

COUNCIL

25 NOVEMBER 2010

REFERRAL FROM HEARINGS SUB COMMITTEE OF STANDARDS COMMITTEE

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Summary

This report advises the Council of a recommendation from the Hearings Sub Committee of the Standards Committee relating to the appointment of Councillor Brice to Committees and other bodies on which the Council is represented.

1. Budget and Policy Framework

- 1.1 The Standards Committee and its Sub Committees have responsibility for the assessment, review and determination of complaints about member behaviour where it is alleged that a breach of the local code of conduct has occurred. The Committee and its Sub Committees may make recommendations to the Council arising from the consideration of specific complaints.

2. Background

- 2.1 On 10 November 2010 the Hearings Sub-Committee of the Standards Committee conducted a hearing into a complaint that Councillor Brice breached the Members' Code of Conduct.
- 2.2 In reaching a decision on this case the Sub Committee agreed to recommend the Council to agree that Councillor Brice should not be appointed to any committees, or to substitute on any committees, or to represent the Council in any way.

3. Report

- 3.1 On 10 November 2010 the Hearings Sub Committee of the Standards Committee conducted a hearing into a complaint that Councillor Brice breached the Members' Code of Conduct by actions, which culminated in Councillor Brice accepting a Police Caution on 2 November 2009 for kerb crawling. The paragraph of the Code identified as potentially having been breached was paragraph 5, which states, "you must not conduct yourself in

a manner which could be reasonably regarded as bringing your office or authority into disrepute”.

- 3.2 The finding of the Investigating Officer in this case was that there had not been a breach of paragraph 5 of the Code of Conduct as the activities complained of were undertaken by Councillor Brice in his private capacity. The Investigating Officer advised that under current law in England, applying now and at the time of the incident complained of (in November 2009), the matter could be taken no further under the Standards regime as it related to activity by Councillor Brice in his private capacity. Such a matter is not currently covered by the Members’ Code of Conduct.
- 3.3 The relevant extract from the published findings and decision of the Hearings Sub-Committee is as follows:

“The Sub-Committee’s decision on whether or not there has been a breach of the Code.

The Sub-Committee reached the following decision after considering the submissions of the parties:

That at the time of the incident in November 2009 there was no evidence to prove that Councillor Brice was not acting in his private capacity. As a result, the Sub-Committee were unable to find a breach of the code of conduct.

Sub –Committee recommendations

The Sub-Committee found Councillor Brice’s behaviour in relation to this incident unacceptable, and considered that Councillor Brice should resign from the Council. The Sub-Committee accepted that this was a matter for Councillor Brice, but felt that his behaviour had brought both him and the Council into disrepute. The Sub-Committee believed that he had acted improperly and without integrity, in breach of the principles of public life, and that he had shown a serious lack of judgment.

The Sub-Committee took into account the views of the Director of Childrens Services, and recommended to the Council that Councillor Brice should not be appointed to any committees, or to substitute on any committees, or to represent the Council in any way.

The Sub-Committee were of the opinion that the law should be altered to cover actions such as this, when carried out by a councillor in any capacity, and agreed to write to the Secretary of State to bring this to his attention.

Reasons for decision:

The Sub-Committee noted that Councillor Brice had accepted a Police Caution and that this was not classified as a criminal conviction. Therefore Paragraph (4) of the Code of Conduct did not apply in this case. The Sub-Committee considered the findings of the decision of Collins J in *Ken Livingstone v The Adjudication Panel for England* (2006). This ruling decided that Section 52 of the Local Government Act 2000 required

Members to comply with the Code of Conduct in their official capacity only and that it did not extend to their private conduct.

The Sub-Committee carefully considered the verbal and written representations from all parties in relation to whether Councillor Brice was acting as a representative of Medway Council at the time of the incident and prior to the incident when he attended a political party fund-raising event and transported other guests to and from the event.

The Sub-Committee considered that there was no evidence to prove that Councillor Brice was not acting in his private capacity and therefore could not find a breach of the code of conduct in this case.”

- 3.4 The Council is asked to consider and respond to the recommendation of the Hearings Sub-Committee that Councillor Brice should not be appointed as a member or substitute member on any Committees or be appointed to represent the Council in any way.
- 3.5 Currently Councillor Brice does not have seats on any Committees, Sub-Committees or outside bodies to which the Council makes appointments.

4. Financial, legal and risk implications

- 4.1 The recommendations in this report are consistent with provisions in the Local Government Act 2000, the Standards Committee (England) Regulations 2008 and associated guidance issued by Standards for England which permit the Standards Committee and its Sub Committees to make recommendations to the Council on issues arising from the consideration of specific complaints about member conduct.
- 4.2 The establishment of, and appointment of members to Committees has to be undertaken by the Council in accordance with sections 101 and 102 of the Local Government Act 1972 and section 15 of the Local Government and Housing Act 1989 (which requires seats on committees to be allocated in proportion to the size of the political groups represented on the Council). Appointments to seats on Committees have to be made in accordance with the wishes of a political group to whom the seats have been allocated. Members who do not belong to a political group have no entitlement to any seats on Committees. Appointments to outside bodies are a matter for Council or the Chief Executive under his delegated authority. With the exception of those bodies where political balance or the formulation of membership is prescribed, established practice in Medway is for places on outside bodies to be allocated to reflect the political balance on the Council. As such, appointments to outside bodies are made in accordance with the wishes of the political groups to whom places have been allocated (but they do not need to be allocated in this way).
- 4.3 As Councillor Brice is not a member of a political group, the Council can resolve not to appoint him to any Committees or as a substitute. If Councillor Brice were to become a member of a political group at any time, then the Council would be bound by the wishes of that group in respect of appointments to the seats allocated to that group.

5. Recommendation

- 5.1 The Council is asked to consider a recommendation from the Hearings Sub Committee of the Standards Committee that Councillor Brice should not be appointed to any committees, or to substitute on any committees, or to represent the Council in any way.

Lead officer contact

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Background papers

Decision notice of the Hearings Sub-Committee held on 10 November 2010