

**NORTHAMPTON BOROUGH COUNCIL**

**ASSESSMENT SUB-COMMITTEE**

Your attendance is requested at a meeting to be held at the Council Chamber on Tuesday, 18 August 2009 at 3:00 pm.

**D. Kennedy**  
**Chief Executive**

**AGENDA**

1. CONSIDERATION OF REPORT INTO COMPLAINTS AGAINST COUNCILLOR WOODS BY MESSRS DICKIE AND WATTS

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**AGENDA STATUS: Public**

Meeting of the Assessment Sub-Committee  
18 August 2009

<b>Report Title</b>	Complaints Against a Member of the Council
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<b>Date of Meeting:</b>	18 August 2009
<b>Directorate:</b>	Chief Executive
<b>Ward(s)</b>	-

**1. Summary**

1.1 The Complainants allege that a Councillor failed or may have failed to comply with the Authority's Model Code of Conduct.

**2. Recommendations**

2.1 That the Sub-Committee considers whether the matter should be referred to the Adjudication Panel for England for determination, or

2.2 That the matter be referred to a separate hearing of the Sub-Committee for determination (on a date to be fixed) and pre-hearing procedures are commenced as soon as possible.

2.3 The Sub-Committee considers whether an exemption applies in respect of Schedule 12 A of the Local Government Act 1972.

**3. Decision on the Complaint**

3.1 On Monday 9 March 2009 the Sub-Committee decided to direct the Monitoring Officer to carry out an investigation of the complaints attached as Appendix 1.

3.2 The Reasons for the Decision:

3.2.1 The allegations, if proved, disclosed three breaches of the Code of Conduct by the Member: it was conduct which could reasonably be regarded as bringing the member's office or authority into disrepute, contrary to paragraph 5; it fell to be assessed as an attempt, contrary to clause 6(a), to use the position as a member improperly to confer an advantage on the member; and it may have breached clause 6(b)(i) as a failure to use the authority's resources in accordance with its reasonable requirements. In all the circumstances,

including the fact that the complaint allegations were prominently in the public domain and had elicited two complaints, the Sub-Committee was satisfied that the allegations were serious and should be investigated.

#### **4. Appointment**

- 4.1 On 3 April 2009 the Monitoring Officer appointed an external investigator, to carry out the investigation of the ethical standards complaints.
- 4.2 On 14 July 2009 the investigator delivered his report dated 13 July 2009 on his investigation. The final version of his report and the appendices are attached at Appendix 2 to this report. The report is exempted from publication pending consideration of the exemption by the Sub-Committee at its meeting.
- 4.3 A copy of the investigation report was sent to the Member on 14 June 2009 and he was given an opportunity to comment on the report's content.
- 4.4 The Sub-Committee now has the task of considering this report and then making a decision under the appropriate section of the Standards Committee (England) Regulations 2008 ("the regulations").

#### **5. Report Background**

- 5.1 Regulations 17 and 18 of the regulations concern the consideration of investigation reports by Standards Committees and the hearing of the Standards Committee that must take place. As one of the report's conclusions is that there has been a breach of the Code of Conduct, the Sub-Committee must, pursuant to Regulation 17 of the regulations refer the matter for consideration at a separate hearing of the Standards Committee. Pursuant to the regulations the hearing must take place within 3 months of the final report dated 13 July 2009, ie on or before 12 October 2009 or as soon as reasonably practicable thereafter.
- 5.2 As an alternative to a hearing the Sub-Committee could decide instead that the matter should be referred to the Adjudication Panel for England for determination.
- 5.3 The Sub-Committee meeting must comply with regulation 17(2)(a) and (b) before deciding to refer the matter to the Adjudication Panel (if they are minded to make that decision). The regulations state that a Standards Committee may only refer the matter to the Adjudication Panel for England for determination if (a) it has determined that the action it could take against the Member would be insufficient were a finding of failure to be made; and (b) the President or Deputy President of the Adjudication Panel has agreed to accept the referral.
- 5.4 The Adjudication Panel have provided guidance on the circumstances in which it would be likely to accept a referral. A copy of the guide is attached at Appendix 3. In the Monitoring Officer's view, the complaint if proved is not so serious as to merit an Adjudication Panel referral. However, this is a matter for the Sub-Committee meeting. If the Sub-Committee meeting concludes that this matter should be referred to the Adjudication Panel for England, then the Monitoring Officer will contact the President of the Adjudication Panel to ascertain whether they are prepared to accept the referral.

## **6. Implications (including financial implications)**

### 6.1 Resources and Risk

The investigation, and the hearing that the Sub-Committee must decide to appoint, will continue to take up the time and attention of the Borough Solicitor and his staff.

### 6.2 Legal

The legal implications are stated in the body of this report.

### 6.3 Other Implications

None Specifically.

## **7. Background Papers**

These are contained within the body of the report and its appendices, as attached to this covering report.

**Report Author and Title:** Nikolas Jacob Solicitor/ Francis Fernandes Borough Solicitor & Monitoring Officer

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Service Improvements

Mr F Fernandes  
Monitoring Officer  
Northampton Borough Council  
St Giles Square  
Northampton  
NN1 1DE  
13 July 2009

Dear Mr Fernandes

**Local Investigations in respect of Councillor Woods**

Enclosed for your attention please find my final report together with the associated appendices. I look forward to hearing from you in connection with the hearing date.

