent that of the 4 Councillors, 3 officers and 1 external witness (the Pastor) I interviewed each were alleging different things as having been said by Councillor Bailey which did not in all cases feature in the accounts of other witnesses. In what was clearly a controversial and heated meeting it is clear that not all present heard all the words which others said they heard Councillor Bailey say. In some instances witnesses recall words to the same or similar effect even though they could not recall the precise words used or had a different rendering of the words in question. Consistency in accounts is clearly relevant to the accuracy of any allegation. Equally, I accept that such differences in recall do not mean particular words or words to stated effect were not said. In my assessment a variety of recollections is not unusual following a meeting where a lot was said. At the same time reliance was only placed on allegations of what Councillor Bailey said when it was supported by other evidence such as corroboration by another witness or some other consistent evidence emerging in the investigation balanced against Councillor Bailey's response which was given due consideration throughout. It is also apparent that the councillors' recollection of comments made were more extensive than that of officers and the Pastor. At the same time a number of the comments alleged by the councillors to have been made were also heard and recounted by

officers and the Pastor. I have had due regard to differences in accounts and Councillor Bailey's responses in forming my conclusions.

4.12 Another feature of the investigation is that the complainants had a lot more to say about what Councillor Bailey had said than appeared in their written complaints. When I first interviewed Councillor Bailey I only had the terse written complaints to hand. Later on in the investigation I provided Councillor Bailey with a copy of the transcript of interviews of all the witnesses. I had also prepared for my use a schedule of comments attributed to Councillor Bailey by each of the witnesses in a document entitled 'Comparative Analysis of Alleged Comments' which appears in the bundle of evidence. I divided the range of comments and behaviour asserted against Councillor Bailey under the following headings:

- 'Eating off the ground'
- 'Too many Nigerians'
- Disorder and not taking direction from the chair
- Derogatory tone
- Religious offence
- Generally negative comments/attitudes

4.13 I sought and received Councillor Bailey's response to the comments allegedly made by him under each heading in a face to face meeting. The draft report was issued subsequently drawing inferences in the light

of the evidence gathered. In his comments on the draft report Councillor Bailey indicated that he felt that I had ignored what he had said in interview. In the light of this comment I reviewed Councillor Bailey's evidence and then sought to re test the evidence of witnesses by inviting them to comment specifically on each of the comments attributed to Councillor Bailey *as claimed by other witnesses*. Councillor Rush, Councillor Denyer and Councillor Barns endorsed the comments of each other complainant in general terms although did not as requested comment on each specific comment allegedly made by other complainants. Councillor McKenzie asked to come in to see me again. On attendance Councillor McKenzie specified what comments as recalled by other complainants he recalled and those he did not. Of the officers similarly (who had not seen any draft report) Paul Feild and Masuma Ahmed addressed each of the comments recalled by the different complainants corroborating some and not others. Dave Mansfield expressed himself unable to recollect exactly what was said but felt that the recollections of members and officers fit with his general recollection of events and may have been said. Councillor Bailey has argued that the complaint is nothing more than a politically motivated action by the Labour councillors. It may of course be tempting to support fellow complainant evidence by endorsing their evidence in general terms. I am satisfied that each complainant interviewed gave genuinely held evidence both in interview and on receipt of the draft report and schedule of comments. Notwithstanding this, I have only treated as corroboration where a witness specifically focused his/her mind on a

particular comment and confirmed they recalled the comment in question being made or words to that effect.

4.14 After a very detailed review of the evidence I find that Councillor Bailey launched into a tirade in which he said among other things:

- ‘There are too many Nigerian churches in the Borough’. This is undisputed. Councillor Bailey disputes some of the further words attributed to him by Councillor Barns, Councillor McKenzie and Councillor Denyer. All are agreed that the statement ‘there are too many Nigerian churches in the Borough’ was made and I find it was said.
- ‘We don’t want any more Nigerians or Nigerian churches in the Borough’ or words to this effect. Councillor Barns gave this evidence. Councillor McKenzie did not attribute these specific words but lists a series of comments by Councillor Bailey along similar lines of there being too many black or Nigerian churches and is consistent with this statement being made. Similarly, Masuma Ahmed recalls this being said although she cannot recall the precise words used. Pastor Aderounmu specifically confirms the comments ‘we don’t need more Nigerian Churches in the Borough’ were made.

- ‘These people eat off the ground. I am sure there must be some hygiene regulations which would prevent this’. These are precise words attributed to Councillor Bailey by Councillor Barns in his interview. Councillor Rush said Councillor Bailey had said ‘it is preposterous to call them churches because when he went in there they were all sitting on the floor cooking food’. Councillor Denyer similarly said Councillor Bailey had said he had been to places in this country where ‘your groups sit in circles round pots on the floor eating with hands’ and further that ‘it really got to a stage where it was so biased and so totally racist you know’. Pastor Aderounmu confirmed the reference was made of them sitting on the floor eating with their hands and said Councillor Bailey thereby implied they were ‘dirty’. Masuma Ahmed recalls the reference was made although she could not recall the exact words used². Paul Feild endorsed the following comment on the issue by Councillor Rush: ‘He said it is preposterous to call them churches because when he went in there they were all sitting on the floor cooking food. That statement in itself isn’t derogatory but if it is delivered in a certain way and an audience is there then it is derogatory’³. In his interview of 7th October 2009 Councillor Bailey said he had visited the applicants’ church and had seen them eating on the floor. Councillor Bailey could not recall making this comment about the church eating on/off the floor in the meeting of 29th July 2009 although he stands by it as an accurate description of how the

² See Comparative Analysis of Alleged Comments of Masuma Ahmed

³ See Comparative Analysis of Alleged Comments of Paul Feild

applicants behave in their services. He maintained he had visited their church and saw members of the congregation eating on the floor. Councillor Bailey denies that such comments if made by him were racially offensive. In a subsequent meeting with me on 30th November 2009 Councillor Bailey said his point was that the applicants were claiming to be a church but in reality they were a commercial concern as he saw them operating a restaurant. He further said that the church had been illegally occupying premises at Church Elm Lane and that the Pastor was himself linked to money laundering which was reported in the *Barking and Dagenham Post*. There is no evidence however that Councillor Bailey articulated this 'economic' rationale for his comments at the meeting and by making the stand alone comments about sitting on the floor eating with hands left it open to an inference that it was intended in a demeaning and racially offensive way. He described as 'ridiculous' the suggestion that the comments were made in a derogatory way. It is clear however that words to the effect of sitting on the floor eating with hands were used. The balance of interview evidence leads me to the conclusion that the comments were made in an offensive way. Councillor Barns had the most vivid recollection of the words quoted above and that they were offensive when made. I accept Councillor Barns' quoted evidence as most reliable on the point. Councillor Barns, Councillor Rush, Councillor Denyer and Pastor Aderounmu all recall that Councillor Bailey said he had attended the church and seen them eating on the floor. All agree it

was said in a racially derogatory or offensive manner. I have had regard to the fact that accounts vary between Councillor Bailey saying the church ate 'off' the floor or 'on' the floor. The witness evidence agrees it was meant in a derogatory way. Pastor Aderounmu denies ever seeing Councillor Bailey visit his church and said that as Councillor Bailey is white he would have stood out in an all black congregation. The Pastor further categorically denied that his church members ever ate on the floor. He felt the comments suggested that the church members were 'dirty'. All the witnesses who heard the comment about the church eating on/off the floor took offence and/or heard them as being meant in a racially derogatory way. Councillor Bailey said in his 30th November 2009 interview that he had not visited the service but had attended the premises. Councillor Rush gave evidence that Councillor Bailey's tone throughout was disparaging towards the applicants in a racially offensive way. Masuma Ahmed recollected that Councillor Bailey had 'health and safety' concerns about the applicants' application but she could not expand further. The overwhelming balance of the evidence gathered through interviews is that Councillor Bailey's concerns were not couched in terms of genuine planning concerns as to how the applicants were or would use the premises but upon sweeping racially motivated generalisations. Councillor Bailey made the point in his interview of 30th November 2009 that during the meeting Councillor Rush had called him a 'racist pig'. He said he did not challenge this when it was said.

However, Councillor Bailey felt that because people heard that said about him that it has affected how people in attendance regarded everything said by him. I put this allegation to Councillor Rush and she denied making the statement or hearing it said. Paul Field's confidential note of 28th July 2009 (in the bundle of evidence) notes that someone made this statement although he could not say who made the statement. There is evidence then that the comment was made. However, in my assessment even if the comment was made, while it is possible that being called a 'racist pig' might have influenced perception of Councillor Bailey the issue for this investigation is what comments were actually made and the reasonable meaning which anyone would place on them in the context in which they were made. The witnesses I interviewed gave their objective recollection and assessment of words they heard and their apparent meaning. None appeared influenced by any alleged insult of Councillor Bailey and in fact Paul Feild is the only one who recollected it.

- There is no place in Barking and Dagenham for churches of this type. Councillor Denyer said Councillor Bailey had made this remark. Councillor McKenzie recalled it being said and I accept it was. While Councillor Bailey denies making this statement it is consistent with his stated position and campaign (below) concerning Nigerian churches and on balance I find this proven.

- ‘They’ did not want to integrate into society. Councillor Bailey emphatically denied making this statement in his 30th November interview. Only Councillor Denyer recalls this being said. It is a perspective consistent with the views articulated by Councillor Bailey in an article published on the London Patriot website (below) where he writes among other things that “*Nigerian Churches do not cater for local born residents and most would feel unwelcome at one of their churches*”. A view that Nigerian churches do not integrate in society is clearly a view held by Councillor Bailey on the evidence and in the context of a number of comments against them being granted permission to operate in the Borough I find on balance this comment was made. It is unclear if ‘they’ was a reference to the applicants, Nigerian churches more generally or to all Nigerians. It is clear it was disparaging to Nigerians however including the applicants and their congregation who were present in the chamber.
- ‘We don’t want the amount of black children’. Councillor Bailey emphatically denied making this statement in his 30th November interview. Councillor Bailey rightly points out that no other person interviewed made this particular allegation. I take Councillor McKenzie’s evidence as accurate on the point. It is confirmed by Pastor Aderounmu and it is consistent with other evidence gathered in this investigation including an article posted on the London Patriot website by Councillor Bailey (see below) and other

comments he made that his concern was race based and I conclude he did indeed make the statement referred to.

