

## **BABERGH DISTRICT COUNCIL**

**FROM:** The Monitoring Officer

**REPORT NUMBER** **G184**

**TO:** STANDARDS COMMITTEE

**DATE OF MEETING** 25 January 2008

### **MEMBERS CODE OF CONDUCT CASE REPORTS**

#### 1. **SUMMARY**

This report updates members on recent investigations conducted by Ethical Standards Officers of the Standards Board and also a recent court ruling involving standards issues. The report is produced for information and training purposes.

#### 2. **RECOMMENDATIONS**

That the content of this report be noted.

The Committee is able to resolve this matter.

#### 3. **FINANCIAL IMPLICATIONS**

None.

#### 4. **RISK MANAGEMENT**

Not relevant to this report

#### 5. **KEY INFORMATION**

##### **SELECTED INVESTIGATIONS**

##### 5.1 **CLLR B (Case no. SBE18511.07 and SBE19689.07)**

**Allegation: The member improperly secured an advantage or disadvantage, failed to disclose a personal interest and failed to withdraw from a meeting in which they had a prejudicial interest.**

5.1.1 The complainant alleged that Cllr B used his status as a parish councillor to obtain council business for his firm of solicitors. Further, that he failed to declare a prejudicial interest and withdraw at eight council meetings between May 2004 and February 2007 and that he used his position as chair at council meetings in February and March 2005 to prevent both council discussion and the making of an informed decision by the council in its capacity as custodian trustee of a playing field.

5.1.2 Cllr B denied acting improperly with regard to his firm's work on behalf of the council. In relation to the allegations about the council's role as custodian trustee of the playing field, his view was that the council was not legally entitled to make a decision.

- 5.1.3 The ethical standards officer (“ESO) considered that instructions given to Cllr B’s firm to carry out work for the council resulted from specific council decisions, and that Cllr B did not misuse his position as chairman to obtain the work.
- 5.1.4 The ESO considered that at two council meetings on 21 June 2004 and 20 March 2006, Cllr B failed to declare a personal interest arising from matters relating to his firm. However, the ESO did not consider either interest to be prejudicial.
- 5.1.5 With regard to the council’s role as custodian trustee of the playing field, the ESO took the view that the council was not required to make a decision in that capacity at either the February or March 2005 meeting and that Cllr B did not prevent the council from discussing matters raised at those meetings.
- 5.1.6 The ESO found that no action was necessary.

**5.2.1 CLLR C (Case no. SBE19077.07)**

**Allegation: The member failed to treat others with respect.**

- 5.2.1 The complainant alleged that Cllr C failed to treat members of the public with respect at a Borough Council meeting on 21 June 2007.
- 5.2.2 The meeting was considering the proposed commercial lease of a Council building, which had been controversial in the local community. After members had voted to accept the proposal, an unidentified member of the public among a group of people leaving the room made a remark to Cllr C along the lines of ‘You’re all right now – you’ve got your backhanders’.
- 5.2.3 Cllr C accepted that he became angry in response to the suggestion that council members and officers were corrupt, and he loudly asked if the speaker could repeat their comments.
- 5.2.4 The ESO did not consider that Cllr C conducted himself in a way that was unfair, unreasonable or demeaning. In light of the allegation that had been made, it was understandable that Cllr C became angry.
- 5.2.5 The ESO concluded that under the circumstances, Cllr C did not fail to treat a member of the public with respect and that no further action was necessary.

**5.3 CLLR L (Case no. SBE18921.07)**

**Allegation: The member failed to treat others with respect.**

- 5.3.1 The complainant alleged that City Cllr L failed to treat her and her companion with respect when they visited the council offices. The complainant alleged that Cllr L grabbed her arm and ordered her out of the building before shouting at her companion.
- 5.3.2 The ESO concluded that Cllr L had spoken abruptly to the complainant and her companion and demanded they leave the council offices. There were no impartial witnesses to confirm whether or not Cllr L had grabbed the complainant’s arm.

5.3.3. The ESO concluded that Cllr L did shout at the complainant's companion and that this amounted to a failure to treat the companion with respect. However, taking all the circumstances into account, the ESO concluded that Cllr L's conduct was only a minor failure to comply with the Code and that no further action was needed.

5.4 **CLLR W (Case no. SBE19458.07)**

**Allegation: The member failed to disclose a personal interest and failed to withdraw from a meeting in which he had a prejudicial interest.**

5.4.1 The complainant alleged that Cllr W failed to declare a personal interest at council meetings between May 2005 and April 2007 when discussing matters relating to a school of which he was a governor. It was also alleged that the interest was prejudicial and that he should have withdrawn from the meetings. The ESO also investigated whether or not Cllr W improperly influenced decisions at the relevant meetings.