Yours sincerely

Phillip Mears

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**Provisional Findings from Investigation carried out in respect of alleged breaches of Northampton Borough Council's Code of Members' Conduct by Councillor Woods**

**1.0 Details of the allegation**

- 1.1 On 9 January 2009 Northampton Borough Council (NBC) received a complaint from a member of the public concerning Councillor Woods. The complaint stated " It was reported in the Chronicle & Echo on 8 December that Councillor Woods parked his car in the Guildhall car park for two months. He was clearly not on Council business for two months, 24 hours a day and therefore he abused his position as a Councillor to park whilst on Council business. He also avoided paying Council parking charges and thereby caused a financial loss to the Council. In so doing he brought the Council and its Councillors into disrepute as evidenced by the complaint" .
- 1.2 On 23 February 2009 NBC received a written complaint from another member of the public concerning Councillor Woods. The following text is taken directly from the complaint form completed by the complainant . " Councillor Woods abandoned a car without a tax disc in the basement car park of the Guildhall for a period of many weeks. The use of the car park is restricted to members and officers using it for official business only. Councillor Woods used it in effect to 'store' a vehicle - whether waiting for repairs or to be re-taxed for an unacceptable period of time - embarrassing other elected members and employees of NBC. It was an action that became public knowledge and added to lowering the public esteem for the authority".
- 1.3 The two complaints were considered by Northampton Borough Council's (NBC) Referral Sub-Committee on 9 March 2009 who decided to refer the matter to the Monitoring Officer for investigation. The sub-committee identified 3 potential breaches of the Code of Conduct - relating to paragraphs 5 , 6(a) and 6(b)(i).

**2.0 List of documents considered during the course of this investigation**

A list of the documents used to inform this investigation and referred to in this report is attached at the end of this report.

**3.0 Interviews carried out during the course of this investigation**

- 3.1 Councillor Woods, Mr Kennedy, Chief Executive of NBC and Ms Kimmet who is part of the Council's Facilities Management Service were interviewed in person by the investigator on 7 May 2009. One of the complainants provided the investigator with comments by email in support of his complaint. A series of questions were put by email to Ms Logue (who works in Facilities Management), Ms Kimmet and Mr McGown, Meeting Services Manager. Summaries of the interviews and comments received are set out in the attached appendices.



#### 4.0 Findings of fact

- 4.1 Northampton Borough Council's Code of Members' Conduct was adopted by the Council on 1 September 2007. Paragraph 5 states "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute". Paragraph 6(a) states "You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person an advantage or disadvantage". Paragraph 6(b)(i) states "You must when using or authorising the use by others of the resources of the authority act in accordance with your authority's reasonable requirements". These three parts of the Code apply where the member is conducting the business of the authority or is acting in, claiming to act in or giving the impression of acting in their official capacity. Councillor Woods has been a member of NBC since May 2003. He has been the Leader of the Council since May 2007. When interviewed Councillor Woods recalled that he had probably received some training in the Code of Conduct following both elections and certainly recalled receiving some training when the Code changed in 2007.

#### Timeline of events relevant to the matter which is the subject of this report

- 4.2 The timeline of events below has been constructed from the interview summaries together with other information reviewed during the course of this investigation. The information provided by interviewees is discussed in more detail further on in the report.

Date	Event
End of September 2008	Councillor Woods parked his car in the Guildhall car park in his designated space. The car was in need of repair prior to its next MOT and when interviewed Councillor Woods explained that he needed somewhere off-road to park the car until he was able to afford to have the repairs carried out.
End of September	The road tax on the car expired
Around 3 <sup>rd</sup> week October	Mr Kennedy spoke to Councillor Woods about the situation concerning the car. Councillor Woods explained that he would sort the matter out once he had been paid his backdated members allowance increase on 20 November.
26 November	Ms Kimmet asked Councillor Woods to remove the car and pointed out that the road tax had expired.
28 November	An article appeared in the AUFONA page of the of the Northampton Chronicle and Echo. The article referred to a red Astra that had remained in the car park for the past 2

	months and also pointed out that the road tax had expired.
Prior to 8 December full Council meeting	Mr Kennedy spoke to Councillor Woods again about the situation concerning the car. Councillor Woods again stated that he would get the matter sorted out.
8 December full Council meeting	Councillor Woods was presented with a 'mock' parking ticket by Councillor Malpas
9 December	Further article concerning the car appeared in the Chronicle.
11 December	Councillor Palethorpe wrote an email to Mr Kennedy requesting that action be taken to remove the red Astra parked in the Guildhall. Mr Kennedy was on leave when the email was sent and therefore the matter was referred to Ms Procter the Director of Finance & Support.
Between Christmas and New Year	Mr Kennedy spoke to Councillor Woods again about the situation concerning the car. Councillor Woods assured him that the removal of the car was imminent.
12 January 2009	Councillor Palethorpe wrote a critical memo to Councillor Woods (copied to Mr Kennedy) in connection with the situation concerning the car.
13 January	Mr Kennedy wrote to Councillor Palethorpe in response to his email of 11 December and Councillor Palethorpe's memo to Councillor Woods. He explained that Councillor Woods had informed him that he believed that he had made the required SORN declaration (see para 4.3 for details) and that arrangements were in hand to remove the car.
15 January	The car was removed from the car park
23 January	The Council received an email from Heart radio station which claimed that the DVLA had confirmed to them that as at 20 January no SORN had been declared in respect of Councillor Woods car.
End of January	Councillor Woods attended the DVLA office in Northampton and made a SORN declaration

4.3 In what circumstances is a vehicle owner required to complete a Statutory Off Road Notification (SORN)?

4.4 According to the DVLA website a SORN is required where:

- The vehicle is being kept off the road due to repair or MOT failure, or it isn't being used

- If the owner is not renewing the road tax and it is being kept off the road

The SORN should be applied for as soon as the vehicle is taken off the road. A SORN can be made from the fifth day of the month in which the current tax disc is due to expire. If it is not possible to renew the tax disc because the vehicle does not have a valid MOT the owner has 14 days from the date of the expiry of the tax disc to make a SORN. Under current legislation the DVLA has the power to impose a fine on the vehicle owner if they fail to make a SORN within the time allowed.

