

STANDARDS COMMITTEE – HEARINGS PANEL

11 February 2009
(10.00am – 1.58pm)

PRESENT: External Members: Dr Clark (Chair) and Mr M Williams
Councillors Bick, McGovern, McPherson

Also present: Councillor Colin Rosenstiel, Mr Andrew Gore (Cllr Rosenstiel's representative).
Mr Mark Jones, Mr Matt Williams (The Standards Board for England)

FOR INFORMATION OF THE COUNCIL

09/SHP/01 INTRODUCTIONS

The Chair requested that everyone around the table introduce themselves. The Chair referred to the Procedure to be followed at the Hearing, copies of which had been included in the papers and laid around the table for the information of those present.

09/SHP/02 APOLOGIES FOR ABSENCE

There were none.

09/SHP/03 DECLARATIONS OF INTEREST

By reason of personal explanation, Councillor McPherson advised of his membership of MAGPAS as an operational First Responder which involved contact with East Anglian Ambulance Service, and further as Security Manager for a large local College, as some of his duties involved acting as part of the Emergency Response team. However, he did not know Mr Austine, (the ambulance paramedic) nor did he know David Monk from the East Anglian Ambulance Service personally.

09/SHP/04 SETTING THE SCENE

The Chair stated that the Panel was meeting to consider the complaint from Mr David Monk, the Clinical Fields Operations Manager of the East of England Ambulance Service, who alleged that Councillor Colin Rosenstiel, a member of Cambridge City Council (the Council), obstructed an Ambulance Service emergency response vehicle on an emergency call when the vehicle,

driven by an Ambulance Service Paramedic, was attempting to gain access to Jesus Green, Cambridge.

The Hearing Panel needed to consider the investigation report from the Ethical Standards Officer and the representations made by Councillor Rosenstiel and decide

(a) Whether they agreed with the Ethical Standards Officer's finding that Councillor Rosenstiel failed to treat Mr Austine with respect and by doing so failed to comply with paragraph 2(b) of the Council's Code of Conduct for Councillors.

(b) Whether they agreed with the Ethical Standards Officer's finding that Councillor Rosenstiel's behaviour has brought his office into disrepute and therefore he had failed to comply with paragraph 4 of the Council's Code of Conduct for Councillors.

If the Panel considered that a breach of either, or both parts of the Code had occurred, the Panel needed to consider what penalty should be applied.

The Hearing would follow four stages:

- a) Resolve any preliminary procedural issues
- b) Make findings of fact
- c) Decide whether the Member failed to follow the Code of Conduct
- d) If the Panel decided the Member had failed to follow the Code of Conduct, the Panel would then decide whether to set a penalty and what form it should take

The Chair concluded by stating that the Panel would adjourn to consider its decision at key stages. It might ask questions of any party at any point in the proceedings and take advice from its Advisor at any time during the Hearing.

If any advice was sought whilst in private deliberation, that advice would be shared with the parties present.

09/SHP/05 PRELIMINARY PROCEDURAL ISSUES

Neither Mr Gore, Mr Jones, nor the Panel raised any issues.

09/SHP/06 FINDINGS OF FACT

The Chair asked Mr Jones if he wanted to comment on Councillor

Rosenstiel's suggested rewording of one sentence in paragraph 5.5 of the Ethical Standards Officer's report. Mr Jones was content with the amended wording suggested. Mr Jones asked if the Monitoring Officer had been provided with a colour photo of the emergency vehicle, as the reproduction in black and white in the Panel's papers (at HS5) was not clear. It was noted that the Standards Board had provided a black and white photocopy. The Chair stated that the type of vehicle was quite familiar to people generally. Mr Gore had no comment to make.

The Panel adjourned to make its findings of fact.

Once reconvened, the Chair announced the findings of fact.

The Hearings Panel agreed with the findings of fact as set out in paragraphs 5.1-5.9 (noting 5.5 as amended) of the Ethical Standards Officer's report.

09/SHP/06 DID THE MEMBER FAIL TO FOLLOW THE CODE

In his written submission, Councillor Rosenstiel had accepted that he failed to follow paragraph 2b of the Code of Conduct in that he failed to treat the ambulance paramedic with respect.

