

Reigate and Banstead Borough Council
Standards Hearing Sub-Committee
27th January 2011
Hearing Process Summary and Decision Notice
Alleged breach of the Code of Conduct
Councillor Michael J Selby

Introduction

- R&B reference: 08462- 2009/01
- Date of Investigator's report: 22nd July 2010
- Date report was received: 26th July 2010
- Name of member: Michael J Selby
- Relevant authority concerned: Reigate and Banstead Borough Council
- Name of investigator: Karen Tricky Solicitor – Originally Associate at Michelmores LLP but latterly Principal Solicitor to West Oxfordshire District Council- appointed by the Council's Monitoring Officer on 18th March 2010
- Date of the hearing: 27th January 2011
- Names of Standards Hearing Sub-Committee members present at the hearing:

Chairman:	Mr. Broadbent
Vice Chairman:	Mrs. Armstrong
Member:	Councillor Mrs. Turner
- Name of the Legal Adviser to the Standards Committee: Miss A Coronel
- Name of the Clerk of the Hearing: Mr. C Cook

Section 1: Preliminary documents

This is the section where you should record the matter to be considered by the standards committee, and also summaries the allegation.

- 1.1 The complaint was received on 18th November 2009 and was considered by a Standards Assessment Sub-Committee on 14th December 2009 and then by a Standards Review Sub-Committee on 4th March 2010. The latter, having concluded that a breach of the Member Code of Conduct may have occurred, instructed the Monitoring Officer to undertake an investigation.
- 1.2 On 18th March 2010 the Monitoring Officer instructed Karen Tricky (Solicitor) Associate with Michelmores LLP to investigate the matter and prepare a formal report for consideration by the Council's Standards Committee. The investigator's report concerns possible breaches of the Code of Conduct as set out below.
- 1.3 The allegation was that Councillor Selby failed to comply with the Council's Code of Conduct in that-

"He consistently behaved in a rude, inappropriate and intimidating manner bordering on harassment towards the complainant, visitors to the complainant's home and his family in connection with their parking outside the complainant's home, which is situated opposite the home of Cllr Selby."
- 1.4 Under paragraph 5(7)(d) of the Regulations, the investigator's report was referred to the Standards Hearing Sub-Committee ("the Sub-Committee") for consideration and a determination as to whether a breach had occurred and what if any penalties should be imposed, in accordance with the Regulations. A Sub-Committee was convened on 27th January 2011 to address these issues.

Section 2: Oral and written submissions (procedural matters)

In this section, you should record any decisions on procedural matters by the standards committee, for example, whether it was decided that the hearing, or part of the hearing, should be held in private.

- 2.1 That the hearing should be held in public.
- 2.2 No other decisions were required or taken.

Section 3: Findings of fact

In this section you should record whether the facts are disputed, any submissions on facts given, and the standards committee's findings of fact.

- 3.1 No decision was required on “findings of fact” as no facts were in dispute.

Section 4: Decision on whether the Code was breached

In this section, you should record the summary of all the submissions given by both the subject member and the investigating officer or their representative, as well as the standards committee's decision as to whether there has been a breach.

It is vital that the decision as to whether there was a failure to comply with the Code of Conduct is supported by reasons. Failure to provide reasons could be a ground for appeal.

- 4.1 The submissions by Cllr Selby are set out in **Annex 1**.
- 4.2 The submissions by the Investigator are set out in her report, which formed part of the agenda papers. No additional submissions were made at the hearing.
- 4.3 The Sub-Committee reached the following decision, (the essence of which was made known at the hearing), taking into account the submissions of the parties.

Did the Code apply to his actions?

- i) The Sub-Committee concluded that it was clear from the documented evidence that at certain times Councillor Selby considered that he was acting in his capacity as a councillor, for the reasons set out in the Investigator's report and particularly paragraphs 6.2 – 6.10
- ii) Therefore the actions taken by Councillor Selby were covered by the Members' Code of Conduct.

Were any of the 6 alleged breaches proved?

- i) As regards to the six alleged breaches, the Sub-Committee concluded that two were proved and for the following reasons-

Paragraph 3(1) of the Code - Failing to treat others with respect.

- The information contained in the Investigator's report was compelling, and in particular the conclusions reached in paragraphs 6.9 and 6.10.
- There was uncontested evidence that following notification of the complaint regarding the use his premises, as to the impact of parking by visitors and employees, the Complainant took actions to ensure they parked more considerately, and yet Councillor Selby continued his intrusive monitoring.

Paragraph 5 of the Code - Councillor Selby conducted himself in a manner which could reasonably be regarded as bringing his office into disrepute.