- 4.5 What the Council's Constitution has to say on the use of Council resources by Members
- 4.6 Part 5 of the Council's constitution is headed "Codes and Protocols". Section 4.5 of part 5 concerns the use of Council resources by members. The section states " *The only basis on which the Council can lawfully provide support services to Members (eg computers, or other IT software, stationery, typing, printing, photocopying, transport etc) is to assist them in the effective and efficient discharge of their duties and role as Members of the Council. Such support services must therefore only be used for Council business. The same should not be used for or in connection with party political or campaigning activities or for private purposes.*" The relevant extract from the Constitution is set out in appendix 3.
- 4.7 In response to the investigator's questions Mr McGown, Meeting Services Manager explained that Councillors receive a copy of the Constitution when they are elected and additionally if it is subsequently revised.
- 4.8 Use of the Guildhall car park
- 4.9 The car park is open Monday to Friday from 6.30am until the last meeting of the evening ends. It is also open Saturday from 8.30 am to 3.00pm.
- 4.10 Officers and Councillors can use the car park when on Council business. Members of the public can also use the car park if spaces are available when visiting the Council offices. Prior to 5.00pm on weekdays Councillors are required to book a space through the Guildhall Office. After 5.00pm Councillors can use the car park without booking.
- 4.11 By virtue of his position as Leader of the Council, Councillor Woods has a designated space in the car park for his specific use when on Council business. Because he has a designated spot he is not required to book a space in advance.
- 4.12 Summary from interview carried out with Ms Kimmet (appendices 4)



- 4.13 Ms Kimmet manages the Guildhall car park. She explained that around 26 November she had spoken to Councillor Woods and asked him to remove his car from the car park. Councillor Woods told her that he would remove the car although Ms Kimmet did not ask for and Councillor Woods did not provide a date by which the car would be moved.
- 4.14 Ms Kimmet also pointed out to Councillor Woods that his road tax was out of date that he needed to make a SORN. Councillor Woods replied that he already knew about this.
- 4.15 Ms Kimmet was asked by the investigator whether Councillors are provided with any guidance concerning the use of the car park. She explained that last year as part of the induction process for new Councillors she had carried out a briefing on the car park's use. She also provided them with a printed sheet setting out the key information. Ms Kimmet explained that Councillor Woods was unlikely to have received a copy of the printed sheet because he was not a new Councillor. Ms Kimmet explained to the investigator that last year was the first time she had carried out the briefing although in her view all Councillors would have been aware that they were only supposed to use the car park for Council business.
- 4.16 Summary from interview conducted with Mr Kennedy (appendix 5)
- 4.17 Mr Kennedy explained that around the third week of October he had become aware that Councillor Woods car had been in the car park for a number of weeks and therefore he spoke to Councillor Woods about the situation. Councillor Woods explained that the car was in a state of disrepair and needed work to be carried out in order to pass the MOT. Councillor Woods explained that he would be able to afford to have the work carried out once he received his backdated Members allowance increase on 20 November.
- 4.18 Mr Kennedy spoke to Councillor Woods again about the situation concerning his car prior to the full Council meeting of 8 December and Councillor Woods commented that he was going to get the matter sorted out.
- 4.19 Mr Kennedy went on holiday immediately after the 8 December meeting and did not return until just before the Christmas break. On 11 December Councillor Palethorpe addressed an email to Mr Kennedy requesting that action be taken to remove the "red Astra illegally parked in the car park". The email was forwarded to Ms Procter, the Director of Finance & Support who was covering in Mr Kennedy's absence. A copy of the email is set out in appendix 6.
- 4.20 Mr Kennedy recalled that at some point over the Christmas and New Year period he had again spoken to Councillor Woods concerning his car and was assured that its removal was imminent.

- 4.21 Mr Kennedy had assumed that while he had been on holiday, Councillor Palethorpe's email of 11 December had been replied to on his behalf. It was only after Mr Kennedy had received a copy of a memo dated 12 January that Councillor Palethorpe had addressed to Councillor Woods that he realised that a response had not been sent to Councillor Palethorpe. The memo of 12 January was highly critical of Councillor Woods for leaving his car untaxed in the car park and for not apparently having made a SORN. A copy of the memo is set out in appendix 7.
- 4.22 Following receipt of the memo Mr Kennedy subsequently spoke to Councillor Woods who explained that he had twice tried to make the SORN declaration via the internet and had also tried phoning the DVLA but had experienced some difficulty getting through. Councillor Woods told Mr Kennedy that he believed that he had now successfully made a SORN declaration.
- 4.23 Mr Kennedy wrote to Councillor Palethorpe on 13 January (appendix 8) explaining that he had discussed the situation with the member concerned and that the member had informed him that they had experienced some difficulty in making a SORN declaration however they believed that they had now done so. Mr Kennedy explained that he would not be taking steps to have the car removed because the Guildhall was a private car park and therefore there was no legal requirement for the car to be taxed. Secondly the car was in its allocated space and was not parked illegally. Mr Kennedy had shown a draft of his letter to Councillor Woods prior to signing and sending it. Councillor Woods did not question any of the content of the letter.
- 4.24 Mr Kennedy discovered that the car did not in fact have a SORN following an email dated 23 January sent to the Council by Heart radio station(appendix 9) . Mr Kennedy subsequently spoke to Councillor Woods who explained that he had received a fine for not having a SORN and that he would be making a SORN declaration at the DVLA office in Northampton. Councillor Woods also agreed to write to Councillor Palethorpe explaining the position.
- 4.25 Summary of interview with Councillor Woods (Appendix 10)
- 4.26 Councillor Woods explained that he has a space in the car park allocated to him on a full time basis by virtue of his position as Leader which meant that he could use the car park during the working day.
- 4.27 Councillor Woods was asked by the investigator whether it was his understanding that he was entitled to use the car park regardless of whether he was on council business.
- 4.28 Councillor Woods explained that each year councillors are provided with a parking pass which enables them to use public car parks when on Council business. He interpreted this to mean that if a councillor was going to see a constituent or was doing something related to their

role as councillor then it would be legitimate to park in one of the public car parks using the pass provided by the Council. In contrast it would not be legitimate use of the parking pass if a councillor was using one of the public car parks when engaged in a shopping expedition.

