

Executive Summary and Recommendations

Title of Report: **Consideration of Investigation into Complaint
Against Councillor S Burbridge**

Date: **13 October 2009**

1. Summary of this Report

- 1.1 This report sets out the process to be followed at this meeting and the necessary background information to allow the Sub-Committee to consider the Investigating Officer's report and the necessary background information.
- 1.2 The procedure to be followed is summarised in paragraph 3.4 and set out in full in Appendix 1.
- 1.3 The meeting of Sub-Committee No 3 (Hearing) is required following the decision of Sub-Committee No 1 (Assessment) to refer the complaints that Councillor Burbridge breached the Code of Conduct to the City Council's Monitoring Officer for investigation. The Investigating Officer's report is attached as Appendix 1 for members of the Sub-Committee and relevant officers only and details of the complaint are set out in paragraph 1 of that report.
- 1.4 In accordance with Regulation 17 of the Standards Committee (England) Regulations 2008, the Sub-Committee must consider the Investigating Officer's Report and reach a conclusion as to whether to accept the findings of no failure and the finding of failure. If the Sub-Committee accept those findings then the matter will proceed to hearing in relation to the finding of no failure and the Sub-Committee will have concluded that there is a Finding of Acceptance in relation to each finding of no failure.
- 1.5 A summary of the pre-hearing process is set out in paragraph 3.4 of this report. This was not circulated 14 days before the hearing as Councillor Burbridge did not respond until 5 October, with the necessary information.
- 1.6 Paragraph 11.4 of the procedure states that "the consideration of any information presented to the Hearing Sub-Committee is exempt information. The Hearing Sub-Committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information". This matter is more fully discussed in paragraph 4.3 of this report.

2. Recommendations

- 2.1 That the Sub-Committee give consideration to the content of paragraph 4.3 of this report and determine if, under Section 100 (A) (4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following items of business because they involve the likely disclosure of exempt

information on the grounds of information presented to a Standards Sub-Committee set up to consider any matter under regulations 13 to 16 to 20 of the Standards Committee (England) Regulations 2008.

- 2.2 That in accordance with Regulation 17, the Sub-Committee consider the Investigating Officer's report to decide whether to accept the Investigating Officer's finding of no failure in relation to paragraphs 3 (2) (a) and 5 and the finding of failure in relation to paragraph 3 (1) and accordingly whether the matter should proceed to hearing.
- 2.3 If the Sub-Committee decide to proceed to a hearing, that it be conducted in accordance with the procedures set out in Appendix 1 and summarised in paragraph 3.4 of this report.
- 2.4 If the Sub-Committee proceed to hearing that, having conducted the hearing, the Sub-Committee reach one of the conclusions set out in 16 (a) or 16 (b) of paragraph 24 of this report.
- 2.5 That the Sub-Committee indicate if there are any issues, associated with the process the subject of this meeting, which they would like referred to the Standards Committee for review.



City of Westminster

Committee Report

Item No:	
Date:	13 October 2009
Classification:	For General Release
Title of Report:	Consideration of investigation into a complaint against Councillor S Burbridge
Report of:	Head of Legal Services
Wards involved:	None
Policy context:	High Ethical Standards
Financial summary:	There are no financial implications
Report Author:	Mick Steward
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3. Background Information

- 3.1 The Standards Committee No 1 on 20 April 2009 agreed that the complaints, (46 in total), that Councillor Burbridge had breached the Members' Code of Conduct be referred to the City Council's Monitoring Officer for investigation.
- 3.2 The Monitoring Officer appointed Rhian Davies, Principal Solicitor, to conduct the investigation. Her report, attached as Appendix 2, was sent to Councillor Susie Burbridge on 14 August 2009. In accordance with the relevant Regulations the hearing must be held within 3 months of the report completed. This Appendix is attached for members of the Sub-Committee and Officers associated with the conduct of the hearing only. This accords with paragraph 11.4 of the procedure set out as Appendix 1. In the event that the Sub-Committee determine under recommendation 1, that the hearing be conducted in public, then copies of Appendix 2 will be made available to the public.
- 3.3 (a) The rules of procedure agreed by the Standards Committee on 14 July 2008 are attached as Appendix 1. Paragraph 12 sets out the details of the pre-hearing process. The Clerk to the Committee wrote to Councillor Burbridge on 27 August as part of the pre-hearing process.

Councillor Burbridge's response is summarised below:

- 3.3 (b) As part of the pre-hearing process, Councillor Burbridge has indicated that she will not be represented at the hearing. She does not disagree with any of the findings of fact in the Investigating Officer's report.

Her statement is attached as Appendix 3.

Councillor Burbridge has confirmed that she will attend the hearing. She has also confirmed that she is happy for the hearing to be heard in public unless she feels intimidated by an overwhelming number of people present.

- 3.4 The procedure for the conduct of the hearing is set out in paragraphs 11.1 – 11.4, 13.2, 13.4 and 13.5 of the rules of procedure (Appendix 1). The Investigating Officer has advised that she will not be calling supporting witnesses.

The procedure, with relevant notes specific to this case added is as follows:

1. Introductions.
2. Declarations of Interest.
3. Consideration as to whether to defer or to proceed in the absence of the Member, if the Member is not present.
4. Representations from the Investigating Officer and/or Councillor Burbridge as to the reasons why the Sub-Committee should exclude the press and public (NB: Both the Investigating Officer and Councillor

Burbridge have indicated that they are happy for the matter to be heard in public and for the documents to be made available).