- The information contained in the investigator's report was compelling, and in particular the conclusions reached in paragraphs 6.16 – 6.18.
- Councillor Selby made no comments whatsoever to indicate that a breach of this paragraph had not occurred.
- Councillor Selby had failed to respond in a timely way to requests made during the pre-hearing procedure, despite numerous reminders. His health concerns were acknowledged and accounted for some delays. However, it had led to some additional and unnecessary preparation being required for the hearing by the Investigator, the Monitoring Officer and the Sub-Committee by his lack of timely response to the pre-hearing procedure.

ii) Whilst no other parts of the Code were considered to have been breached, the Sub-Committee had strong concerns as regards **Paragraph 3(2)(b), namely the allegation that Councillor Selby's behaviour amounted to bullying** and commented as follows-

- This accusation caused the most deliberation and the Sub-Committee believed it to be a borderline case. Whilst the Sub-Committee concluded that on balance the behaviour did not amount to bullying based on the Standards for England Guidance, nevertheless it was significantly serious to warrant further comment.
- The Sub-Committee considered that Councillor Selby's behaviour was-
 - Unacceptable and unreasonable for all the reasons set out in relation to the breach of paragraph 3(1) of the Code

- Was a form of harassment and bordered on intimidation, given that he held himself out to be acting a councillor and therefore would be viewed as being in a position of some influence.
- As such the Sub-Committee strongly recommended that this behaviour should cease immediately.

Section 5: Sanctions

You should include this section if there was a breach of the Code.

In this section you should record a summary of the submissions given by the subject member or investigating officer or their representative, as well as the committee's decision as to the sanction (if any).

This includes written evidence not dealt with in the report and any oral evidence given at the hearing relevant to what sanction, if any, ought to be imposed.

- 5.1 A summary of the submissions made by the Investigator, as to the appropriate sanctions, are set out in **Annex 2- Part 1**.
- 5.2 A summary of the submissions made by Cllr Selby, as to the appropriate sanctions, are set out in **Annex 2 – Part 2**.
- 5.3 The Sub-Committee reached the following decision after considering the submissions of the parties, which was made known at the hearing and reflect the seriousness of the issues and Cllr Selby's apparent lack of remorse:
 - i) Within two weeks, an unreserved written apology, which must be acceptable to the Sub-Committee, should be sent to the complainant.
 - ii) If that apology is not forthcoming then Councillor Selby will be suspended as a Member of the Council for a month.
 - iii) Councillor Selby is required to attend training as arranged by the Council's Monitoring Officer on the Code of Conduct at his own expense; and
 - iv) Until Councillor Selby has completed that training to the satisfaction of the Monitoring Officer, he will be suspended from being a Member of the Planning Committee or attending any meetings arranged of it either as a Ward Councillor or in any other public capacity.
- 5.4 It was confirmed that a full written decision would be sent to all parties as soon as possible and in any event within the next 10 working days.

5.5 The Standards Committee's reasons for deciding to impose the sanctions are set out in **Annex 3**, which details the deliberations of the Committee and reasons for the imposition of the sanctions.

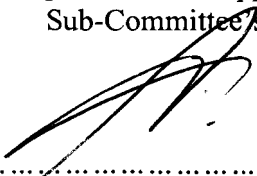
5.6 The sanctions are to take effect from the date of this decision notice.

Section 6: Right to appeal

You should include this section if either the standards committee have decided that the Code has been breached, or that that breach has led to a sanction being imposed.

6.1 Cllr Selby has the right to apply in writing to the president of the Adjudication Panel for England for permission to appeal the standards committee's finding.

6.2 The president of the Adjudication Panel must receive written notice requesting permission to appeal within 21 days of the member's receipt of notification of the Sub-Committee's finding.


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Mrs J Broadbent
Chairman of the Standards Committee

Dated: 7.02.2011

ANNEX 1
ADDITIONAL SUBMISSIONS BY CLLR SELBY
AS TO WHETHER THE CODE HAD BEEN BREACHED?

NOTES-

- i) *Paragraph numbers refer to those in the Investigators Report*
- ii) *This is not a verbatim note of what was said but captures the issues and comments made by Cllr Selby both as part of his submissions at the hearing and also in response to questions by the Sub-Committee members*

1. Para 5.2(x)

- I do not dispute the facts, but vehicles were parked by Mr Reeves, the Complaint (Mr R), and generally, opposite my property, which was inconsiderate.
- There were other places they could have parked.

2. Para 5.1(y)

- (Referred to vehicle used by an employee of Complainant) Why did Mr R not exercise greater control over the vehicles and where they were parked?
- That would have limited my stress and the problems caused. Mr R could have done this earlier but did not.

3. Para 6.5

- I just happen to be a resident: any member of the public would have got upset or could have reported it.