- 4.29 Councillor Woods expressed the view that the situation concerning the Guildhall car park was different because it was not a public car park, he accepted however that there is a cross-relationship with the circumstances in which a public car park could be legitimately used by a Councillor. By way of illustration he explained that if he had left the car in the Guildhall car park in order to go on a three month holiday that would not have been legitimate.
- 4.30 Councillor Woods was asked by the investigator whether he recognised that his designated space was for him to use when directly or indirectly undertaking Council business. Councillor Woods replied "Yes I think so".
- 4.31 He explained that during the time the car was in the car park he had been undertaking a great deal of Council business which explained why he had not got round to getting the repairs to the car sorted out. Attending to the car had not been his highest priority. He had been in the Council offices or engaged on Council business virtually everyday during the time the car had been in the car park. He went on to explain that having reviewed his diary from early October until Christmas 2008 there had been virtually no evening on which he had not in some way been attending to some form of Council business or was acting as a representative of the Council.
- 4.32 Councillor Woods confirmed that he had attended a number of non-Council related events during the time that the car was in the car park.
- 4.33 Councillor Woods accepted that he had been "pushing the boundaries" and that it would be up to the Standards Committee to decide whether he had pushed them too much. He explained that to have removed the car would have taken time, effort and resources that at the time were difficult for him to allocate. Councillor Woods considered that leaving the car where it was had facilitated him in being able to carry out his role because he had not had to take time away from his numerous responsibilities in order to arrange for repairs.
- 4.34 Councillor Woods explained that he had parked the car in the car park because the road tax was due to expire at the end of the month (September). The car was going to need a number of repairs carried out on it in order to pass the MOT. He explained that he lives in a terraced house and does not have a private driveway or an alternative off road location which he could have used to store the car.



- 4.35 His intention had been to park it in the car park for a short time however he had not been in a position to afford to get it repaired immediately. When first parked in the Guildhall he had informed the Guildhall Keepers that he had to sort out the MOT and that it would be there for 3 or 4 days.
- 4.36 Councillor Woods explained that he had been in a position to afford to get the car repaired once he had received his backdated members allowance increase on 20 November 2008. He had not attended to the repair at that time because of the intensity of the issues he was dealing with as Leader and also because by then the subject of his car had become a political issue. He explained that at one Council meeting Councillor Malpas had presented him with a mock parking ticket.
- 4.37 Councillor Woods recalled that as time progressed and the situation regarding the car had become a political issue he had had a number of discussions with the Chief Executive. In essence the Chief Executive had asked him to move the car and Councillor Woods had replied that he would move it as soon as he was able to. Councillor Woods also confirmed that Ms Kimmet had advised him to remove the car and had pointed out that a SORN needed to be made.
- 4.38 On the question of the SORN, Councillor Woods commented that he believed the road tax had expired at the end of September. He recalled that he had first attempted to make a SORN on-line in early October to the DVLA. Because he did not hear back from the DVLA he had tried to check and found that the DVLA had not received his notification. He believed that he had tried to make the SORN 2 or 3 times on-line but for reasons that he was unable to explain he could not complete the registration. He then sent a paper declaration to the DVLA in early December. Apparently this did not arrive at the DVLA's offices because in early January he received a fixed penalty notice for failing to make a SORN. Councillor Woods explained that he had finally completed a SORN by going to the DVLA's offices in Northampton at some point in early January. He had known about the existence of the office but for some reason had not thought about it as an alternative means of making a declaration.
- 4.39 On 31 January Councillor Woods replied by email to Councillor Palethorpe's memo of 12 January (appendix 11) . He confirmed that he had taken the car off the road by placing it in his allocated space because he did not expect it to pass its MOT. In October he had posted a SORN to the DVLA. Some weeks after he realised that he had not received any acknowledgement from the DVLA and therefore had checked and found it had not been received. He then attempted to make a SORN on-line but for reasons he could not explain found he was unable to do so. He then sent a further SORN notice to the DVLA before Christmas. Councillor Woods confirmed that he had told the Chief Executive that he had sent a SORN notice but was experiencing problems successfully registering this with the DVLA. Councillor Woods explained that he had received a fixed penalty notice from the DVLA for non-declaration of a SORN and accepted that it had been his

responsibility to ensure that the SORN had been registered with the DVLA , not simply to have tried.

- 4.40 In response to supplementary questions put to him by email by the investigator Councillor Woods explained that at the end of January he had visited the DVLA's office in Northampton and had made a SORN declaration. He recalled that when he had spoken to Mr Kennedy ( in connection with the proposed response to Councillor Palethorpe's memo) he had not claimed that he had known for certain that his earlier attempts to make a SORN declaration had been successful.
- 4.41 Councillor Woods was asked by the investigator whether he recalled making an apology over the incident as stated in the 16 January edition of the Chronicle (appendix 12c) .
- 4.42 Councillor Woods recalled saying something reasonably informally along the lines that of course he was sorry that the car had remained in the car park for a prolonged period of time and that he was sorry for any embarrassment caused. He pointed out however that no one else would have been entitled to use the space given that it was specifically allocated for the Leader of the Council's use.
- 4.43 Councillor Woods was asked by the investigator whether he considered that he had actually done anything wrong.
- 4.44 Councillor Woods replied that he considered that he had made an error of judgement in not getting the car repaired quickly and that this led to some embarrassment that had been exploited by his opponents. He did not consider that he had been misusing resources or had done anything to seriously bring himself or the Council into disrepute.
- 4.45 Councillor Woods explained that he considered that both the press and opposition members had shown a puerile interest in the situation concerning his car.
- 4.46 When asked by the investigator whether he wanted to make any further comments, Councillor Woods stated that he did not consider that the complaints had been made by bona fide members of the public. He felt they were politically motivated. He explained again that while the car had been in the car park there had been very few periods when he had not in some way been working for the Council. He regretted the fact that the car had been there for so long because it had caused considerable embarrassment. He did not believe that he had done anything fundamentally wrong.
- 4.47 Newspaper coverage relating to the extended stay of Councillor Woods car in the car park
- 4.48 During the course of this investigation the investigator was made aware of three articles that appeared in the Northampton Chronicle and Echo in connection with Councillor Woods car. These articles are dated 28 November 2008, 9 December 2008 and 16 January 2009.

The latter article is headed "Leader has apologised for parked car fiasco" and quoted Councillor Woods as saying " Opposition politicians have had their fun with this. I am sorry for any offence caused to taxpayers".