- ‘We don’t want black churches here’. Councillor Bailey emphatically denied making this statement in his 30th November interview. He specifically denied using the term ‘black’. Councillor McKenzie gave this evidence. Pastor Aderounmu confirms this was said and on balance I accept it as an accurate description of what Councillor Bailey said. It is also consistent with other evidence gathered in this investigation including an article published by Councillor Bailey on the London Patriot website (see below)
- ‘There are too many black churches here’. Councillor McKenzie gave this evidence. Masuma Ahmed recalls this being said although she cannot recall the precise words used⁴. Pastor Aderounmu also confirms it was said. The statement is consistent with other evidence gathered in this investigation as to Councillor Bailey’s perspective including an article published by Councillor Bailey on the London Patriot website (see below) and I accept it was said.
- ‘There are too many Nigerian churches in this place-you wait and see. Wait until next year’s election. You wait and see’. Councillor McKenzie gave this evidence. Masuma Ahmed recalled the comment being made although she could not say what precise

⁴ Comments of Masuma Ahmed on Comparative Analysis of Alleged Comments

words were used. Pastor Aderounmu confirms the statement was made by Councillor Bailey. I accept it as an accurate description of what Councillor Bailey said. Councillor Bailey denied making this statement in his interview of 30th November 2009. I describe below an article published by Councillor Bailey on the London Patriot website. In it a clear campaign by the BNP for the elections of 2010 is described. Councillor Bailey refused to discuss the article and denied that there was any campaign by him or the BNP to oppose further establishment of Nigerian churches in the borough. I was surprised by this denial given the express statement in the article and Councillor Bailey's stance that there are indeed too many Nigerian churches in the Borough. His evidence on this point is therefore not credible and I accept the reference to next year's election was made.

- Why was the council 'giving way' to these people? (the applicants). Councillor McKenzie gave this evidence and I accept it was said. This was denied by Councillor Bailey. Pastor Aderounmu confirms this statement was made. The evidence emerging in this investigation is that Councillor Bailey was and remains opposed to the growth of Nigerian churches in the borough. I accept that the statement was made.

4.15 The description of Councillor Bailey making these comments as part of a 'tirade' is confirmed in the evidence of Councillor Denyer who felt

Councillor Bailey had 'lost it' and of Councillor McKenzie who, when commenting on the draft report, said Councillor Bailey was rambling on. His departure from the chamber in angry protest at the decision to grant planning permission to the church is consistent with my finding that Councillor Bailey was angry and animated during the meeting. Councillor Bailey indicated that he certainly put his point across but denied losing control as alleged.

4.16 In interview Councillor Bailey did not accept he had said anything other than that he did not want any more Nigerian churches in the Borough and there were too many of them. He denied using the word 'black'. The complainants added more detail during their interviews than had been set out in their complaint. In his interview of 30th November 2009 Councillor Bailey sought to explain his reference to there being too many Nigerian churches in the Borough on economic grounds: he asserted that by granting permission to churches which in reality are businesses the council was thereby losing revenue since such organisations would not be paying business rates but operating under charitable status. If such an argument had been articulated with reference to the applicants in terms focusing solely on the business activity of the church it is unlikely that a complaint under the Member Code of Conduct would have been made. However, whatever the economic arguments might have been Councillor Bailey's objections were made in sweeping and racialised terms as 'too many Nigerian churches' or 'too many black churches' which led everyone interviewed to conclude that he was being racially offensive or to

acknowledge that such offence could have been caused. Masuma Ahmed discerned that Councillor Bailey appeared to be making the argument that the church was really a business but even she said that since Councillor Bailey did not develop his argument his comments were open to being offensive. Councillor Bailey continued to object to 'Nigerian' churches despite being told to restrict himself to planning considerations. The overwhelming balance of the evidence is that Councillor Bailey was opposed to the application because it was brought forward by Nigerians. Any underlying 'business' argument was itself in the nature of general stereotyping of the applicants as Nigerians and not based on a careful consideration of the merits of their application. The alleged visit to the church where Councillor Bailey said he saw them eating off/on the floor (or running a restaurant) was not articulated in terms of a coherent planning objection but as a derogatory statement. I also take account that the Councillors interviewed gave more detailed accounts of what Councillor Bailey said than the officers who could only recall sparse details and were generally reluctant to apply the term 'racist' to Councillor Bailey. They all acknowledged that such offence could have been given however.

4.17 I find that Councillor Bailey's tone was antagonistic and offensive. He was called to order by Councillor McKenzie on several occasions who asked him to restrict himself to planning considerations but Councillor Bailey repeatedly interrupted making the comments as stated. The complainants also asserted that Councillor Bailey waived his arms and adopted a confrontational position. In his interview of 30th November 2009

Councillor Bailey denied waving his arms but said he had certainly wanted to make his point clear. Councillor Bailey further challenged the allegation of not taking Councillor McKenzie's instructions. He maintained that Councillor McKenzie was 'not up to the job', that Councillor McKenzie had been 'sacked' from a previous chairing role in the council and that Councillor McKenzie was not competent in his role. The Councillors and officers interviewed who supported the assertion that Councillor Bailey refused to take guidance are themselves experienced with regard to DCB. Councillor McKenzie confirmed it was his first time chairing the Development Control Board. In commenting on the draft report, Councillor McKenzie denied being 'sacked' from any chairing role on the council. He felt that Councillor Bailey was just expressing his opinion. Councillor McKenzie did indicate that in chairing the meeting on 27th July he gave members scope to express themselves although he had to call Councillor Bailey to order on occasions. I do not find that the leeway Councillor McKenzie gave to members generally or to Councillor Bailey in particular either justified or encouraged the range of offensive comments then made. It is a part of the adjudication process that members of DCB are given opportunity to ask questions and make comments. It is also clear that Councillor McKenzie made it clear to Councillor Bailey when his comments were inappropriate and to stick to planning considerations. Allegations of incompetence against Councillor McKenzie were not made by other witnesses. Those witnesses included a clerk (Masuma Ahmed) and legal officer (Paul Field). Questions as to Councillor McKenzie's handling of the meeting should not detract from the essential point: Councillor McKenzie

specifically asked Councillor Bailey to restrict himself to planning considerations. Councillor Bailey refused to do so. Councillor Denyer described Councillor Bailey as having 'lost it'. Councillor Bailey further said in his 30th November interview that he was only doing his job as an elected politician in articulating the views of the electorate. He further said that the Labour Party had been in power for a number of years and were struggling to come to terms with having an Opposition. It is certainly the case that a Councillor is elected to advance the views of constituents. In my assessment Councillor Bailey crossed the line between raising genuine political views and inappropriate comments.

4.18 When the members of DCB voted on the application (by way of show of hands) Councillor Bailey voted against the application. The majority of members voted in favour of the application which was accordingly granted subject to the conditions set out in the officer's report. After the vote was taken Councillor Bailey (and another councillor) walked out of the meeting in protest. As he left Councillor Bailey shouted 'we don't want any more Nigerian churches in the Borough'. It is clear that Councillor Bailey voted against the application on the ground that it emanated from a *Nigerian* church.

4.19 Councillor Bailey's comments and conduct were experienced by those in the meeting as racially offensive. Councillor Rush expressed the view in interview that Councillor Bailey's tone was offensive and derogatory throughout. All the other witnesses beside Councillor Bailey either said they

felt the comments were racially offensive or could have been interpreted as such. I accept and find that the various comments made by Councillor Bailey in relation to the church's application were delivered in an offensive tone which was meant in a racially offensive way. It is clear that witnesses to his comments were genuinely offended at the time. The minutes of the meeting on 27th July 2009 record that Councillor Fairbrass asked for it to be noted that there would be a complaint made about Councillor Bailey's conduct. Paul Field, Senior Lawyer has provided a copy of a memo he wrote the day following the meeting (28th July 2009) which appears in the schedule of evidence. In it he writes that after the vote on the church's application was taken Councillor Bailey stood up and said 'we don't want any more Nigerian churches in the Borough' at the top of his voice and got up and left the Chamber. Paul Field also noted that someone indicated that a complaint would be made in relation to Councillor Bailey's conduct. It is significant that the legal advisor to the meeting considered it necessary to record such a note. This action confirms that something untoward and of concern occurred in the meeting which the legal advisor wanted on record. Paul Field subsequently sent me an email on 24th November 2009 after he had been interviewed. He raised the point that in his view the British National Party 'hardly if ever' vote in favour of applications brought by ethnic minorities and suggest a built in bias or predetermination exists. An allegation of discriminatory practice of this nature is beyond the scope of this investigation and I have not relied on this assertion in drawing any conclusions. If the assertion was ever particularised and presented to the standards committee it may or may not be investigated under the Code of

Conduct for Members. Pastor Aderounmu confirmed in interview that he was offended and that members of his congregation expressed dismay to him after the meeting that they felt the council was hostile towards them as a people. The Pastor was quick to allay their fears. This underlines however the genuine perception that racially offensive remarks were made. It is to be noted that making public reference to the applicants' race (Nigerian) within the comment 'we don't want any more Nigerian churches in the Borough' was not of itself racially offensive in my assessment. However, in looking at the context in which these and other words were said and the tone with which they were said leads to the finding that offence could and was in fact caused on racial grounds. I also take account that the comments were made by a member of a quasi judicial body (DCB) in an open and public meeting at which several members of the applicant church were present. It is hard to imagine that such a comment in such a forum would not be offensive to persons present and especially those who were themselves Nigerian.

4.20 Councillor Bailey was biased against the church's application for planning permission. He had predetermined their application. His bias and predetermination were racially motivated. In his view there were already 'too many' Nigerian churches in the Borough and he was opposed on that basis alone to their application. This attitude was strongly influenced by an underlying racial stereotype that all Nigerian churches in reality operate as businesses. As such he was not prepared to entertain the applicants' application for mixed use of worship and community purposes as genuine.

In his interview of 30th November 2009 Councillor Bailey said he had an 'open mind' on the 27th July meeting. I have seen no evidence of a mind open to hear differing views. In his 7th October 2009 interview he made clear that he regarded such churches as businesses.

4.21 Further to the finding of bias and predetermination I find that Councillor Bailey did not have regard to planning considerations nor did he give due consideration to the merits of the applicants' application one way or the other. In my interview with Councillor Bailey I probed as to what was his basis for contending there were 'too many' Nigerian churches. He accepted he did not have any objective data as to numbers of churches in the Borough per group but was going on perception. It is clear he was operating out of generalisations based on his perception of Nigerian churches. Councillor Bailey went as far as to make allegations of criminal activity against the church (unlawful occupation of a premises) and against the Pastor (unspecified). In his interview of 30th November 2009 Councillor Bailey added that the Pastor had been accused of money laundering which he said was reported in the *Baking and Dagenham Post*. While Councillor Bailey has an underlying argument that granting planning permission to businesses under the guise of a church will lead to a loss of revenue this was not the way his objection was articulated at the meeting. He objected in terms that there were 'too many Nigerian churches' in the Borough and words to similar effect. The evidence of a number of witnesses was that Councillor McKenzie had to often call Councillor Bailey to order and focus on planning matters only. Dave Mansfield, who is a highly experienced

planning officer used to presenting to DCB felt that the objections raised by Councillor Bailey were not relevant planning considerations and questioned Councillor Bailey's suitability to sit on DCB to make decisions given his views. Masuma Ahmed of Democratic Services said that as Councillor Bailey did not elaborate on his comments against the application it was easy to construe them as offensive remarks.

4.22 The group complaint also asserted that Councillor Bailey made comments which were offensive on religious grounds. The only evidence I came across for this was the reference to the applicant church sitting on the floor eating food and the suggestion the applicants intended to use their church service as a business. The sitting on the floor reference could be construed as a criticism of the church's mode of worship. Councillor Bailey denied any religious offence in his interview of 30th November 2009. He again explained his concern that churches operating as businesses should not hide behind a 'church'. He did not accept that a church could operate a business aspect and still be a genuine church. On balance however I interpret the comments as being specific to the applicants' race, not their religion. Any suggestion that the applicant's church was in reality a business would not in my assessment constitute a comment offensive on religious grounds. The whole tenor of the comments I have found Councillor Bailey made were race related and in that vein the reference to sitting on the floor or to business use are to be interpreted. There are no other comments made which could remotely be construed as offensive on religious grounds.