5. Determination as to whether to exclude the press and public (see recommendation 2.1 above).
6. Consideration of Investigating Officer's report to decide whether to accept the findings of no failures ("a finding of acceptance") and whether to proceed to hearing in relation to the finding of failure.

If the Sub-Committee proceed to a hearing

7. Examination of report and written representations.
8. Consideration of the Member's written response to the report. (This is attached as Appendix 3)
9. If there is any disagreement as to the facts of the case, the Investigating Officer to be invited to make representations to support the findings of facts of the case, calling supporting witnesses as agreed by the Chairman. (Councillor Burbridge has not indicated that there are any disagreements of facts and the Investigating Officer does not intend to call any witnesses).
10. Questions of witnesses by the Member. (No witnesses are being called).
11. The Member will then be invited to make representations, calling supporting witnesses as agreed by the Chairman. (Councillor Burbridge does not intend to call any witnesses).
12. Questions of witnesses, called by the Member, and the Member by the Investigating Officer.
13. Questions may be asked by the Sub-Committee at any point, but for the purposes of clarity it is suggested that the Sub-Committee, as far as possible, ask its questions at the conclusion of each submission. This will be reflected in the procedural note which will be tabled at the meeting.
14. The Chairman will then ask both the Investigating Officer and the Member to make a brief final summary.
15. The Sub-Committee will then withdraw, with the Legal Adviser and Clerk, to consider the written and verbal presentations and reach its findings of facts and if the Member is found to have breached the Code of Conduct what, if any, the sanction should be (see paragraph 22 below).

16. On their return, the Chairman will announce the Sub-Committee's decision as to whether the subject Member has failed to follow the Code and if there is a breach of the Code of Conduct any sanction to be imposed..
- 17(a) If the Sub-Committee decides that the Member has not failed to follow the Code, the Sub-Committee can move on to consider whether it should make any recommendations to the Standards Committee relating to process or any other matters to assist in future.
- 17(b) If the Sub-Committee decides that the subject Member has failed to follow the Code, it will consider any verbal or written representations from the Investigating Officer and the Member as to:
 - § Whether the Sub-Committee should apply a sanction;
 - What form of sanction should be taken.
18. The Sub-Committee may question the Investigating Officer and Member and take legal advice, to make sure they have the information they need in order to make an informed decision.
19. The Sub-Committee will then withdraw to deliberate in private to consider whether to impose a sanction on the Member, and if so, what the sanction should be (see paragraph 22 below).
20. The Sub-Committee will then return and the Chairman will announce their decision.
21. The Sub-Committee will consider whether it should make any recommendations to the Standards Committee relating to the process or any other matters to assist in future.
22. The sanctions available to the Sub-Committee are:
 - (i) Censure the Member.
 - (ii) Restrict the Member's access to the resources of the Council for up to 6 months, which could include limiting their access.
 - (iii) Suspend or partly suspend the Member for up to six months on the condition that the suspension will end if the Member apologises in writing, receives any training, or takes part in any conciliation that the Standards Sub-Committee orders them to. Conciliation involves an independent person helping the relevant people to try to reach an agreement on the matter set out by the Sub-Committee.
 - (iv) That the Member submits a written apology in a form specified by the Standards Sub-Committee.

- (v) That the Member undertakes such training as the Standards Sub-Committee specifies.
- (vi) That the Member participates in such conciliation as the Standards Sub-Committee specifies.

Sanctions may start immediately or up to 6 months after the hearing, if the Sub-Committee wishes.

- 3.5 The Legal Adviser to the Sub-Committee will have available at the hearings examples of the sanctions imposed by other authorities, Standards Sub-Committees, in case these are helpful in assisting the Sub-Committee at this stage of the process further advice is given in paragraph 4.4 below.

4. Legal Implications

- 4.1 The Sub-Committee will be advised at the hearing by the Head of Legal Services. A copy of the procedure attached to this report has been sent previously to Councillor Burbridge. A note reproducing the procedure, set out in paragraph 3.4 of this report, will be tabled at the meeting as a separate document to assist everyone present.
- 4.2 The Sub-Committee may take legal advice, in private if necessary, from its Legal Adviser at any time during the hearing or while they are considering the outcome. A summary of any legal advice will be given to the subject Member and Investigating Officer, if present.
- 4.3 The Sub-Committee should consider carefully if it should conduct the hearing in public or private. The Sub-Committee can decide to conduct all of the hearing in private having excluded the press and public in accordance with the Local Government Act 1972 – Schedule 12A – Information presented to a Standards Sub-Committee set up to consider any matter under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008. However, Standards Board guidance suggests that, if at all possible, the hearing should be heard in public.
- 4.4 When deciding on a sanction, if it is regarded as necessary or appropriate, the Sub-Committee should ensure that it is reasonable and proportionate to the breach. Other considerations should include:
- What was the Members' intention?
 - Did the Member know that they were failing to follow the Code?
 - Did the Member get advice from Officers before the incident and was that advice acted on or ignored in good faith?
 - Has there been a breach of trust?

- Has there been financial impropriety?
- What was the result of failing to follow the Code?
- What were the potential results of the failure to follow the Code?
- How serious was the incident?
- Does the Member accept they were at fault?
- Did the Member apologise to the relevant people?
- Has the Member previously been warned or reprimanded for similar misconduct?
- Has the Member failed to follow the Code before?
- How will the sanction be carried out? For example, who will provide the training or mediation?

**If you have any queries about this Report or wish to inspect any of the Background Papers, Please Contact:
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Background Papers

- **Standard Board Guidance**