

Minutes of: STANDARDS COMMITTEE (HEARING PANEL)

Date of Meeting: 28 July 2004

Present: Mr A Loyns (in the Chair);
Councillors K S Briggs and Mrs A Brown

Apologies for Absence: There were no apologies for absence

Public Attendance: Four members of the public were in attendance

S.196 DECLARATIONS OF INTEREST

There were no declarations of interest made at the meeting.

S.197 APPOINTMENT OF CHAIR

It was reported that Mr A Loyns had been nominated by the Panel to chair the meeting.

S.198 REPORTS OF AN INVESTIGATION UNDER SECTION 59 OF THE LOCAL GOVERNMENT ACT 2000 BY THE STANDARDS BOARD FOR ENGLAND ETHICAL STANDARDS OFFICER – SBE3830.03 AND SBE3348.03

The Panel considered reports from the Ethical Standards Officer under Section 64(2) of the Local Government Act 2000 in relation to allegations made against Councillors R Bibby and J Taylor that they failed to declare prejudicial interests at meetings of the Council held on 26 February, 9 April and 14 May 2003 and failed to leave the meetings whilst the issues in question were being discussed, in contravention of paragraphs 4.3.1 and 4.5.1(a) of the Council's Code of Conduct.

Paragraph 4.3.1 of the Council's Code of Conduct states that:-

“a Member with a personal interest in a matter who attends a meeting of the Authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.”

Paragraph 4.5.1(a) of the Council's Code of Conduct states that:-

“4.5.1 subject to paragraph 4.5.2 below, a Member with a prejudicial interest in any matter must

- (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he/she has obtained a dispensation (d) from the authority's Standards Committee”.

The Panel also considered an allegation that Councillor Bibby had failed to record in the Register of Interests his membership of an action group which was campaigning for an increase in the fees paid to care homes, in contravention of paragraph 5.1.2(d) of the Council's Code of Conduct.

Paragraph 5.1.2(d) of the Council's Code of Conduct states that:-

"5.1.2 within 28 days of the provisions of the Authority's Code of Conduct being adopted or applied to that authority or within 28 days of his/her election or appointment to office (if that is later) a Member must register his/her other interests in the authority's register maintained under Section 81(1) of the Local Government Act 2000 by providing written notification to the authority's Monitoring Officer of his/her membership of or position of general control or management in any

(b) body whose principal purposes include the influence of public opinion or policy."

In commencing the hearing, the Chair introduced those present and outlined the procedure. Both parties indicated that they did not wish to raise any issues about the procedure as outlined.

The Chair explained that the next part of the proceedings was to consider whether or not there were any significant disagreements about the facts contained in the Investigator's Report.

Both parties agreed that the disputed facts were as follows:-

1. No advice was given by the Monitoring Officer at the meeting of Council held on 26 February 2003.
2. No declarations of interest were made by Councillors Bibby and Taylor at the meeting of 26 February 2003.
3. Councillor Bibby did not withdraw from the meeting of Council on 26 February 2003.

The case for the Ethical Standards Officer was presented by Mr D Abrahams who called as witnesses, Mr K Cowell (Head of Democratic Services) and Mrs J Hammond (Director of Legal and Democratic Services).

The case against Councillor Bibby was being heard following an allegation from Councillor M Connolly that Councillor Bibby had failed to declare a prejudicial interest at the Council's budget setting meeting on 26 February 2003, when a decision was made on an amendment which would have the effect of increasing the level of fees paid to residential care homes. Councillor Connolly further alleged that Councillor Bibby had again failed to declare a prejudicial interest at the Council meeting on 9 April 2003 during a discussion of issues relating to residential care homes during public question time. The Ethical Standards Officer also investigated whether or not Councillor Bibby was in breach of the

Code of Conduct by failing to declare a personal and prejudicial interest at the Council meeting on 14 May 2003 when, during the Leader's Statement on the State of the Borough, members of the public present asked about the level of fees payable to the private sector residential care homes for the elderly and four Councillors asked questions about private residential care homes for the elderly.

The Ethical Standards Officer also investigated whether or not Councillor Bibby was in breach of the Council's Code of Conduct by failing to record in the Council's Register of Interests his membership of an action group which was campaigning for an increase in the fees paid to care homes.

The Panel considered an allegation by Councillor J Byrne that Councillor Taylor had failed to declare a personal interest at three Council meetings on 26 February 2003, when a decision was made on an amendment which had the effect of increasing the level of fees paid to residential care homes and then on 9 April 2003 and 14 May 2003 respectively, when the issue of fees paid by the Council to residential care homes was discussed.