4.23 The complaints made are genuine complaints in response to objectionable behaviour. Councillor Bailey suggested the complaint was politically motivated by the Labour Party and Councillor Rush in particular against the BNP minority group. It is true that all the complainants are members of the Labour Party. However, the complaints did not convey any impression of being part of some co ordinated campaign against Councillor Bailey or the BNP. The accounts of what was said differed among he complainants. Had there been a co coordinated conspiracy as suggested I would have expected very similar or near identical accounts of what was said. Councillor Bailey felt that Masuma Ahmed had the best recollection of events yet even she could see why some would have found Councillor Bailey's comments as offensive although she did not herself make that allegation. The Comparative Analysis of Alleged Comments in the bundle of evidence shows that various of the comments and their perception as racially offensive were confirmed by persons other than the Labour members namely Dave Mansfield (officer), Masuma Ahmed (officer), Paul Field (officer) and Pastor Aderounmu (applicant). In fact Pastor Aderounmu was not put forward by the complainants as a witness. I as investigating officer chose to call him in for interview to get his perspective. The Pastor has confirmed as said that racially offensive comments were made by Councillor Bailey. The evidence is therefore overwhelming that racially offensive comments were made by Councillor Bailey. Councillor Rush and Councillor Denyer acknowledged that they were aware of what they saw as the usual nature of Councillor Bailey's political views but felt on this

occasion he had crossed the line. Further, even if Labour members derive some political advantage from the making of this complaint (which I do not find) it does not alter the fact that offensive and inappropriate comments were made. In my assessment the complainants are raising genuinely felt concerns and are not motivated by political opportunism.

4.24 In support of my findings in this section I also refer to an email which was forwarded by Councillor Valerie Rush to the Monitoring Officer Nina Clark on 5th August 2009 at 11.54 am. In her email she states 'I believe you need to see this in conjunction with the complaint-Cllr V Rush' and the email includes a copy of an article posted onto the website of 'London Patriot' by Councillor Bailey. The article is entitled 'African for Essex Pogrom: Barking and Dagenham Residents Suffer' and 'Posted on August 4th, 2009 by Bob Bailey'. The email and article appears in the bundle of evidence. In it Councillor Bailey attacks a stated preferential treatment of migrants to Barking and Dagenham over local (white) residents in housing allocations. He goes on in the article to make specific reference to a decision of the Development Control Board to grant a licence to a Nigerian church. I infer this to be the meeting of 27th July 2009 forming the subject of this complaint. He continues:

There are now over 20 large Nigerian Churches in Barking and Dagenham, and another one was granted a licence to operate by the Labour dominated Development Control Board just last week. The BNP made loud representations against it and walked out. Some Labour Councillors voted against it but Labour had turned out the numbers to force it through. The problem is just not the churches which create a lot of noise and traffic it is the fact that these recently arrived Nigerians will now want to live in the borough to be near their place of worship. In Barking and Dagenham there are now more active Nigerian Churches than any other places of worship. There is more than in any other London borough. But you will not read about this in

the local papers the Barking and Dagenham Post and Recorder. These papers are in on the scheme to make British people feel like foreigners in their own borough. Nigerian Churches do not cater for local born residents and most would feel unwelcome at one of their churches. The fact that the local Council, under Rob Whiteman, now seeks to employ people from a Black Minority Ethnic background before local born people is also causing a lot of unrest and angst among the WWC of Barking and Dagenham. It would seem that the Labour Party wants to reduce the number of whites in the borough to the level where they are a minority like in Tower Hamlets and Newham. Some believe this could happen very quickly if the BNP does not take control of the Council in 2010.

The BNP is campaigning against the 'Africans for Essex pogrom' and 'anti white and anti British discrimination' and it will be a central tenet of the next local council election campaign in 2010. Now is the time to make a stand against the fascist Labour Party.

- 4.25** Councillor Bailey explicitly declares himself (and the British National Party) opposed to Nigerian churches being granted a 'licence' to operate in the Borough. The rationale appears to be nothing but dislike for a Nigerian presence: "*The problem is just not the churches which create a lot of noise and traffic it is the fact that these recently arrived Nigerians will now want to live in the borough to be near their place of worship*". Councillor Bailey has sought to justify his opposition to Nigerian churches on economic grounds namely leading to a loss of revenue to the local and national economy. Such arguments do not appear in the article. Councillor Bailey also displays racial stereotyping of Nigerian churches: "*Nigerian Churches do not cater for local born residents and most would feel unwelcome at one of their churches*". Most tellingly is his statement that "*The BNP is campaigning against the 'Africans for Essex pogrom' and 'anti white and anti British discrimination' and it will be a central tenet of the next local council election campaign in 2010*". The policy of the British National Party is not the subject of this investigation. However, the stated campaign against 'Africans' is

explicitly discriminatory against Nigerian churches and is evidence of Councillor Bailey's attitude towards Nigerians and Nigerians seeking to acquire church premises in the Borough. It also corroborates my finding that Councillor Bailey as a participant or leader of such a campaign was biased against the applicants at the 27th July 2009 meeting on the sole ground of the applicants being Nigerian and the related stereotypes held by Councillor Bailey. The stereotyping displayed in the article is also consistent with the finding that the negative comments about Nigerians/the applicants attributed to Councillor Bailey were indeed made by him.

4.26 I sent a copy of the article posted on the London Patriot website to Councillor Bailey with an indication that I would call him on 20th November 2009 to discuss it as part of the investigation. I held a brief telephone conference with Councillor Bailey on 20th November 2009. Councillor Bailey acknowledged receipt of the article but refused to discuss the article on the ground that the article was something done by him in his private life. He maintained councillors are not answerable for actions in their private lives. He further objected on the basis that as far as he is concerned the complaint is a 'witch hunt' by Councillor Valerie Rush. In the circumstances I am unable therefore to get Councillor Bailey's detailed response to the article. In response to his assertion that the article is a private matter the following should be noted: the 2007 Code of Conduct certainly applies to members acting in their official capacity and only applies to their private lives if conduct resulting in a criminal conviction occurs⁵. However, the

⁵ Paragraph 2, Schedule 1 to Local Authorities (Model Code of Conduct) Order 2007

article is not in this investigation being cited as a ground for a complaint under the Code but as evidence as to Councillor Bailey's state of mind when he had previously been acting as a Councillor in the Development Control Board meeting. It thus becomes a subject of legitimate inquiry in assessing this complaint. The article is of direct relevance to this complaint since in the article Councillor Bailey makes specific reference to the meeting (of 27th July) which is the subject of this complaint. It is also noteworthy that while Councillor Bailey asserts the article was done in his private life he published it in the public arena (on the World Wide Web site of London Patriot). Councillor Bailey had a further opportunity to record any comments he has on the article upon receipt of the draft report. In his interview of 30th November 2009 Councillor Bailey denied that he or the BNP were or would be campaigning against Nigerians coming into the Borough at the next election. On the basis that he authored the article referred to that is plainly untrue. In fact the article itself is a form of campaign literature. Councillor Bailey responded to the use of the article along the lines that anyone could dig up various comments he had made and misconstrue them. That is always a risk with published comments. The article however is directly relevant to this complaint because in it specific reference is made to the meeting at the centre of this complaint and Councillor Bailey discloses his attitude in the article towards Nigerian churches which he held at the time of the meeting.

4.27 Councillor Bailey shed further light upon his view point which in turn informed his conduct at the meeting of 27th July in my interview with him on 30th November 2009. In our meeting Councillor Bailey said people had a concern when certain churches come into an area. In such instances the demography and cultural make up changes. He felt that the Labour Government was forcing through a strategy of 'ethnic cleansing' of white British people. He further said that white Britons feel threatened and intimidated and feel their future is uncertain. Councillor Bailey also said that there was a feeling that anyone dissenting was beaten on the head with a stick and called 'racist' and that people were fed up generally. This statement captures Councillor Bailey's perspective towards non white persons coming into the Borough. Due to the stated feelings of insecurity felt by white Britons Councillor Bailey is expressly opposed to there being more Nigerian (or other immigrant) presence in the Borough. This lends more weight to my overall findings that racially motivated comments were made. The purported justification as it being an articulation of a perceived insecurity by certain (white) persons does not make them less inappropriate.

Comments on the draft report

4.28 Councillor Bailey initially responded in an email of 1st December 2009 in which he stated that he felt I had ignored what he had said during our last meeting. He also said that he looked forward to making his representations at the hearing where he hoped to interrogate witnesses and complainants and review the evidence against him. I was concerned if Councillor Bailey

felt that the evidence had not been properly considered. I thus took the further step of sharing the document entitled 'Comparative Analysis of Alleged Comments' and to further test the inferences drawn. Upon receipt of comments the final report's fundamental conclusions as to breach of the Code remain. Councillor Bailey also said he was minded to complain about the 'biased and inaccurate and one sided investigation' in an email to me dated 5th December 2009. He also said in that email 'do not assume that I agree with anything you have submitted so far'. I responded to Councillor Bailey's email on 11th December 2009 inviting him to use the council complaints procedures or to make written representations on the draft report as appropriate.

4.29 Councillor Bailey provided a more detailed response to the draft report in an email to me dated 14th December 2009. Councillor Bailey asserts the allegations to be based on 'lies and a fabrication'. He points out that Councillor McKenzie had not seen the group complaint document when shown to him which was supposedly made in his name. On this point I showed Councillor McKenzie the group complaint and he confirmed it as accurate. It is true that he appeared not to have seen the group complaint document previously. That does not itself indicate the group complaint was baseless since Councillor McKenzie subsequently ratified it as accurate. Councillor Bailey also argues that the complaint is made by 4 councillors who are a very close Labour faction and who regularly sit together on the Development Control Board. He points out that no members from the 'other side' of the chamber made complaint nor did the Conservative or BNP

councillor. I have carefully considered and weighed the accounts of all witnesses as individuals. I have not seen evidence of political bias. The further weakness in this line of attack is the extensive corroboration from Pastor Aderounmu and partial corroboration from the officers. Councillor Bailey challenges the reliability of the case against him owing to differing accounts and lack of corroboration. I have had careful regard to and addressed the issue of corroboration in this report. Councillor Bailey also suggests that the Labour members are biased towards Nigerians in the aim of securing their vote. I have seen no evidence of such bias. Once again, the thrust of this investigation has been to assess what was said, the meaning to be placed on the words used and the application of the Member Code of Conduct in this regard.

4.30 Councillor Rush acknowledged the draft report in an email to me of 30 November 2009 and said that she felt no corrections were needed. In relation to the 'Comparative Analysis of Alleged Comments' schedule she had carefully gone through the comments concerned. She said 'I firmly believe that on the whole they capture what did happen on that evening. It is fair to say that as witnesses we would to a small extent perhaps put a different word in there and then but my memory confirms that the statements made were accurate'.