- 4.49 Copies of the above articles are set out in appendices 12 a - c.
- 4.50 **Comments received following the circulation of the draft report**
- 4.51 Following the circulation of the draft report comments via e mail were received from both the complainants and from Councillor Woods. The key points below. The comments in full together with the investigators responses to the various parties are set out in appendices 13 & 14.
- 4.52 One of the complainants was critical of the Council's approach to the handling of their complaint. They considered that the whole process had taken far too long - 6 months from the time that they made their complaint to when they received the draft report. Secondly they felt that the Council had adopted a hostile and unhelpful attitude towards them by appearing to ask them to prove the allegation. The complainant also pointed to the fact that the Council appeared unwilling to send them a copy of the Code of Conduct and instead told the complainant to download it from the Council's website. The complainant generally found the website not to be user-friendly and recommended that the Council considered making the process of a complaint on-line more accessible.
- 4.53 A series of e mails passed between the investigator and Councillor Woods following the circulation of the draft report. The key points are summarised below. As mentioned above, the correspondence in full is set out in the appendices to this report.
- 4.54 The following points were contained within an email fom Councillor Woods dated 24 June. Councillor Woods pointed out that he had expressed the view during his interview with the investigator that if a Councillor used one of the Council car parks when *not on official* business then this would represent a technical breach of the Code irrespective of the length of time involved.
- 4.55 In response the investigator commented that he had recalled Councillor Woods making the above point. The following points were not raised during the interview.
- 4.56 Councillor Woods commented in his email that it was well known (and tolerated) that Councillors and staff use the Guildhall car park on evenings and weekends when not on Council business. He also commented that some Councillors use the Borough's car parks when on private business. He pointed out that Councillors are provided with a specific notice which informs them that the car park permits are only to be used on Council business however in six years he had never known for officers to carry out any checks on whether Councillors were using their permits appropriately.



- 4.57 He commented that if he was guilty of a breach of the Code then anyone who had used the Guildhall or other car parks (when not on official business) was equally guilty. He commented that the Standards Committee should recommend that these loopholes should be closed forthwith. He further commented that as leader of the Council he was seen by the public as being on duty 24/7.
- 4.58 In response to the above points the investigator asked Councillor Woods whether he would be willing to provide the names of Councillors who he believed had not used their car parking facilities appropriately. Councillor Woods response together with a number of other points were contained in an email dated 29 June is summarised below.
- 4.59 Councillor Woods stated that he did not have the names and times that specific Councillors may or may not have parked in any particular car park, he was not making complaints against individuals – rather he was seeking to illustrate the complexities associated with the subject.
- 4.60 He commented that it had been custom and practice over an extended period of time for Councillors and senior staff to park in the Guildhall car park on Saturdays in order to pop into town. This was regarded as a 'perk of the job'. If he was guilty of a misuse of Council resources by leaving his car in the car park then the loophole should be closed in order to be fair and consistent.
- 4.61 Councillor Woods went on to comment that the judgement as to whether he did or did not make improper use of Council resources was not a black and white issue. In his view the reality was that it was a judgement call based on drawing a line within a wide range of grey.
- 4.62 **Action taken by the investigator in response to Councillor Woods comments**
- 4.63 Derek Simpson who oversees the Borough's car parks apart from the Guildhall was asked by the investigator whether any checks were carried out by officers to ensure that Councillors were not using their Council permits when not on Council business. In response Mr Simpson explained that it was almost impossible to monitor the situation because there were not the resources available to do so. He confirmed that no regular checks were carried out.
- 4.64 Ms Kimmert who manages the Guildhall car park was asked whether any checks were carried out during weekdays, evenings or weekends to prevent Councillors from parking at the Guildhall when not on official business. She commented that checks were made, however she and her staff had no control over when business was official or not. If she had reason to believe that a Councillor was abusing the situation she would talk to them.

- 4.65 She confirmed that she had never had to ask a Councillor to remove their car - apart from Councillor Woods. She also confirmed that she was not aware of any Councillor having left their car in the Guildhall for several days or weeks - apart from Councillor Woods.
- 4.66 Conclusion on the facts
- 4.67 Based on the information outlined above I have drawn the following conclusions.
- 4.68 Councillor Woods is provided with a designated car parking space by virtue of his position as Leader of the Council. The space is for his use while engaged on Council business.
- 4.69 Councillor Woods parked his car continuously in his allocated space within the Guildhall car park from the end of September 2008 until 15 January 2009.
- 4.70 Councillor Woods used the car park as an off-road facility until such time as he was able to afford to have some repairs carried out which were required before the car would be able to pass its MOT.
- 4.71 During the time that the car was in the car park the Chief Executive raised the matter with Councillor Woods on at least three occasions as did Ms Kimmet on one occasion.
- 4.72 Councillor Woods informed the Chief Executive that he would be in a position to have the car repaired once he had received his backdated members allowance increase on 20 November 2008. Councillor Woods states that he did not attend to the repairs after 20 November because of the intensity of the activities he was engaged in at the time on behalf of the Council and because the situation surrounding the car had become a political issue.
- 4.73 The road tax on the car expired at the end of September 2008.
- 4.74 On the subject of the SORN based on the information available to me I am not in a position to question the genuineness of the efforts Councillor Woods states that he made to declare one. It is apparent however that whatever steps he did take were not successful by virtue of the fact that he received a penalty notice.
- 4.75 At the time this report was written I have not been able to ascertain whether Councillor Woods received the penalty notice for failing to make a SORN before or after he had his conversation with Mr Kennedy in response to Councillor Palethorpe's email.
- 4.76 Due to a lack of evidence it has not been possible to conclude with any certainty whether or not there is any validity to Councillors Woods claim that other Councillors use the Guildhall and the Council's other car parks on a regular basis when not on official business.