Councillors Bibby and Taylor presented their own cases and called as witnesses Councillors Creswell, Magnall and Walker. In evidence, Councillors Magnall and Creswell confirmed that a statement by Councillor Taylor which indicated his interest in the item at the meeting on 26 February 2003 was such as to suggest that Councillor Bibby had also made the same declaration of interest. Councillor Bibby also referred to the fact that although he did not declare an interest at the meetings of 9 April and 14 May 2003, he had left the Council chamber for substantial parts of those meetings.

Councillor Walker referred to the fact that Councillors Bibby and Taylor had always been very open about their occupations and this information was well known amongst Members of Council. He considered that the way in which the amendment had been introduced at the meeting of Council on 26 February 2004 was designed to place the Members concerned in a difficult situation.

In his final submission on the findings of fact Mr Abrahams suggested that the evidence and the balance of probability pointed to there being no formal declaration of interest by Councillors Bibby and Taylor at the meeting of Council held on 26 February 2003. In reaching this conclusion, he referred specifically to the evidence of Mr Cowell and Mrs Hammond and the fact that neither the two Members concerned nor Members of their group had challenged the Minutes of the meeting of 26 February 2003 to indicate that a declaration of interest had been made.

Mr Abrahams stated that in her evidence, Councillor Creswell described a heated exchange taking place at a Council meeting involving Councillor Bibby, and that he left the Chamber in order to calm himself. However, she could not recall which meeting. However, Councillor Bibby indicated that he did not leave the meeting on 26 February so Councillor Creswell's recollection must relate to the meeting on 9 April 2003.

Councillor Walker's evidence did not, Mr Abrahams felt, relate to the assertion by the Councillors that a declaration had been made and did not therefore assist in this regard.

With regard to Councillor Magnall's evidence, Mr Abrahams referred to the fact that she had indicated that she was not present at the meeting of Council held on 9 April 2003. She recalled the discussion but not the words used by Councillors Byrne or Bibby. She recalled Councillor Taylor saying something to the effect that "I have the same interest". Mr Abrahams suggested that a declaration of interest could not have been made at the start of the meeting on 26 February 2003, as the discussion on the amendment took place at a later stage. It was his opinion that Councillor Bibby spoke on the amendment and referred to his own experience as a residential home owner. At this time Councillor Taylor indicated that he had the same interest. However, this did not constitute a formal declaration of interest by either member. Mr Abrahams also referred to the fact that no-one challenged the minutes of the meeting on 26 February 2003 to indicate that declarations had been made.

Councillor Bibby accepted that he did not leave the meeting of 26 February 2003 as suggested in his original statement to the Ethical Standards Officer. He suggested that he and Councillor Taylor had declared their interest on 26 February 2003 but that because of the level of noise at the meeting this had been missed. He also pointed to the fact that there had been evidence of mistakes being made in sets of minutes.

With regard to the meeting on 9 April 2003, there was a heated debate involving the Leader of the Council and he considered that he had a right to defend himself against statements being made.

At the annual meeting of Council on 14 May 2003, he left the chamber for a considerable period of time and recalled the Leader summing up on the Statement of the Borough debate.

In considering the findings of fact, the Panel considered that on the balance of probabilities, the Director of Legal and Democratic Services did give advice during the Council meeting on 26 February 2003.

The Panel considered that on the balance of probabilities, Councillors Bibby and Taylor did, during the debate, indicate their interest, but that no formal declaration was made either at the start of the meeting or before the amendment was discussed.

The Panel noted that contradictory evidence had been given by Councillors Bibby and Taylor. In written evidence it was stated that a declaration was given at the start of the meeting. The evidence before the Panel indicated that the declaration occurred during the debate.

The Chair explained that the Panel now needed to consider whether or not the Member had failed to follow the Code of Conduct.

Whilst maintaining that they had declared an interest at the meeting of 26 February 2003, Councillor Bibby pointed out that the sale of the residential home in question was being sold and contracts had been exchanged on 13 May 2003 and completion took place on 23 May 2003. On 23 February 2003, Councillor Taylor had been made redundant and the National Care Standards Commission at Bolton had been informed of this and given details of the prospective new owner and care manager.

Given those circumstances, Councillors Bibby and Taylor contended that they had no personal financial gain from the decision of Council relating to fees paid to private residential homes.