4. Para 6.11

- I agree the conclusions of Ms Trickey re bullying – at no time have I used bad or insulting language to Mr & Mrs R or otherwise.
- Therefore, there was no breach.

5. Para 6.13

- There was no intimidation or interference with witnesses at all.
- Therefore there was no breach of that at all. I agree the Investigator's finding.

6. Para 5.1 (h) and Para 6.19

- I never tried to further my own private interests – I always kept to that and did not seek any private gain whatsoever
- No preferential treatment was given to me. I was treated as any other member of public would be
- I agree there was no breach

7. Para 5.1(q)

- As to my taking photographs, I appreciate it may upset some people and could be seen as harassment.
- That was not my intention.
- I have taken photos for many years in my Ward, for example, for flooding and drainage problems. Therefore, this is nothing new.

- As soon as the PCO asked me to stop I did, other than the photo of 36 Ruden Way that was to be demolished. I took it as an historical record

8. Para 6.8

- This says that I did not treat Mr Reeves and others with respect – I think I do.
- I think borderline case as-
 - Photos – I ceased taking them when told to so. I did comply and was reasonable
 - Notes on cars – I stopped when told not to
 - I did not contravene any request when instructed not to take certain actions

9. Para 6.17

- Did not originally know if there was a breach of planning control. I knew there was a business being run from Mr R's property.
- The Enforcement team of the Council rely on residents to help them with evidence
- I refer to the Council Guidance for the public as how to notify the Council and report a concern about a breach of planning control
- I spoke to the Enforcement team
- There can be no objection to considering the document as it is a public document and refers specifically encourages the taking of photos.
- I think it is a gray area as to whether I did anything wrong because it was the parking of vehicles that triggered my concern that there was a breach of planning control.
- I did not think I'd done anything wrong as -
 - I Called at their property and apologised
 - I did not slam my door and tried to explain why I had closed it on Mrs R
 - Their response was that they could park their cars where live and it's not unlawful. I agree that is true but it showed no consideration for others
 - The access to my drive contains humps and is difficult access due to tree roots
- I do not feel I failed to treat others with respect. For example,
 - After investigation closed at the end of July, I took in a parcel for Mrs Reeves and did so as a gesture of kindness, despite our ongoing dispute. I took it over and she thanked me.
 - That was a gesture of kindness and consideration.
- I do not think I breached the Code and, if I did I am sorry but it was unintentional
- I do not feel I caused distress or disturbance or that photos being taken would cause someone to take medication
- Taking registration numbers was what I was instructed to do as part of the advice I was given subsequent to report of my complaint about the breach of planning control.
- If the Enforcement team had said the investigation was completed, I would have stopped but I was only told in August – at that time my monitoring ceased.

10. In answer to questions by members of the Sub- Committee-

- The report and my statement say I was still taking photos in August and beyond but that must mean I was in error about the date I knew of the decision about the planning enforcement investigation. I took no more photos after that point in time, or after the PCO told me not to
- To clarify whether duty or personal interest were the reasons for his actions-
 - I live opposite Mr R and couldn't ignore what seemed a breach of planning control. I had a "bird's eye view" and like the "man on the Clapham Omnibus" needed to understand if that was unusual activity.
 - I couldn't say nothing and residents came to me for advice and help
 - If I perceive there is a problem, I report it on behalf of residents but don't use my position / add weight to get a particular decision from the Council
- As regards flooding in the Ward, I probably took as many photos as I did with Mr R that is about 2 rolls of photos for flooding so similar to parking and not excessive.
- I was informed that the decision as to the business activity was made in August 2009 and did still take photos, even though the decision said planning permission was not required. That was because the letter also said that if the situation changed it could be investigating further. There is a difference between theory and practice
- Para 17- I did not apologise to Mrs R for several days but have no straight answer – maybe I was collecting my thoughts or had other evening meetings to attend?
- I asked what was in the vans of employees – that seemed a natural question to ask. I was part of Neighbourhood Watch many years ago, and maybe more cautious? If vehicles are there all day it sends "alarm bells" and I was curious.
- I did not know who owned the vehicles. I just knew there was a rise in vehicle activity way above what was expected of a residential property.
- The number of commercial vehicles was not right or normal for a residential household
- I didn't contact the police as another resident did and found out who owned it. I thought it belonged to gardeners doing work to another property, belonging to an elderly neighbour

11. Photos taken by Cllr Selby were circulated showing his drive as well as the originals of provided by Mr R and referred to in his statement.

12. Cllr Selby also submitted a report of the inspection of his car in March 2009, following it having "grounded" as he used the crossover to his drive in 2009. It clearly stated there was no damage to the vehicle, but Cllr S maintained that the Oak tree on verge had caused his crossover and drive to lift and he was concerned about access to his drive and need to take extra care.