- 5.0 Conclusion as to whether Councillor Woods has or has not failed to comply with the Code of Conduct**
- 5.1 As outlined earlier in this report paragraphs 5 and 6(a) and 6(b)(i) apply where a member is Conducting the business of the authority or is acting in, claiming to act in or is giving the impression of acting in their official capacity.
- 5.2 In his capacity as Leader of the Council Councillor Woods has an allocated space in the Guildhall car park which is a facility provided to him by the Council in order to assist him in undertaking his responsibilities on behalf of the Council. It follows therefore that when making use of his space it would be reasonable to assume that Councillor Woods would either be acting in, claiming to act in or giving the impression of acting in his official capacity. On these grounds I have concluded that the official capacity 'test' has been met in this case.
- 5.3 I will firstly consider whether it would be reasonable to conclude that by leaving his car in his designated space throughout the time in question Councillor Woods used or attempted to use his position improperly to confer on or secure an advantage for himself. I will then go on to consider whether it would be reasonable to conclude that Councillor Woods failed to use the Council's resources in accordance with the Council's reasonable requirements. Thirdly I will consider whether by leaving the car in the car park and failing to make a SORN declaration within the required period it would be reasonable to conclude that Councillor Woods brought his office or authority into disrepute.
- 5.4 Did Councillor Woods use or attempt to use his position improperly to confer on or secure an advantage for himself?
- 5.5 When coming to or conclusion on this aspect of the complaint I have considered a number of factors. Firstly I considered the basis on which the Council provides Councillor Woods with a designated space. Secondly I reflected on his stated reason for leaving the car in the car park in the first place and whether by using his space in the way that he did, it can reasonably be said to have been to his advantage. I then considered whether the use he made of the space could reasonably be said to represent an improper use of his position. Finally I took account of the explanations put forward by Councillor Woods for why the car remained there throughout the period in question and the other points that he raised in his defence.
- 5.6 As has been discussed at length earlier in this report Councillor Woods is provided with a designated space by virtue of his official position as Leader of the Council. It would in my view be reasonable to conclude that the space is provided to assist him in commuting to and from the



Council offices in recognition of the fact that he is likely to need to visit the offices on a more frequent basis than most Councillors.

- 5.7 When interviewed Councillor Woods stated he recognised that his designated space was for him to use when directly or indirectly on Council business. It would in my view be reasonable to assume therefore that he would have been aware that he was not entitled to use the space when not directly or indirectly engaged on Council business.
- 5.8 Can it reasonably be said that there was a distinct advantage to be gained by Councillor Woods in using his car park space in the way that he did? In my view it is apparent that there was a clear advantage to be gained in that he needed somewhere off-road to park the car and he did not have an alternative facility readily available.
- 5.9 Would it be reasonable to conclude that Councillor Woods used his position improperly by parking his car in his designated space? Councillor Woods has clearly stated that he used his designated space as an off-road facility to park his car. In my view he used the space in a way that the Council would not have approved of and for his own personal advantage. I have therefore concluded that he did make improper use of his official position.
- 5.10 When interviewed and through a subsequent exchange of emails with the investigator following the circulation of the draft report Councillor Woods put forward a number of points in support of his position.
- 5.11 Firstly he stated that for virtually all the time that the car had been in the car park he had directly or indirectly been engaged on Council business. Secondly he claimed that leaving the car there had helped him to carry out his Council duties because he had not had to take time away from his Council duties in order to attend to the repairs. Thirdly he claimed that he had not caused a disadvantage to anyone else because even if the car had not been there no one else would have been entitled to use the space. Fourthly he claimed that if he was guilty of misusing the Council's car parking facilities then so were a number of other Councillors because it was custom and practice for Councillors to use the Guildhall and other car parks when not on official business.
- 5.12 I will address each point in turn.
- 5.13 On the first point, I have no doubt that Councillor Woods did spend a significant amount of time during the period that the car was stored in the car park engaged on Council business. No doubt this goes some way to explain why the car remained there for so long. I do not believe it credible however to suggest that that he was on official business throughout the period and indeed Councillor Woods confirmed that there were periods when he was not engaged in Council business. The fact remains that the primary reason he used the space during the period in question was because he required an off-road facility. I

therefore consider the amount of time he spent on Council business represents little by way of justification.

- 5.14 On the second point I am willing to accept that not attending to getting the car sorted out meant that Councillor Woods had more time to devote to Council business, however this does not in my view represent a reasonable excuse for taking advantage of his position to use the car park as an off-road facility for such a protracted period of time.
- 5.15 I regard the third point put forward by Councillor Woods as irrelevant. The issue under consideration here is not whether his actions led to others experiencing a disadvantage but whether he used or attempted to use his position improperly to secure an advantage for himself.
- 5.16 On the final point Councillor Woods explained that a number of Councillors use the Guildhall and other car parks when not on official business. He went so far as to suggest that Councillors regard making use of the car parks when not on Council business as a 'perk of the job'. Councillor Woods suggested that if he was guilty of misusing the car park then so were they.
- 5.17 As has been explained earlier in this report I have not been able to come to a conclusion concerning whether there was widespread misuse of the car parking facilities by Councillors as claimed by Councillor Woods. Even if there were some substance to his claim, it does not in my view remove the responsibility he had to comply with the Code of Conduct and the relevant parts of the Council's constitution.
- 5.18 In conclusion based on the information available to me I consider it reasonable to conclude that Councillor Woods used his designated space as an off-road facility for in excess of 3 months until such time as he could find the time and money required to attend to the necessary repairs to his car. Making use of his space in that way had a distinct advantage for Councillor Woods because he did not have an alternative off-road facility. It is clear that he would not have been able to use of the designated space in that way if he had not been acting in an official capacity. My conclusion therefore is that Councillor Woods did use his position improperly to confer an advantage for himself.
- 5.19 Would it be reasonable to conclude that Councillor Woods failed to use the Council's resources in accordance with its reasonable requirements?
- 5.20 In May 2007 the Standards Board published guidance on the Code for Councillors. The guidance covering the use of resources states " Where your authority provides you with resources (for example telephone, computer, transport or support from Council employees) you must only use these resources for carrying out your local authority business and any activity which your local authority has authorised you to use them for".