4.31 Councillor Denyer did not provide comments on the draft report but following receipt of the 'Comparative Analysis of Alleged Comments' document responded by email of 6th December 2009 stating 'I have looked

at the comments made by other witnesses and I concur with them. I could not and will not say comments alleged to have been made by them are incorrect but, in all fairness, I could not confirm they were said verbatim. Having made the point in general I agree with the comments made’.

4.32 Councillor Barns did not provide comments on the draft report but responded on receipt of the ‘Comparative Analysis of Alleged Comments’ document by email to me of 3rd December 2009 stating ‘Although I cannot recall the precise words used I can confirm that all the statements made, or words to same effect were stated at the Development Control Board’.

4.33 Councillor McKenzie came in to make his comments in a meeting with me on 7th December 2009. Councillor McKenzie endorsed the draft report as accurate and underlined particular sections in the draft report. A note of his comments appears in the bundle of evidence. In the same meeting I also made a note of what Councillor McKenzie did or did not recall being said by other witnesses in the ‘Comparative Analysis of Alleged Comments’ document which also appears in the bundle of evidence⁶.

⁶ Councillor McKenzie left the country shortly following our meeting and has not been able to confirm the notes. He has been invited to do so upon return from abroad.

5. Summary and conclusion on the material facts

5.1 In summary therefore I find that at the Development Control Board meeting on 27th July 2009 Councillor Bailey made a series of racially offensive comments in relation to the applicants.

5.2 In particular Councillor Bailey made a series of comments which were expressed in a derogatory tone. The comments were intended to cause and did in fact cause offence on racial grounds. The comments were as follows:

- 'There are too many Nigerian churches in the Borough'
- 'We do not want any more Nigerian churches in the Borough'. That this was said is undisputed. I find it was made in an offensive tone.
- These people eat off the ground. I am sure there must be some hygiene regulations which would prevent this'
- The church had no right to be in the Borough and it was time to call a halt to churches of other nationalities coming into the Borough
- He (Councillor Bailey) had visited the applicants' church and had seen them eating on the floor
- They (the applicant church/Nigerian churches generally) did not want to integrate into society
- 'We don't want the amount of black children'
- 'We don't want black churches here'
- 'There are too many black churches here'

- 'There are too many Nigerian churches in this place-you wait and see. Wait until next year's election. You wait and see'
- Why was the council 'giving way' to these people? (the applicants).

5.3 Councillor Bailey's tone was antagonistic and offensive towards the applicants. That offence was racially motivated. He was biased against their application and had predetermined their application. This was part of an ongoing campaign against more Nigerian churches being established in Barking and Dagenham.

5.4 I do not find that he made any comments which were offensive on religious grounds.

6. Reasoning as to whether there has been a failure to comply with the Code of Conduct

Scope

6.1 The Members Code of Conduct ('the Code') applies to the conduct of a member when among other things he/she is conducting the business of their authority which includes the business of the office the member was elected or appointed to. Councillor Bailey was conducting the business of the council when he sat as a member of the Development Control Board on 27th July 2009. As such the Code of Conduct clearly applies to the matters which form the subject of this complaint.

Failure to treat others with respect

6.2 Paragraph 3 (1) of the Members' Code of Conduct ('the Code') provides in relation to members that 'you must treat others with respect'. The Guidance issued by Standards for England⁷ distinguishes between criticism of ideas and opinion as being part of democratic debate which would not itself amount to bullying or failing to treat someone with respect from instances where individuals are subject to unreasonable or excessive personal attack.

⁷ The Code of Conduct: Guide for members May 2007, www.standardsforengland.gov.uk

6.3 The findings of this investigation in the light of the overwhelming witness evidence indicates that Councillor Bailey's comments were along the lines of a personal attack on the applicants as a 'Nigerian' church and of Nigerians or Nigerian churches more generally. Both councillor and officer witnesses could not discern any coherent and developed challenges from Councillor Bailey on planning grounds. Further, the comments made by Councillor Bailey were not an engagement of planning policy ideas but in the nature of comments which were personally disparaging.

6.4 I also consider that a failure to properly engage with and consider the applicants' application for planning permission by Councillor Bailey who instead made a number of offensive comments was a failure to treat the applicants with respect. The applicants were entitled to have their application considered fairly on the merits in the light of relevant planning considerations only. Councillor Bailey in my finding did not engage in relevant planning considerations but was opposed to the application on the sole ground that the applicants were Nigerian and the associated stereotypes he holds about Nigerian churches. This was disrespectful to the applicants who were not accorded the courtesy of a fair and balanced consideration of the actual merits of their planning application by Councillor Bailey in his quasi judicial role as a member of the Development Control Board. I also consider that the persistent interruptions by Councillor Bailey to pursue a line of attack which had been ruled out as improper by the chair (Councillor McKenzie) was a failure to treat the chair and the applicants with respect. He had a line of attack which he was minded to pursue

irrespective of its inappropriateness and the offence being caused. The 2007 Case Review⁸ issued by the then Standards Board for England cites as an example of disrespect a case where a member persistently refused to accept the chair's rulings at a meeting, refused to be quiet when asked and at two meetings of the council was asked to leave by the police. While Councillor Bailey's conduct was not as extreme as the case cited his behaviour clearly fell foul of the disrespect provisions.

6.5 It is also clear that Councillor Bailey had 'predetermined' the application from the church. 'Predetermination' occurs where a councillor is closed to the merits of any arguments relating to a particular issue and makes a decision without taking opposing views into account. Such a councillor has in effect made up his mind before hearing the matter and irrespective of any opposing arguments. In this respect the councillor would be held to be 'biased'. Bias occurs where the fair minded and reasonable observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased (*Porter v Magill* (2002) 2 AC 357). 'Predisposition' is where a councillor holds a view in favour of an issue but they have an open mind to the merits of the argument before they make a final decision at the relevant council meeting⁹. Predisposition is lawful. Predetermination is unlawful and decisions tainted by such bias may be struck down in a court of law as unlawful. Councillor Bailey's emphatic

⁸ Case Review 2007, page 24, Standards for England www.standardsforengland.gov.uk

⁹ Standards for England Occasional Paper "Predisposition, Predetermination or Bias, and the Code" and advice note from Phillip Sales QC to then Standards Board for England on Predisposition and Predetermination in relation to Part III Local Government Act 2000 and Local Authorities (Model Code of Conduct) (England) Order 2001 and the (then) draft Local Authorities (Model Code of Conduct) (England) Order 2007

statements that ‘there are too many Nigerian churches in the Borough’, ‘we don’t want any more Nigerian churches in the Borough’, ‘we don’t want any more black churches’ and such comments disclose a mind set against the applicants’ planning application from the outset. Councillor Bailey affirmed this stance in interview maintaining that Nigerian churches are in reality businesses and he was scathing as to the genuine nature of their application to use Rima House for religious purposes. Councillor Bailey was never going to decide in favour of their application. His mind was closed. The article posted on the London Patriot website discussed above is further evidence of a predetermined mindset. As such the applicants were not accorded the respect of fair consideration of their application by Councillor Bailey. The predetermination also constitutes in my finding a failure to treat the applicants with respect.

Compliance with equality laws

6.6 The Code provides at paragraph 3 (2) (a) that:

‘(2) You must not-

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006)

6.7 This provision in the Member Code of Conduct implies:

- action by an individual member might cause the authority as a whole to be in breach of the equality enactments

- the paragraph in the Code is breached if it is found that the member's conduct 'may' cause the authority to breach any of the equality enactments. Proof of actual breach is not required
- a careful consideration of the relevant equality enactment(s) in any given case is necessary to determine if the member's actions might theoretically trigger breach on the part of the authority as a whole

6.8 The Standards for England Guidance rightly notes that the provisions of the equality enactments are complex. I have therefore set out my reasoning on the equality enactment provisions in some detail by reference to the following questions:

- Which equality enactments provision(s) are of relevance to this complaint?
- What conduct by any person/body would constitute a breach of the relevant equality enactment(s)?
- When could the conduct of an individual member fix the authority as a whole with liability?
- Reasoning in the light of the above whether Councillor Bailey has done anything which may cause the council to breach the relevant equality enactment(s)

Which equality enactments provisions are of relevance to this complaint?

6.9 Section 33 (1) Equality Act 2006 lists the following as the 'equality enactments':

- (a) the Equal Pay Act 1970 (c. 41),

- (b) the Sex Discrimination Act 1975,
- (c) the Race Relations Act 1976,
- (d) the Disability Discrimination Act 1995,
- (e) Part 2 of this Act,
- (f) regulations under Part 3 of this Act,
- (g) the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661),
- (h) the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660)
- (i) the Employment Equality (Age) Regulations 2006.

6.10 It will be observed that section 33 (1) (e) incorporates provisions under Part 2 of the Equality Act 2006 as part of the 'equality enactments'. Part 2 prohibits discrimination on the ground of religion and belief. Section 44 of the Act makes clear that in this context 'religion' means any religion and 'belief' means any religious or philosophical belief. It further provides that lack of religion or belief is covered in the definition. The Act thus extends protection from discrimination on the ground of any religion or religious or philosophical belief or on the ground that someone is not of a particular religion or does not hold a particular religious or philosophical belief.

6.11 It is also observed that section 33 (1) (f) includes as equality enactments regulations made under Part 3 of the Act. Part 3 deals with sexual orientation discrimination and is not relevant to this complaint.

6.12 For completeness section 33 (2) of the Equality Act 2006 separately refers to the 'equality and human rights enactment' which is provided to mean the equality enactments and the [Human Rights Act 1998 \(c. 42\)](#). The Member Code at paragraph 3 (2) (a) refers only to the 'equality enactments' so on the face of it the Human Rights Act 1998 is not to be regarded as part of the 'equality enactments'.

6.13 I have found as a fact that offensive comments were made on the basis of the applicants' race. Therefore *the Race Relations Act 1976 is the equality enactment relevant to this complaint*. The effect of paragraph 3 (2) (a) of the Code of Conduct is that Councillor Bailey will be in breach of the Code if anything he did may cause the council to be in breach of the Race Relations Act 1976. (Since I do not find any conduct was offensive on religious grounds the provisions dealing with religious discrimination are not relevant to this complaint and form no part of my reasoning).

What conduct by any person/body would constitute a breach of the relevant equality enactment(s)?

6.14 The relevant enactment as said is Race Relations Act 1976. In order to assess whether particular conduct could amount to infringement of the Race Relations Act 1976 regard must be had to the ways in which discrimination is defined and prohibited under the 1976 Act. In this regard the Race Relations Act 1976 firstly defines discrimination with which the Act is concerned. It then in subsequent parts makes it unlawful to discriminate

as so *defined* in specific contexts and makes provision for the enforcement of its provisions. The prohibited contexts cover a host of areas including employment, education facilities and (of relevance to this complaint) planning. I now consider (a) when discrimination occurs under Race Relations Act 1976 and (b) how unlawful discrimination may occur in the context of a planning committee decision making process

6.15 Under Race Relations Act 1976 a person is said to discriminate in any of the following ways:

(a) **Direct discrimination.** This occurs where a person treats another less favourably than he treats or would treat another on the ground of race.