Mr Gore focused his submission on whether Councillor Rosenstiel failed to follow paragraph 4 of the Code of Conduct and by doing so therefore brought his office into disrepute. Mr Gore referred the Panel to the judgement from Mr Justice Collins on *Livingstone v The Adjudication Panel for England* and put it to the Panel that although Councillor Rosenstiel's actions brought himself into disrepute, it could not be said that it brought the office of Councillor into disrepute.

Mr Jones asked the Panel to consider what would reflect badly on councillors in this case. He stated that amongst the Ethical Standards Officer's findings of fact were (i) that Councillor Rosenstiel had accepted he was on constituency business, that he had telephoned council officers and was holding the fort until they arrived (ii) that Councillor Rosenstiel had referred to his status of Councillor whilst blocking the ambulance from entry and that he referred to his status as Councillor whilst liaising with the police. Mr Jones put it to the Panel that Councillor Rosenstiel therefore misused his status as a councillor.

Mr Williams questioned Mr Jones' passing reference to national media

coverage of the case and expressed his concerns that the Standards Board was asking the Panel to consider the coverage. Mr Gore expressed concern that any consideration of media coverage of the case was inappropriate. Mr Jones agreed and made it clear that he did not wish the Panel to take into account the press coverage.

In response to Mr Jones' points, Mr Gore stated that although the ambulance paramedic's interview was comprehensive he had not commented that Councillor Rosenstiel was acting in his official capacity nor did he comment on the impact on the office of councillor generally.

The Panel adjourned to consider its findings.

Once reconvened, the Chair announced its findings on whether they believed the Member had breached the Code:

Councillor Rosenstiel admitted that his behaviour was in breach of the code of conduct. Therefore the Panel concluded that Councillor Rosenstiel had failed to treat Mr Austine with respect and by doing so failed to comply with paragraph 2(b) of the Council's Code of Conduct for Councillors.

With regard to whether there was a breach of paragraph 4 of the code of conduct, the Panel considered carefully the arguments put by Mr Gore as to whether the Councillor was acting in a personal capacity or in a manner that would bring his office into disrepute. The Panel also considered Mr Gore's analysis of Mr Justice Collins' judgement especially at paragraph 40 of the Livingstone case, but were not persuaded by it in the circumstances of this case.

It is clear from the uncontested evidence that the Councillor throughout his dealings both with Mr Austine and the police officer stated that he was acting in his capacity as a ward Councillor.

In those circumstances we are not persuaded this was only personal misconduct and are satisfied that it was behaviour which would inescapably be regarded as bringing his office as Councillor into disrepute. We therefore concluded that Councillor Rosenstiel has failed to comply with paragraph 4 of the Council's Code of Conduct for Councillors and has brought his office of Councillor into disrepute.

09/SHP/07 SHOULD A PENALTY BE APPLIED?

The Chair asked Mr Jones if a penalty should be applied and if so what form it should take. Mr Jones advised the Panel that normal practice was not to comment on penalties for individual cases. He referred to the Standards Board guidance which had been included in the Panel's papers. He asked that if the Panel were minded to request a written apology, that it be agreed by the Panel and at the meeting if possible, to reduce the risk of any delay (which had been the experience in other cases).

Mr Gore explained in detail the background to the incident on 2 June 2007, the incident itself and Councillor Rosenstiel's public service record. Mr Gore referred to the Standards Board guidance and the questions a Panel must ask itself. He submitted that a positive rather than negative analysis could be drawn having gone through the list. In considering the penalty, Mr Gore stated that Councillor Rosenstiel invited a penalty of a written apology. He asked the Panel take into account that Councillor Rosenstiel will regard with shame the fact that his public service record has been blemished by this event.

The Panel adjourned to consider its findings.

Once reconvened, the Chair stated that all decisions made had been unanimous and that the Panel had set the following penalty:

That Councillor Rosenstiel should send a full personal, unqualified and unreserved written apology to the East of England Ambulance Service and the member of staff involved in the incident in June 2007. This should be in a form agreed with the Panel.

With regard to the breach of paragraph 4 of the Code of Conduct the Panel did not feel additional sanction was required in the light of their findings and the public nature of the hearing process.

The meeting closed at 1.58pm.

Chair