- 5.21 It is worth repeating here what section 4.5 of part 5 of the Council's Constitution has to say regarding the use of resources by Councillors. *" The only basis on which the Council can lawfully provide support services to Members (eg computers, or other IT software, stationery, typing, printing, photocopying, transport etc) is to assist them in the effective and efficient discharge of their duties and role as Members of the Council. Such support services must therefore only be used for Council business. The same should not be used for or in connection with party political or campaigning activities or for private purposes."*
- 5.22 The first point to consider is whether Councillor Woods' car parking space can reasonably be regarded as a resource or support service within the terms of the Council's Constitution.
- 5.23 The examples quoted in section 4.5 of part 5 on the Constitution are illustrative and are not meant to represent an exhaustive list. Support services by their very nature are designed to support a Councillor in the undertaking of his or her official role. As Leader of the Council Councillor Woods is provided with a designated space in order to support him in undertaking his official role in the same way that he is provided with office accommodation, IT facilities and staffing resources. I have therefore concluded that it would be reasonable to regard Councillor Woods designated space as a resource or support service and therefore its use is governed by the requirements set out in the Constitution.
- 5.24 Section 4.5 of part 5 of the Constitution clearly states that support services are only to be used for Council business and not for private purposes.
- 5.25 In my view the use Councillor Woods made of his designated space between late September and 15 January 2009 was incompatible with the guidance laid down by the Council in its Constitution because he was in effect using the space for private purposes. The space had been made available to facilitate his commuting to and from the Council offices, given that his car was out of action for in excess of 3 months it is apparent that the space was not being used in the way that the Council had intended. My conclusion therefore is that Councillor Woods did fail to use his designated space in accordance with the Council's reasonable requirements.
- 5.26 Would it be reasonable to conclude that Councillor Woods has brought his office or authority into disrepute?
- 5.27 Since the judgement of Justice Collins in the Ken Livingstone case ( Livingstone v Adjudication Panel for England 2006) it has been made clear that in order come to a finding that this aspect of the Code has been breached it would need to be reasonable to conclude that the actions of the Councillor in question had led to the reputation of the office of 'Councillor' within the authority as a whole being adversely affected.

- 5.28 Within this report I have been critical of Councillor Woods actions in using the Guildhall car park in the way that he did for in excess of 3 months. Councillor Woods himself accepts that he showed an error of judgement in doing so. I am also critical of the fact that he failed to ensure that he successfully registered a SORN within the timescale required. Councillor Woods has accepted that he should have made sure that he had a SORN in place.
- 5.29 A number of newspaper articles appeared in connection with the incident and it is apparent that by his actions he provided his political opponents with ammunition to use against him. Councillor Woods explained to the investigator that the matter had caused him considerable embarrassment.
- 5.30 In conclusion, it may well be the case that Councillor Woods own reputation has suffered to some degree as a result of his actions. It does not follow however that the reputation of all Councillors within the authority has similarly been affected. I have found no evidence to suggest that this is the case. My finding therefore is that Councillor Woods did not bring his office or authority into disrepute.
- 5.31 Final conclusion
- 5.32 My conclusion therefore is that Councillor Woods failed to comply with paragraphs 6(a) and 6(b)(i) but did not fail to comply with paragraph 5 of the Code of Conduct for members.

## **6.0 Recommendations**

- 6.1 That the Council provides all Councillors with detailed guidance on the use of the Guildhall Car Park, and that all Councillors are reminded of the circumstances in which they are allowed to use their Council passes when making use of other Council car parks.
- 6.2 That the Council introduces measures to ensure that Councillors are only using the Guildhall and other Council car parks when engaged on official business.
- 6.2 That the Council considers reviewing the process of by which residents can make complaints on-line to ensure that it is made as accessible as possible.

Phillip Mears

Investigating Officer



diary column written by our  
 uth Aufona . . . If you have  
 or the Aufona page, you can  
 aufona@northantsnews.co.uk



■ The off-centre Astra in the Guildhall car park

# Not middle way

CAN anyone shed light on the blood red Vauxhall Astra that has been badly parked in the Guildhall's underground car park (where borough councillors park) since September?

We only ask as the vehicle's tax disc appears to have run out.

Has it broken down? Is it unlikely to pass its MOT and that's why it's been left there, somewhat brazenly, for the past two months?

Still at the Guildhall, what a brilliant idea to stage the budget meeting on December 22.

Presumably, ERGO members will be toasting each other with mulled wine afterwards, safe in the knowledge that, by the time the media gets to publicise all the good news, more good news and - who knows - even the odd setback, most council tax-payers will have understandably shuffled off to tackle the annual rituals of roasting a goose or setting the video for the Queen's Speech.

A case of a good day for burying good news (obviously).

## Red hot!

**BINNERS**, watch out. As well as having retro shoes named after him, your Labour rival come the next general election, Clyde Loakes, has just been named one of the 50 most influential people in local government by the *Local Government Chronicle*. Clyde is 38 and the youngest Labour council leader in the country; although there aren't that many these days . . .

## Norman service

**AMID** the financial gloom is one real success story. County leader Norman Hacker - who, as the *Chron* reported last week, collected a touch over £60K for all his worthwhile work in local government: Strawberry Hall, Plod, the LGA, etc - can now add £8,538 as a regional board member with the East Midlands Development Agency. For this, Norm needs to find two days a month out of his schedule. That's £350 a day, or £50 an hour. Bravo, Norm - keep fighting the Northamptonshire corner!