Section 1 (1) (a) of the Act provides:

(1) A person discriminates against another in any circumstances relevant for the purposes of any provision of this Act if—

(a) on racial grounds he treats that other less favourably than he treats or would treat other persons;

(b) **indirect** in which respect there are two stand alone definitions in section 1 (1) (b) of the Act:

he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but—

(i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and

(ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and

(iii) which is to the detriment of that other because he cannot comply with it.

OR

A person also discriminates against another if, in any circumstances relevant for the purposes of any provision referred to in subsection (1B), he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but—

(a) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons,

(b) which puts [or would put]² that other at that disadvantage, and

(c) which he cannot show to be a proportionate means of achieving a legitimate aim.

© **Victimisation** (s. 2 Race Relations Act 1976). This occurs where a person is treated less favourably because of having taken a 'protected act' such as complaining about discrimination. Victimisation is clearly not relevant to this complaint and I do not therefore set out the provisions in detail.

(d) **Harassment** (section 3 A Race Relations Act 1976). This entails engaging in unwanted conduct on the grounds of race which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment for the victim. Section 3 A is set out below:

3 A (1) A person subjects another to harassment in any circumstances relevant for the purposes of any provision referred to in [section 1\(1B\)](#) where, on grounds of race or ethnic or national origins, he engages in unwanted conduct which has the purpose or effect of–

(a) violating that other person's dignity, or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

(2) Conduct shall be regarded as having the effect specified in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect.

6.16 It should be noted that 'race' and 'racial group' includes the victim's colour, race, nationality or ethnic or national origins (section 3 Race Relations Act 1976). In this complaint any discrimination on the basis that the applicants were of Nigerian origin would clearly be covered by the Act.

6.17 In addition, section 71 Race Relations Act 1976 places a positive duty on any body and specified bodies in carrying out their functions *to have due regard to the need* (a) to eliminate unlawful racial discrimination; and (b) to promote equality of opportunity and good relations between persons of different racial groups. This duty was added by section 2 (1) Race Relations (Amendment) Act 2000. The section is only breached if the relevant body fails to 'have due regard' to the duty stated.

Decisions of local planning authorities

6.18 Once ‘discrimination’ is shown one then turns to see whether it has occurred in a context prohibited under Race Relations Act 1976. This case concerns decisions in a planning context. Under section 19 A Race Relations Act 1976 it is unlawful for a local planning authority to discriminate (as defined above) on racial grounds when discharging its functions under planning legislation. Section 19 A is reproduced below:

(1) It is unlawful for a planning authority to discriminate against a person in carrying out their planning functions.

(2) In this section “planning authority” means—

(a) in England and Wales, a county, [county borough,]² district or London borough council, [the Broads Authority]³ , [a National Park authority or]⁴ a joint planning board [...]⁵ and

(b) in Scotland, a planning authority or regional planning authority,

and includes an urban development corporation and a body having functions (whether as an enterprise zone authority or a body invited to prepare a scheme) under Schedule 32 to the Local Government, Planning and Land Act 1980.

(3) In this section “planning functions” means—

(a) in England and Wales, functions under [the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990] and such other functions as may be prescribed, and

(b) in Scotland, functions under [the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas)

(Scotland) Act 1997 and the Planning (Hazardous Substances) (Scotland) Act 1997]⁷ or Part IX of the Local Government (Scotland) Act 1973, and such other functions as may be prescribed,

and includes, in relation to an urban development corporation, planning functions under Part XVI of the Local Government, Planning and Land Act 1980 and, in relation to an enterprise zone authority or body invited to prepare an enterprise zone scheme, functions under Part XVIII of that Act.

6.19 Section 19A makes it unlawful for a ‘planning authority’ to discriminate which for the purposes of this matter includes the Development Control Board which discharges some of the council’s planning functions. Unlawful discrimination would occur if the Development Control Board exercised its functions such as voting on a planning application in a discriminatory manner.

When could the conduct of an individual member fix the authority as a whole with liability?

6.20 It is an essential component of paragraph 3 (2) (a) of the Code that the member will only be in breach if as a matter of law his/her conduct is such that it ‘may’ cause the authority to be in breach of an equality enactment. The concept is known at common law as ‘vicarious liability’ and where vicarious liability exists a second person or body can be held liable for the actions of the actual perpetrator. The Standards for England Guidance states that “*Under equality laws, your authority may be liable for*

any discriminatory acts which you commit¹⁰ (my emphasis). The Guidance rightly directs attention to the equality enactments themselves to assess whether in any particular instance the actions of an individual member could fix the authority as a whole with liability. Without that essential element there can be no breach of paragraph 3 (2) (a) of the Member Code of Conduct. I now consider the potential 'vicarious liability' of an individual member in relation to 'discrimination' and the broad section 71 duty to have regard to the need to eliminate race discrimination and promote good relations between different racial groups.

6.21 Case law supports the view that a council can be vicariously liable for the actions of a councillor. In *Moore v Bude-Stratton Town Council* (2001) ICR 271 the Employment Appeal Tribunal held that a council was vicariously liable for abusive comments made by a councillor towards an employee who claimed constructive dismissal. That was an employment context. It is inferable that a council can also be liable for discriminatory acts of a councillor towards members of the public. Paragraph 3 (2) (a) of the Code of Conduct 2007 assumes councillor vicarious liability to be possible and the case cited supports a concept of vicarious liability of a council for the actions of councillors. On balance therefore I conclude that it is the intention of Parliament that individual acts of discrimination (direct/indirect/victimisation/harassment) by a member could fix the member's authority with liability. Paragraph 3 (2) (a) of the Code of Conduct is meaningless otherwise.

¹⁰ The Code of Conduct May 2007: Guide for Members, Standards for England, page 9

6.22 With the positive duty to eliminate discrimination and promote good relations under section 71 it is clear that the statutory duty is vested in the council as a body. On a plain reading of section 71 and assuming vicarious liability to apply, the individual member would only be liable under Race Relations Act 1976 once it is established that the council as a whole failed to discharge the duty to 'have regard' and he/she was part of the cause. Discriminatory action by a sole member would not breach the section 71 duty if in the end the council fulfilled its duty.

Reasoning In the light of the above whether Councillor Bailey has done anything which may cause the council to breach the relevant equality enactment(s)

6.23 Taking each form of potential discrimination in turn I find as follows in relation to Councillor Bailey's conduct under the Race Relations Act 1976:

- (i) Direct discrimination – Councillor Bailey voted against the application for planning permission by the Redeemed Christian Church of God. It is clear that this was because it was a Nigerian church and that Councillor Bailey has stereotypical assumptions about such churches and applications made by them. His vote was clearly an act of less favourable treatment (a no vote) on the ground of the applicant's race. His statement during and as he left the chamber that 'there are too many Nigerian churches in the Borough' was an emphatic declaration

of how he had discharged his responsibilities as a member of the Development Control Board at the meeting. The article posted on the London Patriot website confirms that he was and remains opposed to such applications on the sole ground of the applicants being Nigerian and the associated stereotypes he holds about them. Councillor Bailey suggested in interview that if there had been too many churches of any particular background he would have made the same comment. I do not accept that his approach to the application was other than discriminatory on racial grounds. Even if he would have made similar comments in relation to any church of a particular background it remains the law that to treat someone less favourably on the ground of their race is unlawful. It may be objected that the applicants suffered no detriment since the majority of councillors in fact voted in favour and planning permission was granted. There is however no requirement under the direct discrimination provisions for the victim to have suffered any detriment or disadvantage as a result of the discriminatory actions. That is contrasted with the indirect discrimination provisions set out above which respectively require the victim to have suffered a 'detriment' or be put at a 'disadvantage'. No such requirement appears for direct discrimination. In any event, I also consider that the making of racially disparaging comments in relation to the applicants and Nigerians/Nigerian churches more generally may also constitute direct race discrimination. Case law in relation to the employment field established that racially derogatory comments could constitute 'direct' discrimination and without the need

for consideration of how a comparator was or would be treated¹¹. (That case also confirmed a detriment must be shown to found unlawful discrimination in the employment context. No such requirement appears in the planning context). While there is little case law on the point in a planning context I consider that the courts would take the same approach in interpreting direct discrimination in this context also.

- (ii) Indirect discrimination – there is no basis for a finding that Councillor Bailey’s conduct could amount to indirect discrimination. This was not a case where a requirement or condition or a provision, criteria or practice was applied arbitrarily by him which happened to disadvantage the applicants as members of a particular racial group. The conduct and associated racial comments were direct. The conduct thus better fits the direct discrimination analysis in paragraph 6.14 (i) above.
- (iii) Victimisation – there was no ‘protected act’ done by the applicant or anyone else in response to which they were subjected to discrimination. As such this ground of discrimination is not relevant to this complaint.
- (iv) Harassment- on the face of it Councillor Bailey’s comments quite apparently fall within the harassment provisions of section 3 A Race

¹¹ *Thomas v Robinson* (2003) IRLR 7, EAT

Relations Act 1976. It is clear that the comments he made about the applicants and Nigerian churches/Nigerians generally were offensive, hostile, degrading, humiliating and offensive. They were offensive to the complainants according to their interview evidence and to Pastor Aderounmu who felt quite put out from what he had heard. Officers interviewed did not go as far as to say the comments were racially offensive but they could see that others would take offence. However, *it appears that the harassment provisions do not apply to actions of a local planning authority in a planning context.* In particular, section 3 A (the harassment provision) opens with the words 'a person subjects another to harassment in any circumstances relevant for the purposes of any provision referred to in [section 1\(1B\)](#)'. One then turn to see the provisions listed in section 1 (1B) to which 'harassment' applies:

- (a) [Part II](#);
- (b) [sections 17 to 18D](#);
- (c) [section 19B](#), so far as relating to—
 - (i) any form of social security;
 - (ii) health care;
 - (iii) any other form of social protection; and
 - (iv) any form of social advantage;which does not fall within section 20;
- (d) [sections 20 to 24](#);
- (e) [sections 26A and 26B](#);
- (f) [sections 76](#) and [76ZA](#); and

(g) [Part IV](#), in its application to the provisions referred to in paragraphs (a) to (f).

Discrimination by planning authorities is covered by section 19A of the 1976 Act, Part III. Section 19 A does not appear in the list of provisions to which harassment under section 3 A applies although other Part III provisions are covered. This is a surprising and perhaps concerning omission in the 1976 Act but the result in legal terms is that 'harassment' on racial grounds by local authority planning authorities is not expressly prohibited under the Act. One would instead need to place reliance on other forms of discrimination such as direct discrimination which does apply. I have concluded that Councillor Bailey's conduct may constitute direct discrimination.

- (v) Positive duty - whilst performing the functions of a member on the Development Control Board the council was subject to the statutory duty in section 71 Race Relations Act 1976 to 'have due regard' to the need to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between people of different racial groups. Although Councillor Bailey acted in a discriminatory manner the council as a whole did not act in a discriminatory manner. Regard was had to the need to eliminate discrimination and promote good relations. If anything Councillor Bailey's interventions brought the issue into sharp relief and ensured discriminatory issues were properly addressed. I do not regard the discriminatory remarks by Councillor Bailey sufficient to place another body (the council) in

breach of its overarching duty nor such that it could be said that it 'may' have caused the council to breach the equality enactment of Race Relations Act 1976. As such I do not find that Councillor Bailey did anything which 'may' have caused the council to be in breach of section 71 RRA 1976.

