

Executive Summary and Recommendations

Title of Report: **Consideration of an Investigation into a Complaint
Against Councillors Barbara Grahame and Aziz Toki**

Date: **15 December 2009**

1. Summary of this Report

- 1.1 This report sets out the process to be followed at this meeting and a summary to the pre-hearing process.
- 1.2 The procedure to be followed is summarised in paragraph 3.5 and set out in full in Appendix 1.
- 1.3 The meeting of Sub-Committee (Hearing) is required following the decision of the Sub-Committee No ? which met on 16th November 2009 and considered the Investigation Officer's report regarding the complaint that Councillors Grahame and Toki breached the Code of Conduct. The decision of that meeting was that the matter would be considered by this meeting in accordance with Regulation 18 of the Standards Committee (England) Regulations 2008.
- 1.4 The Investigating Officer's report is attached as Appendix 2. At this stage the report is exempt from publication and has thus been circulated separately for members of the Sub-Committee and relevant officers only. Details of the complaint are set out in paragraph 1 of that report. The written response submitted by Councillors Grahame and Toki is attached as Appendix 3.
- 1.5 A summary of the results of the pre-hearing process is set out in paragraph 3.3 of this report.

2. Recommendations

- 2.1 That the Sub-Committee give consideration to the content of paragraph 4.4 of this report and determine if, under Section 100 (A) (4) of the Local Government Act 1972 (as amended), the public and press be excluded from the meeting because it would involve the likely disclosure of exempt information, namely 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.
- 2.2 That consideration be given to the request from Councillors Barbara Grahame and Aziz Toki that Councillor Paul Dimoldenberg represent them at the hearing (see paragraph 4.2).

- 2.3 That, having conducted the hearing, the Sub-Committee reach a decision as to whether either or both Members have failed to follow the Code of Conduct and if there is such a breach then whether any sanction should be imposed.
- 2.4 That the Sub-Committee indicate if there are any issues associated with the process which they would like referred to the Standards Committee for review.



City of Westminster

Committee Report

Item No:	
Date:	15 December 2009
Classification:	Not for publication
Title of Report:	Consideration of investigation into a complaint against Councillors Barbara Grahame and Aziz Toki
Report of:	Head of Legal Services
Wards involved:	None
Policy context:	High Ethical Standards
Financial summary:	There are no financial implications
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3. Background Information

- 3.1 The Standards Sub-Committee on 14 July 2009 decided that Councillor Caplan's complaint, that Councillors Grahame and Toki 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, including the supporting evidence, was sent to Councillors Grahame, Toki on 27 October 2009. The report was also sent to Councillor Caplan as the complainant. In accordance with the Standards Committee (England) Regulations 2008, the hearing must be held within 3 months of the date that the investigation was completed, ie by 27th January 2010. The Investigating Officer's report 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 attached as Appendix 1. In the event that the Sub-Committee determine under recommendation 2.1, that the hearing be conducted in public, then copies of this report and Appendices 2 and 3, but not the evidence bundle, will be made available to the public.
- 3.3 The rules of procedure agreed by the Standards Committee on 14 July 2008, and subsequently amended by the chair of the Standards Committee in August 2008, are attached as Appendix 1. Paragraph 11 sets out the details of the pre-hearing process. The Clerk to the Committee wrote to Councillors Grahame and Toki on 18 November as part of the pre-hearing process. The responses are summarised below:
- As part of the pre-hearing process, Councillors Grahame and Toki have indicated that they wish to be represented at the hearing by Councillor Paul Dimoldenberg.
 - Councillors Grahame and Toki have confirmed that they will attend the hearing. They also confirmed that they are happy for the hearing to be heard in public and for the papers to be in the public domain.
 - The pre-hearing process invited Councillors Grahame and Toki to disagree with any of the findings of fact. On their behalf Councillor Dimoldenberg has raised some issues with the contents of the Investigating Officer's report and submitted additional evidence which was not previously submitted by either Councillors Grahame or Toki. However, neither Councillor has indicated whether they disagree with the findings in paragraph 8 which conclude that they have breached the Code of Conduct. The submissions are attached as Appendix 3.
- 3.4 The procedure for the conduct of the hearing is set out in paragraphs 12 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, 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. Consideration of the request of Councillors Grahame and Toki to be represented by Councillor Dimoldenberg.
5. Representations from the Investigating Officer and/or Councillor Grahame and Toki as to the reasons why the Sub-Committee should exclude the press and public (NB: Both the Investigating Officer and Councillors Grahame and Toki have indicated that they are happy for the matter to be heard in public and for the documents to be made available).
6. Determination as to whether to exclude the press and public (see recommendation 2.1 above).
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.
10. Questions of witnesses called by the Investigating Officer. (No witnesses are being called).
11. The Members, or their representative, will be invited to make representations, calling supporting witnesses as agreed by the Chairman. (The Members wish to call Mrs Jean Fraser, Councillor Melvyn Caplan and Councillor Mehfuz Ahmed)
12. Questions of the Members' witnesses and the Members 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 Members are found to have breached the Code of Conduct any sanction to be imposed.
16. On their return, the Chairman will announce the Sub-Committee's decision as to whether the subject Members have failed to follow the Code and if there is a breach of the Code of Conduct any sanction to be imposed.
17. 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.
18. 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.

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 Councillors Grahame and Toki. 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 Standards Committee (England) Regulations 2008. provide for complainants to be represented by either a Solicitor or a Barrister. In the event that they ask to be represented by someone else the consent of the Sub-Committee is required.
- 4.3 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 Members and Investigating Officer, if present.
- 4.4 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 Schedule 12A of the Local Government Act 1972 (as amended) However, the Standards for England guidance suggests that, if at all possible, the hearing should be heard in public.
- 4.5 If either or both members are found to have breached the code, when deciding on whether to impose a sanction, the Sub-Committee should ensure that it is reasonable and proportionate to the breach. Other considerations should include:
 - What were the Members' intentions?
 - Did the Members know that they were failing to follow the Code?
 - Did the Members 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?
 - Do the Members accept they were at fault?

- Did the Members apologise to the relevant people?
- Have the Members previously been warned or reprimanded for similar misconduct?
- Have the Members 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**