ANNEX 2
SUBMISSIONS AS TO THE APPROPRIATE PENALTY TO BE IMPOSED?

Note- This is not a verbatim note of what was said but captures the issues and comments made by the parties

PART 1
SUBMISSIONS BY THE INVESTIGATOR

1. Sanctions range from censure to suspension
2. To Cllr Selby's credit –
 - He has been a Councillor for more than 20 years and has not been the subject of any previous allegation of breach
 - He takes his role seriously
 - It is important to him that he represents those in his Ward, though that may only be a few in this case and has spent considerable time on the matter
3. Of concern are the facts that-
 - Even after being told that there was no longer a breach of planning control he continued his own evidence gathering
 - He was warned by the police that his behaviour was unacceptable but ignored them in part
 - He was also warned by other Councillors in the same way but ignored their advice
 - He continued to monitor parking even after Mr & Mrs Reeves had taken actions try and alleviate the problems
 - His taking of notes and photographs was disrespectful and a form of harassment
4. Whilst Cllr Selby has indicated that he does not believe he has done anything wrong, there is no indication that he will fail to accept the Sub-Committee's decision.
5. Cllr Selby has indicated that he would give an unreserved apology to Mr and Mrs Reeves and they are happy to accept one provided there is no repetition of the behaviour that led to their complaint
6. The recommended sanctions were-
 - That Councillor Selby give an unreserved apology in writing within 2 weeks
 - If he fails to give that apology he be suspended for 1 – 2 months
 - Councillor Selby should be required to undertake training on the implications of the Code to ensure that there is no repeat of the behaviour that gave rise to the breaches found by the Sub-Committee

PART 2
SUBMISSIONS BY COUNCILLOR SELBY

1. Clearly there has not been a finding in my favour
2. Training requirement-
 - I have attended training on Planning and the Code of Conduct already.
 - I am prepared to have more training to understand better how the code works, as I currently have an overview only and not a detailed understanding of the mechanics.
 - I am not entirely familiar with the application of the Code and that would be beneficial
3. I am prepared to make a written apology. I regret what has happened and am sorry that it has got to this situation.

ANNEX 3
PENALTY TARIFF CHECK LIST

Code failure	Code para.	Assessment of Breach				
		Low 1	2	3	4	High 5
To treat others with respect	3(1)	3				
		<ul style="list-style-type: none"> - He was not abusive or aggressive - He continued his behaviour after repeatedly being asked and advised to stop - He clearly had a “personal and prejudicial” interest in the actions he was taking as a Councillor and held himself out to be acting as a Councillor throughout - He did not appear to be able to appreciate the impact his actions were having on his neighbours yet expected them to understand the stress theirs was having on him - His consistent and continued monitoring of his neighbours in that context was itself indicative that he did not respect their position, even when no breach of planning control had been proved 				
Not to bully any person	3(2)(b)	Not Proved				
		<ul style="list-style-type: none"> - But bordered on intimidation and harassment - The above issues were of concern 				
Not to intimidate or attempt to intimidate any person who is likely or is likely to be a complainant	3(2)(c)(i)	Not Proved				
Conducted himself in a manner which could reasonably be regarded as bringing his office into disrepute	5	2				
		<ul style="list-style-type: none"> - Representations and submissions had only been made by the Investigator - Cllr Selby had made none at all in relation to this breach - His submissions as regards penalties clearly indicated his lack of understanding as to the application of the Code to his behaviour 				

Used his position as a Member to improperly confer on or secure for himself or any other person, an advantage or disadvantage	6(1)	Not Proved
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TARIFF CALCULATION

Total possible Tariff score – breaches identified	10
Total Tariff scored-	5
Reduction for Apology Given (Scale 1-5) i) Cllr Selby did not appear remorseful ii) This was apparent from his submissions iii) He only said he was “prepared” to give an apology iv) He did not make one verbally at the Hearing	1
Reduction for other mitigating factors (scale of 1-5) None	0
Total tariff score less reductions agreed by the Committee	4
Overall Tariff score % - ie: Total tariff scored as a percentage of the total possible tariff score	40%

PENALTIES AGREED

Penalty Imposed
Suspend/partly suspend the Member for up to 3 months on condition that the suspension will cease if a written apology is made
<ol style="list-style-type: none"> 1. Cllr Selby to provide an unreserved apology within 2 week, that apology to be to the satisfaction of the Sub Committee members 2. If he fails to do so he will be suspended for 1 month 3. Cllr Selby to be suspended as a member of The Planning Committee and from attending as a Ward Councillor or in any other public representative capacity until he has undergone training on the Code to the satisfaction of the Monitoring Office
Other penalties or requirements to be specified eg training
To attend training on the Code at his own expense, such training to be organised by the Monitoring Officer