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- DIVORCED** mum, seeks loyal male, 50 plus, likes films, talks, nights in for friendship, maybe more. Tel No: 0905 546 2708 Box No: 344660
- CURVACEOUS** petite brunette, brown eyes, loves music, seeks tall, attractive male for relationship. Tel No: 0905 546 2708 Box No: 347618
- FEMALE** seeks honest, caring, genuine male, 50-60's for LTR. Tel No: 0905 546 2708 Box No: 318510
- BUBBLY** brunette, artistic, imaginative, great to be with, loves men in uniform, could that be you? Tel No: 0905 546 2708 Box No: 347620
- STUNNING** petite, mixed race female, 23, seeks kind, tactile, white male, 28-40 for loving, lasting relationship. Tel No: 0905 546 2708 Box No: 304667
- TALL** slim fit female seeks lovely tall male to share good times and lots of TLC. Tel No: 0905 546 2708 Box No: 347622
- ATTRACTIVE** blonde female, 40's, affectionate, no ties, likes cuddles, seeks intelligent male, 38-55 for loving relationship. Tel No: 0905 546 2708 Box No: 200975
- BEAUTIFUL** independent single female, no ties seeks solvent, passionate male. Tel No: 0905 546 2708 Box No: 347630
- BLONDE** widow, 70, smart, caring, seeks gentleman for kisses, cuddles, meals out, maybe more. Tel No: 0905 546 2708 Box No: 248208
- STUNNING** tall slim blonde, brown eyes WLTN kind, caring male for great fun together. Tel No: 0905 546 2708 Box No: 347638
- CLARE** seeks kind, sincere, tall, medium build male, 43-54 well educated for lun and friendship. Tel No: 0905 546 2708 Box No: 346438
- VIVACIOUS** cuddly, bubbly female, loves life, seeks tall handsome male to be adventurous with. Tel No: 0905 546 2708 Box No: 347544
- LOVING** lovely lady 44 me firm build looking for fun and friendship. Tel No: 0905 546 2708 Box No: 347544
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## Guidance on the circumstances in which the Adjudication Panel would consider accepting a reference from a Standards Committee under Regulation 17 of the Standards Committee (England) Regulations 2008.

1. The Standards Committee (England) Regulations 2008 include provision (Regulation 17 (1) (c)) for a Standards Committee to make a finding that a matter should be referred for determination by the Adjudication Panel. Before such a referral can be made the Standards Committee need themselves to have determined that the action which the Standards Committee could itself take (if there were a finding that there had been a failure to follow the provisions of the Code) would be insufficient. The reference itself can be made only if the President or Deputy President has agreed to accept it.
2. The possibility of such a reference arises only after a monitoring officer has produced a report for the Standards Committee. The President of the Adjudication Panel is willing to indicate, prior to the consideration of that report by the Standards Committee, whether he would agree to accept such a referral. Such agreement would not commit the Standards Committee to making such a referral but would avoid the Standards Committee seeking to refer matters which were not suitable.
3. The maximum sanction which a Standards Committee can impose is a suspension for a period of six months. Thus the primary question to determine as to whether a reference can be accepted is whether, if a breach of the Code had occurred, a more severe sanction than six months suspension would be appropriate.
4. It would be rare for the Adjudication Panel's Case Tribunals to impose a suspension for longer than six months, not least because the effect of such a lengthy suspension might be seen as leading to constituents being left without effective representation at a time when the suspended elected member is not able to fulfil his responsibilities.
5. Less rarely, however, a Case Tribunal will **disqualify** an elected member. Whereas a suspension will apply only to the particular council whose Code of Conduct has not been followed, a disqualification will preclude the member concerned from being appointed to **any** relevant authority. Thus it would be an appropriate sanction for a member whose conduct leads to the view that the member concerned is unfit to hold such public office.
6. The Adjudication Panel has already published guidance (*Guidance on decisions available to a Case Tribunal*) as to when disqualification is likely to be an appropriate sanction. The following is an extract from that guidance:
  - 14.1 *The Respondent has deliberately sought personal gain (for either him or herself or some other person) at the public expense by exploiting his or her membership of the body subject to the Code of Conduct.*
  - 14.2 *The Respondent has deliberately sought to misuse his or her position in order to disadvantage some other person.*
  - 14.3 *The Respondent has deliberately failed to abide by the Code of Conduct, for example as a protest against the legislative scheme of which the Code forms part.*



*Members of local authorities are expected to uphold the law. Where the Code has been deliberately breached to reflect the Respondent's opposition to the principles underlying the legislation, the Case Tribunal is likely to think of a disqualification of one year.*

- 14.4 *There have been repeated breaches of the Code of Conduct by the Respondent.*
  - 14.5 *The Respondent has misused power or public assets for political gain.*
  - 14.6 *The Respondent has misused council property.*
  - 14.7 *The Respondent has committed a criminal offence punishable by a sentence of three months or more imprisonment.*
  15. *There may be other factors not listed above which also merit disqualification. Nor will disqualification always be appropriate even if the listed factors are present.*
  17. *Disqualification may be imposed as an alternative to suspension in order to avoid an authority being inquorate or the electorate left without adequate representation. Disqualification would allow by-elections to take place whereas this would not be possible if the member concerned were suspended.*
7. The President or Deputy President is likely to agree to accept references for matters which are of a kind which would merit disqualification.
8. It is important to bear in mind that the decisions on whether to refer, and whether to accept such a referral, are being made on the hypothetical basis of a finding that there has been a breach of the Code of Conduct. In taking a decision as to whether to accept a proposed reference, the President or Deputy President would not usually seek to form a view as to how likely it is that such a finding would be made. Nor would they usually seek to form a view on whether there are particular mitigating circumstances which would cause a Case Tribunal not to disqualify a member even though such disqualification might usually be seen as appropriate for a breach of the kind concerned. Those are decisions which should properly be left to the Case Tribunal hearing the case.
9. A reference to the Adjudication Panel should include:
- a brief description of the conduct which has given rise to the complaint
  - details of:
    - when the member was elected.
    - when the member made a declaration to abide by the Code.
    - relevant training the member has received.
    - the member's committee membership or Executive responsibilities; and
    - a note of any appointments to other bodies on behalf of the council and of any membership of other relevant authorities.
  - a copy of the relevant Code of Conduct should be appended.
  - the reference should indicate what paragraphs of the Code have been under consideration.
  - the investigating officer's report to the Standards Committee should be appended. The Standards Board for England has provided a template for such a report in its publication '*Local Standards Framework - Guide for Authorities.*'
  - A list giving the names, addresses and contact details of:
    - the respondent.
    - complainant.
    - monitoring officer.
    - investigating officer.
    - Standards Committee correspondent.
    - any legal representatives.