Mr Abrahams contended that at the time of the meeting on 26 February 2003, the Members still owned or were employed at the residential care home and therefore had a personal and prejudicial interest. He considered that given that at this stage contracts had not been exchanged, the interest was ongoing and significant. Failure to declare a personal and prejudicial interest at the meeting of 26 February 2003 was a breach of the Code of Conduct.

Mr Abrahams considered that during the public question time at the meeting of 9 April 2003, when issues were raised about residential care homes in Bury, Councillors Bibby and Taylor should have declared a personal and prejudicial interest and failure to do so was a breach of the Code of Conduct.

Mr Abrahams suggested that during the State of the Borough debate, when questions were asked by members of the public and Members of Council on matters relating to residential care homes, that Councillors Bibby and Taylor should have declared a personal and prejudicial interest and left the meeting and that failure to do so was a breach of the Code of Conduct.

Councillor Bibby in response indicated that he did not deny that he had a prejudicial interest but that given the advanced stage of the sale of the Home he had no financial gain arising from the decisions or discussions.

The Panel considered the finding of the Ethical Standards Officer that Councillor Bibby had failed to comply with paragraph 5.1.2(d) of the Council's Code of Conduct by failing to record in the Council's Register of Interest his membership of an action group which was campaigning for an increase in the fees paid to care homes.

Councillor Bibby reported that he had not recorded the matter in the declaration of interest because it was the incoming owner of the residential care home who wished to become a member of this Group.

Mr Abrahams suggested that as membership of the Group had been taken up on 11 April 2003, it should have been registered and that failure to do so was a breach of the Code of Conduct.

The Panel found that with regard to Councillor Taylor, that on 26 February 2003, 9 April 2003 and 14 May 2003, a breach of paragraph 4.3.1 of the Council's Code of Conduct had occurred in that a personal and prejudicial interest had not been declared. As the interest was a prejudicial one, it follows that a breach of paragraph 4.5.1(a) had occurred as he did not withdraw from those meetings.

With regard to Councillor Bibby, on 26 February 2003, 9 April 2003 and 14 May 2003, a breach of paragraph 4.3.1 of the Council's Code of Conduct had occurred in that a personal and prejudicial interest had not been declared. As the interest was a prejudicial one, it follows that a breach of paragraph 4.5.1(a) had occurred as he did not withdraw from those meetings.

Also, with regard to Councillor Bibby, the Panel concluded that the failure to enter into the Register of Interest his membership of the Action Group campaigning for an increase in residential home fees was a breach of paragraph 4.5.2(d) of the Code of Conduct.

The Chair reported that as the Members had been found to fail to follow the Code, the Panel would consider representations from the investigator and the Members as to whether or not a penalty should be set and what form, if any, that penalty should take.

The Panel made the following findings.

The Standards Board of England consider breaches of the Code of Conduct to be serious matters.

Having taken into account everything the Members said in relation to these matters and their apologies to Bury MBC, the Panel has made allowances when setting the level of penalties.

The Panel also considered the penalties imposed for similar breaches in other local authorities. The Panel believes the penalties to be imposed are reasonable and proportionate in the circumstances.

For the breach of paragraph 4.3.1 and paragraph 4.5.1(a) of the Code of Conduct, a six week suspension should be imposed on both Councillors Bibby and Taylor.

In relation to Councillor Bibby's breach of paragraph 5.1.2(d) of the Council's Code of Conduct, there was conflicting evidence from Councillor Bibby. The Panel took the decision to accept the written evidence given on 14 January 2004 (reference MN11) where he stated that he was a member of the Action Group BCPAG prior to 26 February 2003. The Panel therefore imposes on Councillor Bibby a suspension of 8 weeks to run concurrently with the penalty for the breaches of paragraphs 4.3.1 and 4.5.1(a).

In both cases, the suspensions will be postponed until 1 September 2004. Therefore, Councillor Taylor will be suspended from 1 September 2004 to 12 October 2004 inclusive and Councillor Bibby will be suspended from 1 September 2004 to 26 October 2004 inclusive. Given the statements made by the Members with regard to their training, this would be addressed by the Chair of the Standards Committee for further consideration.

The Panel noted the comments made by the Members in their letters of 14 June 2004 and the Chair of the Panel wished to assure the Members that the Panel's decisions had been based on the Ethical Standards Officer's report and the evidence heard at the Hearing.

The investigating officer reported that he did not wish to make any recommendations to the Local Authority.

The Chairman closed the proceedings and thanked everyone for their attendance.

A LOYNS
Chair

(Note: The meeting started at 9.45 am and ended at 3.20 pm)