



Haringey Council

**COMPLAINT BY COUNCILLOR REITH AGAINST COUNCILLOR AITKEN –
LOCAL REFERENCE SC3/089**

LONDON BOROUGH OF HARINGEY – STANDARDS COMMITTEE –
DETERMINATION HEARING PANEL – THURSDAY 22 OCTOBER 2009

PANEL CHAIR – MS RACHEL CHAMBERS – INDEPENDENT MEMBER

MEMBERS OF HEARING PANEL – CLLRS DODDS AND WINSKILL AND
MS C. SYKES, INDEPENDENT MEMBER AND MR J. BATTERHAM,
INDEPENDENT MEMBER

ROSEMARY LANSDOWNE DEPUTY MONITORING OFFICER – LEGAL
ADVISER TO THE COMMITTEE

TERENCE MITCHISON ON BEHALF OF THE INVESTIGATION OFFICER
– E. JARRETT

MR COOPER SOLICITOR OF EVERSHEDES, REPRESENTED
COUNCILLOR AITKEN

CLERK TO STANDARDS COMMITTEE – CLIFFORD HART

DATE OF HEARING – THURSDAY 22 OCTOBER 2009

TIME OF HEARING – COMMENCING AT 10.00AM

LOCATION OF HEARING – HARINGEY CIVIC CENTRE, HIGH ROAD,
WOOD GREEN, N22

**Notice of Finding of Standards Determination Hearing
relating to Cllr Ron Aitken.**

On Thursday 22nd October 2009, the Standards Committee – Determination Hearing Panel (“the Panel”) - considered a complaint by Councillor Lorna Reith that alleged that Councillor Ron Aitken breached the Code of Conduct by:

- 1) firstly giving a confidential report to Councillor Oakes; and
- 2) secondly by colluding with Councillor Oakes to send a confidential report to a journalist with the Evening Standard.

The Panel considered as a preliminary point of law whether in fact the Panel could consider the matter as consisting of two separate breaches of the Code of Conduct.

Mr Cooper on behalf of Councillor Aitken submitted that the Panel could not hear and determine the first issue because the investigating officer had not covered the point in her initial investigation of the Matter and because the original allegation by Councillor Lorna Reith only related to the second issue in any event. He further submitted that the first issue was only added as an after thought at the previous hearing of the Standards Committee and had never been part of the original complaint.

Mr Mitchison submitted that an allegation/complaint could be a series of inter-related events and these could be considered as separate breaches of the Code of Conduct.

The Panel adjourned to consider this preliminary matter.

The Panel made the following decision:

The Panel looked at The Standards Committee (England) Regulations 2008 and at the Local Government Act 2000, section 57(a).

The Panel noted that the meaning of ‘matter’ is defined at paragraph 9 of the Regulations and that paragraph 17(b) of the Regulations to which the Panel was referred states that “the matter” as defined, “should be considered at a Hearing by the Standards Committee”.

Looking at paragraph 9 of the Regulations, the exact wording is:

“ matter, in reference to section 57(a) of the Act means a written allegation made under sub-section (1) of that section”

So the “matter” (*for determination by the Panel*) is the original complaint by Cllr Reith, which is at page 103 of the bundle.

The Panel did not expect the complaint to be in technical legal language, but rather to set out the general concerns (of the complainant). The Panel therefore felt that the matter could be a series of events which, if proved, could constitute separate breaches of the code at each stage. The Panel was therefore going to look, as potential separate breaches, at firstly Cllr Aitken giving the report to Cllr Oakes and secondly as a separate matter whether they colluded in the transmission of the document to the press. Just for clarification, the Panel therefore did not find that the ‘matter’ was Evelyn Jarrett’s conclusions (or the investigation report) but was simply what the original complaint said.

The Panel heard evidence from Terence Mitchison on behalf of the Investigating Officer. Cllr Aitken gave evidence in person and was represented by Mr Cooper – his solicitor. Councillor Allison gave evidence on behalf of Councillor Aitken and Councillor Gorrie sent a written statement in support.

The panel made the following determination:

The Panel considers that paragraph 4(a) in particular sub-sections (i) and (iv) were the relevant section of the Code of Conduct.

The Panel heard that one key fact in this matter was not in dispute, namely that Cllr Aitken gave the confidential report to Cllr Oakes.

There were, however, a number of facts in dispute, the main one being whether or not there was collusion between the two councillors to send the confidential report to journalists.

In relation to the first allegation, the Panel heard legal submissions and received advice on the law in relation to the ‘need to know’.

The Panel decided that if Councillor Oakes had had a right to see a copy of the confidential report in any event under the common law provisions relating to his ‘need to know’ as a member of the Council, then Councillor Aitken would not have been in breach of the Code of Conduct by giving Councillor Oakes a copy of the exempt report.

The Panel looked at the commentary to the Local Government Act 1972 as set out in the encyclopedia of local government law, in particular page 2108/8 and read the part that said ‘if not a member of the specific committee, the Councillor has to show cause why sight of the document is necessary to perform his or her duties’.

The Panel then attempted to apply the need to know test and found it had insufficient evidence before it to determine one way or the other whether Cllr Oakes had a ‘need to know’ the contents of the exempt report in order to satisfactorily perform his duties as a member of the Council.

In any event, the Panel found that there was no breach of the Code of conduct by Councillor Aitken, because the Panel was satisfied that Cllr Aitken had the implied consent of the Council authorising him to give the report to another Councillor pursuant to paragraph 4 (a) (i) of the Code of Conduct.

The Panel decided that consent was implied through custom and practice, whereby if a member turns up to a committee meeting

they can have access to and are usually given a copy of exempt reports even if they are not a member of that committee and if Councillor Oakes had actually attended the committee he would in all probability have been given a copy of the exempt report. Based on the evidence heard by the Panel, it was also custom and practice for members to share exempt reports with each other often applying the need to know test themselves. The Panel noted also that there was no protocol on 'member to member' exempt document transmission.

In relation to the second allegation, the Panel was troubled by the inconsistencies in Cllr Aitken's evidence, for example the emergence of new evidence at the hearing regarding his email account, however the Panel found on the balance of probabilities that collusion between Councillor Aitken and Councillor Oakes had not been shown and therefore the Panel found that there was no breach of the Code of Conduct in respect of this allegation.

The Panel reserved the right to make recommendations to the Council about confidential information and to ask that members receive training on this.

DATE: 23 OCTOBER 2009

**Rosemary J Lansdowne
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for and on behalf of
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