6.24 Accepting that discrimination occurred one then turns to see whether such apparent discrimination occurred in a context deemed unlawful under Race Relations Act 1976. Section 19A makes discrimination in a planning context unlawful as discussed. The Development Control Board itself may in theory have followed the course of action enjoined by Councillor Bailey and voted against the application. The outcome of the vote was not a foregone conclusion and had planning permission been refused the overall decision would have been tainted with discrimination. In this sense he did something which 'may' have caused the Development Control Board which is part of the local planning authority to breach the Race Relations Act 1976 in contravention of paragraph 3 (3) (a) of the Member Code of Conduct. (It should also be noted for completion that section 31 Race Relations Act 1976 makes it unlawful for a person to induce or attempt to induce a person to do any act which contravenes Part III of the Act. Under the Interpretation Act 1978 a 'person' includes a body of persons, corporate or unincorporated. In seeking to get the Board to act in a discriminatory way Councillor Bailey may himself be liable although our concern is with the liability of the local planning authority).

6.25 The use of the word 'may' in paragraph 3 (2) (a) indicates that it is not necessary for it to be proven that the subject member actually did cause the council to breach any of the equality enactments. That could only be established by a court of law following a claim from an aggrieved person. The Code requires the investigator of a complaint and in turn the Standards Committee to make an assessment and an express finding whether the complained of conduct could have caused the council to breach any of the equality enactments.

6.26 The Case Review 2007¹² cites as an example a case which went before the Adjudication Panel for England in which a member attended an equalities training course and was disrespectful to the trainer. The Case Review continues that the tribunal viewed with concern the fact that, rather than acknowledging his initial inappropriate behaviour at the training session, the member chose to repeat it in interviews to the local newspaper and radio station and then to compound it by making a statement to a meeting of the council using offensive terms and language. It is noteworthy and of concern that in his interview Councillor Bailey was in no way apologetic for any offence he may have caused to the applicants from the church or other members on the Development Control Board. In fact he was quite dogmatic in his views concerning Nigerian churches.

6.27 Councillor Bailey himself has the right to 'freedom of expression' under article 10 European Convention on Human Rights (ECHR) which is

¹² Case Review 2007, page 28. www.standardsforengland.gov.uk

one of the fundamental freedoms in the ECHR which was incorporated into English law by the Human Rights Act 1998 (HRA). Under HRA Councillor Bailey enjoys a free standing right to the Convention freedoms in relation to actions by a public authority and domestic courts are required to interpret UK legislation as far as possible to give effect to Convention rights. Article 10 provides:

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by a public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema.*

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for the maintaining of the authority and impartiality of the judiciary.*

6.28 The article 10 right to freedom of expression is a qualified right. Individuals cannot say anything they wish with impunity but can be subject

to relevant rules 'as are prescribed by law' and 'are necessary in a democratic society'. The Race Relations Act 1976 and Race Relations (Amendment) Act 2000 prescribe the limits of acceptable and unacceptable conduct in relation to race matters and the matters complained of in this matter. Actions found to be in potential or actual breach of those pieces of legislation would not therefore constitute an infringement of Councillor Bailey's article 10 right to freedom of expression. Further, the Case Review 2008¹³ issued by Standards for England (which updates the 2007 Case Review) cites case APE 0378 which was an appeal before the Adjudication Panel for England. The tribunal considered whether racist comments can have a political dimension and examined whether they could be afforded the protection of freedom of expression under Article 10. In that case a councillor had said in relation to planning enforcement that "those wishing to buck the system were usually of ethnic origin". The Tribunal considered the High Court case of *Sanders v Kingston* [2005] EWHC 1145 (Admin) on the degree of protection a councillor is entitled to when considering that councillor's right to freedom of expression. The tribunal acknowledged that freedom of expression is of fundamental importance for the maintenance of a democratic society. However, the tribunal considered that it must be considered whether the words used were a political expression or 'no more than expressions of personal anger and abuse'. Only the former attracts the higher level of protection under article 10. The finding of this investigation is that Councillor Bailey's comments were of the nature of personal anger and abuse and not political expressions within the ambit of the article 10

¹³ The Case Review: 2008 Digest, page 5, www.standardsforengland.gov.uk

freedom of expression right and so are not deserving of the higher level of protection referred to.

6.29 Similarly, in his interview of 30th November 2009 Councillor Bailey asserted that a Councillor is elected to voice the views of his constituents. I accept that to be so. The law however lays down what is acceptable to say in a given context. It is for the Councillor to act and make comments responsibly within the law even if persons he may be representing may not act with such restraint.

6.30 It must finally be considered under the discrimination heading whether the issue of the applicant's ethnic origin or background was of any possible relevance to the local planning authority's determination of the church's planning application. Section 70 (1) of the Town and Country Planning Act 1990 provides that where an application is made to a local planning authority for planning permission they may grant permission, either conditionally or subject to such conditions as they think fit or they may refuse planning permission. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 provides that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. Decisions of the courts have developed what 'material considerations' are relevant to planning determinations. It was held in *Stringer v Minister of Housing and Local Government* (1970) 1 WLR 1281 that any consideration which relates

to the use and development of land is capable of being a planning consideration. Development plans consist of a series of policies dealing with various aspects of development in the local authority's area such as transport or employment. Planning determinations are to be made in the light of those policies and any material considerations. In this matter the presenting officer set out the various policies of relevance to the application. The policies are listed at paragraph 4.7 of this report. It was noted as a consideration in the officer report that Planning Advice 4 indicates that persons of Black African heritage are more likely to belong to a faith. However, none of the policies referred to either require, permit or encourage a proposed development to be refused on the basis that the applicants are of a particular ethnic origin or background. Similarly, there is no case law to the effect that ethnic origins could ever be a material consideration in refusing planning permission. Councillor Bailey himself received training to sit on the Development Control Board which made it clear that only relevant planning considerations should be borne in mind in making decision. As such I do not find it was either lawful or legitimate in planning terms for Councillor Bailey to have based his consideration or vote on the application on the applicant's ethnicity or racial background.

Disrepute

6.31 Paragraph 5 of the Code of Conduct for Members provides that 'You must not bring your office or authority into disrepute while acting in your official capacity, or at any time through criminal activity that leads to a

criminal conviction'. The Guidance¹⁴ does not go into great detail on the subject of disrepute but notes that a member's actions and behaviour are subject to a greater scrutiny than that of ordinary members of the public and the member should be aware that their public and private actions might have an adverse impact on their office or authority. The 2007 Case Review¹⁵ published by the then Standards Board for England provides that a case tribunal or standards committee will need to be persuaded that the misconduct is sufficient to damage the reputation of the member's office or authority, as opposed to only damaging the reputation of the individual concerned. 'Disrepute' is defined in the 2007 Case Review as conduct which could reasonably be regarded as either (a) reducing the public's confidence in that member being able to fulfil their role; or (b) adversely affecting the reputation of members generally, in being able to fulfil their role. Conduct by a member which could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties will bring the authority into disrepute. The Case Review notes that an officer carrying out an investigation about someone allegedly breaching the Code of Conduct does not need to prove that a member's actions have actually diminished public confidence, or harmed the reputation of an authority, in order to show a failure to comply. The test is whether or not a member's conduct "could reasonably be regarded" as having these effects.

¹⁴ The Code of Conduct: Guide for Members May 2007, page 13. www.standardsforengland.gov.uk

¹⁵ Case Review 2007, www.standardsforengland.gov.uk

6.32 Regard should also be had to paragraph 6 of the Members' Code of Conduct for Planning Matters:

"The law relating to the planning process obliges Members to act in a quasi-judicial and independent manner. They are required to consider planning applications and enforcement matters and site specific policy issues solely on their own merits, in line with published relevant policy"

6.33 Councillor Bailey had attended training to sit on the Development Control Board and was aware of the Member Code of Conduct and Code of Conduct for Planning Matters. Councillor Bailey's conduct in making racially offensive comments and carrying out his role with regard to the applicants' ethnicity is a clear and blatant breach of paragraph 6 of the Planning Code and in turn a breach of the Member Code of Conduct for Members. In case APE 0378 referred to above and cited in the 2008 Case Review the tribunal held that where a member based expressions of opinion on prejudice against people it would, in the mind of a reasonable person, bring both the office and authority into disrepute. The Tribunal said that this is not only due to the authority's statutory duties under anti discrimination legislation, but also because such attitudes fall far short of what is expected of those holding public office. This investigation has found that Councillor Bailey has a fixed racial stereotype in relation to Nigerian churches and which drove his consideration of their planning application and various offensive comments he also made.

6.34 In my assessment a member acting in a discriminatory manner and at variance with the local Code of Conduct for Planning Matters is in any

objective assessment conduct which has brought both the council and the office of councillor into disrepute.

6.35 At paragraph 6.5 I set out how in my finding Councillor Bailey had predetermined the application from the church. I further consider that such actions viewed objectively may bring the council and office of councillor into disrepute. Members of the public reasonably expect to be dealt with in a fair and even handed way and for any quasi judicial body such as a planning committee (Development Control Board) to act impartially and lawfully. By departing from those standards Councillor Bailey brought the council and office of councillor into disrepute.

6.36 I also consider that the conduct in relation to each of the provisions considered above breached the principles in the preamble to the Code of Conduct of objectivity, respect for others, the duty to uphold the law and leadership. The principles are relevant in assessing if the Code's provisions have been breached and the breach of the principles further supports my findings in relation to the Member Code of Conduct.

Findings

7. For the reasons stated I conclude that Councillor Bailey breached the following provisions of the Code of Conduct for Members:

- Paragraph 3 (1) – You must treat others with respect
- Paragraph 3 (2) (a) 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 5 -You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

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MEMBERS' CODE OF CONDUCT**THE TEN GENERAL PRINCIPLES GOVERNING
THE CONDUCT OF MEMBERS OF LOCAL AUTHORITIES**

The principles as set out below define the standards that Members should uphold

Selflessness - Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity - Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity - Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability - Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness - Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal judgement - Members may take account of the view of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others - Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

Duty to uphold the law - Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship - Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership - Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

MEMBERS' CODE OF CONDUCT

PART 1

GENERAL PROVISIONS

Introduction and interpretation

1. (1) This Code applies to **you** as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code

“meeting” means any meeting of

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

“member” includes a co-opted member and an appointed member.

Scope

2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of your authority
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3. (1) You must treat others with respect.

(2) You must not

- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

4. You must not

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where
 - (i) you have the consent of a person authorised to give it;

- (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.
5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute
6. You
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of your authority
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by
- (a) your authority's chief finance officer; or
 - (b) your authority's monitoring officer,
- where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

PART 2

INTERESTS

Personal interests

8.(1) You have a personal interest in any business of your authority where either

- (a) it relates to or is likely to affect
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;

- (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
 - (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.
- (2) In sub-paragraph (1)(b), a relevant person is
- (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

- 9.(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a

personal interest, but need not disclose the sensitive information to the meeting.

- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, “executive decision” is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

- 10.** (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business
- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - (c) relates to the functions of your authority in respect of
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where
- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
 - (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12. (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;
 - (b) you must not exercise executive functions in relation to that business; and
 - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

PART 3**REGISTRATION OF MEMBERS' INTERESTS****Registration of Members' interests**

13. (1) Subject to paragraph 14, you must, within 28 days of

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14. (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

- (3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

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Procedure for Local Standards Hearings

1. Interpretation

- (a) “Member” means the Member of the Council who is the subject of the allegation being considered by the Standards Committee, unless the context indicates otherwise. It also includes the Member’s nominated representative.
- (b) “Investigating Officer” means either the Ethical Standards Officer of Standards for England (ESO) who referred the report to the Council (and includes his or her nominated representative) or in the case of matters that have been referred for local investigation and matters which have been referred by the Standards Committee to the Monitoring Officer for investigation, references to the Investigating Officer mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).
- (c) “The Matter” is the subject matter of the Investigating Officer’s report.
- (d) “The Standards Committee” refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- (e) “The Democratic Services Officer” means an Officer of the Council responsible for supporting the Standards Committee’s discharge of its functions and recording the decisions of the Standards Committee.
- (f) “Legal Adviser” 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.
- (g) “The Chair” refers to the person presiding at the hearing.

2. Modification of Procedure

The Chair 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.

3. Representation

The Member may be represented or accompanied during the meeting by a Solicitor, Counsel, or, with the permission of the Committee, another person. Note that the cost of such representation must be met by the Member, unless the Council has agreed to meet all or any part of that cost in accordance with its terms and conditions of its policy in relation to Member indemnities.

The council has in place insurance to meet the legal cost of any elected or co-opted member of the council to cover all reasonable and necessary costs charged by a

representative appointed to represent the member/co-opted member who is charged with being in breach of the Member Code of Conduct. The terms and conditions of any insurance cover shall be in accordance with the council's insurance policy currently in force.

4. Pre-Hearing Procedure (ESO's Report)

Upon reference of a matter from an ESO for local determination following completion of the ESO's report, the Monitoring Officer shall:

- (a) Arrange a date for the Standards Committee's hearing;
- (b) Send a copy of the report to the Member and advise him/her of the date, time and place for the hearing;
- (c) Send a copy of the report to the person who made the allegation and advise him/her of the date, time and place for the hearing;
- (d) Request the Member to complete and return the model Pre-Hearing Forms A, B, D and E, as recommended by Standards for England within 14 days of receipt;
- (e) In the light of any Pre-Hearing Forms returned by the Member, determine whether the Standards Committee will require the attendance of the ESO and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;
- (f) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and highlighting the issues which the Standards Committee will need to address; and
- (g) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
 - (i) All Members of the Standards Committee who will conduct the hearing;
 - (ii) The Member;
 - (iii) The person who made the allegation; and
 - (iv) The Investigating Officer.

5. Pre-Hearing Process (Local Investigation)

Upon receipt of the final report of the Investigating Officer including a finding that the Member failed to comply with the Code of Conduct for Members or the Standards

Committee finds that the matter should be considered at a formal hearing, the Monitoring Officer shall:

- (a) Arrange a date for the Standards Committee's hearing;
- (b) Send a copy of the report to the Member and advise him/her of the date, time and place for the hearing;
- (c) Send a copy of the report to the person who made the allegation and advise him/her of the date, time and place of the hearing;
- (d) Request the Member to complete and return the model Pre-Hearing Forms A, B, D and E, as recommended by Standards for England within 14 days of receipt;
- (e) In the light of any Pre-Hearing Forms returned by the Member, determine whether the Standards Committee will require the attendance of the Investigating Officer and any additional witnesses at the hearing to enable it to come to a properly considered conclusion at the hearing, and arrange for their attendance;
- (f) Prepare a Pre-Hearing Summary Report setting out the course of the allegation, investigation and Pre-Hearing Process and highlighting the issues which the Standards Committee will need to address; and
- (g) Arrange that the agenda for the hearing, together with the Pre-Hearing Summary Report and copies of any relevant documents are sent to:
 - (i) All members of the Standards Committee who will conduct the hearing;
 - (ii) The Member;
 - (iii) The person who made the allegation; and
 - (iv) The Investigating Officer

6. Legal Advice

The Standards Committee may take legal advice from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Standards Committee should be shared with the Member and the Investigating Officer if they are present.

7. Setting the Scene

At the start of the hearing the Monitoring Officer shall introduce each of the Members of the Standards Committee, the Member (if present), the Investigating Officer (if present) and any other Officers present, and shall then explain the procedure which the Standards Committee will follow in the conduct of the hearing.

8. Preliminary Procedural Issues

The Standards Committee shall then deal with the following preliminary procedural matters in the following order:

(a) **Appointment of Chair**

An Independent Member shall be appointed as Chair.

(b) **Disclosures of Interest**

The Chair shall ask Members of the Standards Committee to disclose the existence and nature of any personal or prejudicial interests;

(c) **Quorum**

The Chair shall confirm that the Standards Committee is quorate, i.e. one Councillor Member and two Independent Members.

(d) **Hearing Procedure**

The Chair shall confirm that all present know the procedure which the Standards Committee will follow in determining the matter.

(e) **Proceeding in the absence of the Member**

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

- (i) the Chair shall ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the hearing;
- (ii) the Standards 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 Standards Committee is satisfied with such reasons, it shall adjourn the hearing to another date;
- (iv) if the Standards Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Standards 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.

(f) **Exclusion of Press and Public**

- (i) The Standards Committee may exclude the Press and public from its consideration of the matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

- (ii) The Chair shall ask the Member, the Investigating Officer and the legal adviser to the Standards Committee whether they wish to ask the Standards Committee to exclude the Press or public from all or any part of the hearing. If any of them so request, the Chair shall ask them to put forward reasons for so doing and ask for responses from the others and the Standards Committee shall then determine whether to exclude the Press and public from all or any part of the hearing.
- (iii) Where the Standards Committee does not resolve to exclude Press and public, the agenda and any documents which have been withheld from the Press and public in advance of the meeting shall then be made available to the Press and public.

9. A failure to comply with the Code of Conduct

The Standards Committee will then address the issue of whether the Member failed to comply with the Code of Conduct in the manner set out in the Investigating Officer's report.

- (a) The Chair shall ask the Member to confirm that he/she maintains the position as set out in the pre-hearing summary

(b) The Pre-Hearing Process Summary

The Chair will ask the legal adviser or the Democratic Services Officer to present his/her report, highlighting any points of difference in respect of which the Member has stated that he/she disagrees with any finding of fact in the Investigating Officer's report. The Chair will then ask the Member to confirm that this is an accurate summary of the issues and ask the Member to identify any additional points upon which he/she disagrees with any finding of fact in the Investigating Officer's report.

- (i) If the Member admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report, the Standards Committee may then make a determination that the Member has failed to comply with the Code of Conduct in the manner described in the Investigating Officer's report and proceed directly to consider whether any action should be taken (Paragraph 11).
- (ii) If the Member identifies additional points of difference, the Chair shall ask the Member to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigating Officer (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Standards Committee is not satisfied with the Member's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the Member

to challenge the veracity of those findings of fact which are set out in the Investigating Officer's report but in respect of which the Member did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigating Officer and/or any additional witnesses to attend the hearing.

(c) Presenting the Investigating Officer's Report

- (i) If the Investigating Officer is present, the Chair will then ask the Investigating Officer to present his/her report, having particular regard to any points of difference identified by the Member and why he/she concluded, on the basis of his/her findings of fact, that the Member had failed to comply with the Code of Conduct. The Investigating Officer may call witnesses as necessary to address any points of difference.
- (ii) If the Investigating Officer is not present, the Standards Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer. In the absence of the Investigating Officer, the Standards Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chair shall draw the witness's attention to any relevant section of the Investigating Officer's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
- (iii) No cross-examination shall be permitted but, at the conclusion of the Investigating Officer's report and/or of the evidence of each witness, the Chair shall ask the Member if there are any matters upon which the Standards Committee should seek the advice of the Investigating Officer or the witness.

(d) The Member's Response

- (i) The Chair shall then invite the Member to respond to the Investigating Officer's report and to call any witnesses as necessary to address any points of difference.
- (ii) No cross-examination shall be permitted but, at the conclusion of the Member's evidence and/or of the evidence of each witness, the Chair shall ask the Investigating Officer if there are any matters upon which the Standards Committee should seek the advice of the Member or the witness.

(e) Witnesses

- (i) The Standards Committee shall be entitled to refuse to hear evidence from the Investigating Officer, 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 Standards Committee may address questions to the Investigating Officer, to the Member or to any witness.

(f) **Additional Evidence**

At the conclusion of the evidence, the Chair shall check with the Members of the Standards Committee that they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter.

- (g) If the Standards Committee at any stage prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter, the Standards Committee may (on not more than one occasion) adjourn the hearing and make a request to the Investigating Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Standards Committee. All parties to the complaint will be informed if and when this occurs.
- (h) Determination as to whether there was a failure to comply with the Code of Conduct
 - (i) At the conclusion of the Member's response, the Chair shall ensure that each Member of the Standards Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the Code of Conduct as set out in the Investigating Officer's report.
 - (ii) Unless the determination merely confirms the Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 9(b) (i) above), the Standards Committee shall then retire to another room to consider in private whether the Member did fail to comply with the Code of Conduct as set out in the Investigating Officer's report.
 - (iii) The Standards Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
 - (iv) The Standards Committee's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigating Officer, the Member or a witness, or to seek legal advice from or on behalf of the Monitoring Officer. If it requires any further information, it may adjourn and instruct an Officer or request the Member to produce such further evidence to the Standards Committee.

- (v) At the conclusion of the Standards Committee's consideration, the Standards Committee shall consider whether it is minded to make any recommendations to the Council with a view to promoting high standards of conduct among Members.
- (vi) The Standards Committee shall then return to the main hearing room and the Chair will state the Standards Committee's principal findings of fact and their determination as to whether the Member failed to comply with the Code of Conduct as set out in the Investigating Officer's report.

10. If the Member has not failed to follow the Code of Conduct

If the Standards Committee determines that the Member **has not failed** to follow the Code of Conduct in the manner set out in the Investigating Officer's report the Committee will then consider whether it should make any recommendations to the authority with a view to promoting high standards among members.

11. Action consequent upon a failure to comply with the Code of Conduct

- (a) The Chair shall ask the Investigating Officer (if present, or otherwise the legal adviser) and the subject Member whether, in their opinion, the Member's failure to comply with the Code of Conduct is such that the Standards Committee should impose a sanction and, if so, what would be the appropriate sanction.
- (b) The Chair will then ensure that each Member of the Standards Committee is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- (c) Any Member of the Standards Committee may address questions to the Investigating Officer or to the Member as necessary to enable him/her to take such an informed decision.
- (d) The Chair should then set out any recommendations which the Standards Committee is minded to make to the Council with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigating Officer and the legal adviser.
- (e) The Standards Committee shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Standards Committee will make to the Council.
- (f) At the conclusion of their consideration, the Standards Committee shall return to the main hearing room and the Chair shall state the Standards Committee's decisions as to whether to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Standards Committee will make to the Council.

- (g) The Standards Committee has power to impose any one or a combination of the following sanctions:
- censure of that Member
 - restriction for a period not exceeding six months of that Member's access to the premises of the authority or that member's use of the resources of the authority, provided that those restrictions meet **both** the following requirements:
 - (i) they are reasonable and proportionate to the nature of the breach; and
 - (ii) they do not unduly restrict the person's ability to perform the functions of a Member.
 - partial suspension of that Member for a period not exceeding six months
 - suspension of that Member for a period not exceeding six months
 - that the Member submits a written apology in a form specified by the Standards Committee
 - that the Member undertakes such training as the Standards Committee specifies
 - that the Member participates in such conciliation as the Standards Committee specifies
 - partial suspension of that Member for a period not exceeding six months or until such time as the Member has met **either** of the following restrictions:
 - (i) they have submitted a written apology in a form specified by the Standards Committee; or
 - (ii) they have undertaken such training or have participated in such conciliation as the Standards Committee specifies
 - suspension of that Member for a period not exceeding six months or until such time as the Member has met **either** of the following restrictions:
 - (i) they have submitted a written apology in a form specified by the Standards Committee; or
 - (ii) they have undertaken such training or have participated in such conciliation as the Standards Committee specifies

12. Reference back to the Ethical Standards Officer

If, at any time before the Standards Committee has determined upon any appropriate sanction, the Standards Committee considers that the nature of the failure to comply with the Code of Conduct for Members is such that the appropriate sanction would exceed the powers of the Standards Committee, the Standards

Committee may instruct the Monitoring Officer to request the Ethical Standards Officer to resume responsibility for the conduct of the matter, and may adjourn the hearing until the Monitoring Officer advises the Standards Committee of the Ethical Standards Officer's response to such a request.

13. The Close of the Hearing

- (a) The Standards Committee will
- (i) announce its decision on the day of the hearing and provide the Democratic Services Officer with a short written statement of their decision, which the Democratic Services Officer will deliver to the Member as soon as practicable after the close of the hearing; and
 - (ii) give its full written decision as soon as possible but within two weeks of the hearing to the relevant parties:
 - the Member
 - the complainant
 - the Standards Committee of any other authorities concerned
 - Standards for England.
- (b) The Chair will thank those present who have contributed to the conduct of the hearing and formally close the hearing;
- (c) Following the close of the hearing, the Democratic Services Officer will agree a formal written notice of the Standards Committee's determination and the Monitoring Officer shall arrange for the distribution and publication of that notice (or a summary of that notice, where required) in accordance with Regulation 20 of the Standards Committee (England) Regulations 2008.

14. Appeals

The Member may seek permission to appeal against the decision of the Standards Committee by writing to the Principal Judge of the First-tier Tribunal (Local Government Standards in England). The letter must set out the grounds for such an appeal and include a statement as to whether or not the Member consents to the appeal being heard by way of written representations. The letter must be received by the Principal Judge within 28 days of the date of the written notice of decision under Paragraph 13(c).

**SUGGESTED ORDER OF PROCEEDINGS FOR HEARING
26 MARCH 2010**

1. Welcome and introductions (Chair).
2. Housekeeping issues (Chair/Democratic Services Officer).
3. Any disclosures of interest by the Standards members (Chair/other sub-Committee members).
4. Confirmation of the Sub-Committee being quorate (Chair).
5. Reference to the fact that the meeting is being recorded (for the record) and that a written transcript can be made available at a later stage to either party on request (Chair).
6. Monitoring Officer to present her report (Monitoring Officer).
7. Chair to enquire of Subject Member's representative if he wishes to identify (without going into all the detail at this stage) any particular issues in terms of the finding of facts in the Investigating Officer's report (ie any parts that he agrees with/parts where there is a clear difference of opinion). Also to check that he is happy for the whole hearing to be heard in public (ie an opportunity to ask for any particular aspects to be heard in private) (Chair/Subject Member's representative).
8. Sub-Committee to consider any relevant aspects following the Subject Members' representative's response and respond as necessary (Sub-Committee).
9. Investigating Officer will be asked to present his Investigation report and call any witnesses to address any points of difference (Investigating Officer/witnesses).
10. The Sub-Committee may ask questions/points of clarification of the Investigating Officer or his witnesses (Sub-Committee).
11. Subject Member's representative asked if he wishes to ask questions/points of clarification of the Investigating Officer or his witnesses (Subject Member's representative).
12. Subject Member's representative to respond to the Investigating Officer's report and call any witnesses to address any points of difference (Subject Member's representative/witnesses).
13. The Sub-Committee may ask questions/points of clarification of the Subject Member's representative or his witnesses (Sub-Committee).
14. Investigating Officer asked if he wishes to ask questions/points of clarification of the Subject Member's representative or witnesses (Investigating Officer).

15. Investigating Officer will be asked to briefly sum up (Investigating Officer).
16. Subject Member's representative to briefly sum up (Subject Member's representative).
17. The Chair will check with her members that they have sufficient evidence to come to a considered conclusion (Chair).
18. The Sub-Committee will then retire to a private room to determine whether there was a failure to comply with the Code of Conduct (Sub-Committee).
19. They will then return and the Chair will announce the decision (Chair).
20. If the Sub-Committee find no failure they will consider whether they wish to make any recommendations to the authority (Chair).
21. If failure is found they will ask the Investigating Officer if he thinks any sanction should be imposed and if so, what sanction (Chair/Investigating Officer).
22. The Chair may ask for clarification of the sanctions available if they are not clear (Chair/Monitoring Officer).
23. The Chair will check with her members that they have sufficient information to make an informed decision as to any sanctions (Chair).
24. The Chair will set out any recommendations which they are minded to make regarding promoting high standards of conduct among Members and seek the Subject Member's representative's views, and those of the Investigating Officer and Monitoring Officer/legal adviser (Chair).
25. The Sub-Committee will then retire to decide upon any sanctions and any recommendations re standards generally (Sub-Committee).
26. They will then return and the Chair will announce the decision (Chair).
27. The Chair will then close the meeting (Chair).

Notes:

- (1) The Chair, in consultation with her Sub-Committee colleagues, will determine any relevant break periods.
- (2) The Sub-Committee can retire to a private room to re-cap/consider issues at any stage during the hearing should they feel that would be beneficial to their consideration of the case.

APPENDIX E

Sanctions

If the standards committee finds that a subject member has failed to follow the Code of Conduct and that they should be sanctioned, it may impose any one or a combination of the following:

- censure of that member

- restriction for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) of that member's access to the premises of the authority or that member's use of the resources of the authority, provided that those restrictions meet **both** the following requirements:
 - i) They are reasonable and proportionate to the nature of the breach.
 - ii) They do not unduly restrict the person's ability to perform the functions of a member.

- partial suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008)

- suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008)

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The hearing

Members should bear in mind that a standards committee hearing is a formal meeting of the authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The standards committee should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that members of the public, and members of the authority, have confidence in its procedures and findings.

The standards committee should bear in mind the need to maintain public confidence in the council's ethical standards. This requires that the standards committee's decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the subject member, the council and the public. For the subject member, an adverse decision by the committee can result in censure or in suspension for up to six months.

Representatives

The subject member may choose to be represented by counsel, a solicitor, or by any other person they wish. If the subject member concerned wants to have a non-legal representative, the subject member must obtain the consent of the standards committee.

The standards committee may choose to

withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

Evidence

The standards committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned.

In many cases, the standards committee may not need to consider any evidence other than the investigation report or the ethical standards officer's report, and any other supporting documents.

However, the standards committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

The standards committee can allow witnesses to be questioned and cross-examined by the subject member, the monitoring officer, the ethical standards officer or their representative. Alternatively, the standards committee can ask that these questions be directed through the chair. The standards committee can also question witnesses directly.

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- that the member submits a written apology in a form specified by the standards committee
- that the member undertakes such training as the standards committee specifies
- that the member participates in such conciliation as the standards committee specifies
- partial suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) or until such time as the member has met **either** of the following restrictions:
 - i) They have submitted a written apology in a form specified by the standards committee.
 - ii) They have undertaken such training or has participated in such conciliation as the standards committee specifies.
- suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) or until such time as the member has met **either** of the following restrictions:
 - i) They have submitted a written apology in a form specified by the standards committee.
 - ii) They have undertaken such training or has participated in such conciliation as the standards committee specifies.

Suspension or partial suspension will

normally start immediately after the standards committee has made its decision. However, if the standards committee chooses, the sanction may start at any time up to six months following its decision. This may be appropriate if the sanction would otherwise have little effect on the subject member. For example, in the case of a suspension or partial suspension where there are no authority or committee meetings which the subject member would normally go to in the period after the hearing has finished. The standards committee should also confirm the consequences, if any, for any allowances the subject member may be receiving.

Periods of suspension or partial suspension set by a standards committee do not count towards the six-month limit for absences from authority meetings, after which a member would normally be removed from office under section 85 of the Local Government Act 1972.

Considering the sanction

When deciding on a sanction, the standards committee should ensure that it is reasonable and proportionate to the subject member's behaviour. Before deciding what sanction to issue, the standards committee should consider the following questions, along with any other relevant circumstances:

- What was the subject member's intention? Did the subject member know that they were failing to follow the Code of Conduct?

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- Did the subject member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result of failing to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the subject member accept they were at fault?
- Did the subject member apologise to the relevant people?
- Has the subject member previously been warned or reprimanded for similar misconduct?
- Has the subject member failed to follow the Code of Conduct before?
- Is the subject member likely to do the same thing again?
- How will the sanction be carried out? For example, who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a subject

member has repeatedly or blatantly misused the authority's information technology resources, the standards committee may consider withdrawing those resources from the subject member.

Suspension may be appropriate for more serious cases, such as those involving:

- trying to gain an advantage or disadvantage for themselves or others
- dishonesty or breaches of trust
- bullying

Sanctions involving restricting access to an authority's premises or equipment should not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.

The following is an extract from useful guidance published by the First-tier Tribunal on aggravating and mitigating factors they take into account when assessing an appropriate sanction:

“ Examples, but not an exhaustive list, of mitigating factors are:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.

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- A member's previous record of good service.
- Substantiated evidence that the member's actions have been affected by ill-health.
- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the member.
- Compliance with the Code since the events giving rise to the determination.
- Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.



Examples, but again not an exhaustive list, of aggravating factors are:

- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.



The First-tier Tribunal also advises the following:



In deciding what action to take, the Case Tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Case Tribunal should be designed both to discourage or prevent the particular Respondent from any future non-compliance and also to discourage similar action by others.

Case Tribunals should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.

This guidance does not include a firm tariff from which to calculate what length of disqualification or suspension should be applied to particular breaches of the Code. Any such tariff would in any event need to have regard to the need to make adjustments toward the lower end of the spectrum if there are mitigating factors and towards the upper end if there are aggravating factors.



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