5.4.2 Cllr W was appointed as the council's representative on the school's board of governors from 1999 until he stood down in 2007. He included this position in the council's register of interests. In March 2005 the council considered a proposal to increase the capacity of the school. The proposal was agreed and the children's services overview group and cabinet met to discuss specific plans to fund an extension.

5.4.3 The ESO considered that Cllr W had a personal interest in matters relating to the school extension through his position as a governor. Cllr W declared an interest at some, but not all, of the meetings. The ESO considered that Cllr W's failure to declare his interest on some occasions was a breach of the Code of Conduct.

5.4.4 Cllr W stated that the 'default position' at the overview group meetings was for all declarations of interest to be taken as read and accepted in the minutes without members having to declare interests formally every time. He admitted that for this reason he had not verbally declared his interest each time, but stated that he had not sought deliberately to conceal it.

5.4.5 In considering whether Cllr W's interest was also prejudicial, the ESO noted that the matter under consideration did not in the early stages require members to make any decisions significantly affecting the school or council expenditure. In these circumstances the ESO did not consider that Cllr W had a prejudicial interest.

5.4.6 However, once the proposal to increase the capacity of the school had been agreed, members of the relevant committees were asked to make decisions which impacted directly on the school and had significant financial implications for the council, including the increase of the budget for the extension work. At these meetings, the ESO considered Cllr W's interest to be prejudicial and that Cllr W had failed to comply with the Code of Conduct by taking part in the discussion at these meetings.

5.4.7 On 24 July 2007 the council's monitoring officer, having until then been unaware that Cllr W was a school governor, advised him that his interest was prejudicial. Cllr W withdrew from the meeting before the matter was discussed.

5.4.8 Cllr W stated that he had no personal financial interest in the school and had no contacts with anyone employed by it or involved with building work for the extension project. However, he could see that a member of the public might perceive that he could be influenced and so accepted the monitoring officer's advice, stating that he intended to be more careful about such matters in future.

5.4.9 The ESO considered that by contributing to discussions about the possible budget increase, Cllr W had sought to influence improperly a matter in which he had a prejudicial interest. In reaching his finding, the ESO took into account that the purpose of the school extension project was to ensure the authority met the anticipated demand for school places rather than benefiting the school alone, that the circumstances requiring budgetary increases were outside Cllr W's control and that the key financial decisions were made in accordance with officer recommendations. He considered that Cllr W was acting in what he had believed to be the public interest and was not seeking any personal or financial benefit. Therefore the ESO found that no further action was necessary.

5.5. **CLLR S (Case no. SBE18629.07)**

**Allegation: The member improperly secured an advantage or disadvantage.**

5.5.1 The complainant alleged that Parish Cllr S misused his position by allowing others to store items in a disused council building, without the council's consent. It was alleged that Cllr S's actions jeopardised the council's insurance policy and increased its liability for community charge on the building.

5.5.2 The building had stopped being used and started to become derelict three to four years previously. Cllr S continued informally to look after the building and oversee its security. The council received empty rate relief for the building. Sundry items related to the building's maintenance and Cllr S's own fundraising activities and some items left by community groups who had used the building previously remained inside.

5.5.3 The ESO considered that council members were aware that Cllr S's and some community groups' belongings had been in the building for a number of years and had made no adverse comment.

5.5.4 Cllr S agreed that he had stored some belongings in the building for a member of the public. The ESO considered that Cllr S acted in good faith with regards to this arrangement and did not have an improper motive.

5.5.5 In April 2007 the council discovered items belonging to a commercial company in the building. Although Cllr S said he did not make any arrangements with the commercial company, the ESO did not accept this and considered that Cllr S had made the arrangements and was present when the goods were delivered. The ESO considered that Cllr S had failed to comply with the Code in that he used his position improperly for the purpose of securing an advantage for another person. However, the ESO found no evidence that Cllr S was paid for his services or the use of the building. The ESO did not consider that Cllr S benefited from the arrangement or that he had any underhand intent or improper motive. In the circumstances of the case, no further action was necessary.

5.6 **CLLR H (Case no. SBE17970.07)**

**Allegation: The member brought their office or authority into disrepute, improperly secured an advantage or disadvantage, failed to disclose a personal interest and failed to withdraw from a meeting in which they had a prejudicial interest.**

- 5.6.1 The complainant alleged that Parish Cllr H, when completing a form for financial support from the post office authority in opening a shop and post office, gave inaccurate information about the location of post offices in nearby villages. Further that Cllr H deliberately misinformed the parish council about funding for the venture from the Village Retail Services Association (ViRSA) by claiming incorrectly that a grant for £10,000 had been agreed. Lastly, it was alleged that on 5 February 2007 Cllr H tabled motions on the parish council's agenda relating to a private company of which he was a director, without disclosing his personal interest.
- 5.6.2 Cllr H stated that he completed the post office form in good faith and that the information he included was correct. He also stated that an advisor from ViRSA had advised him that, should the shop proposal meet its financial requirements, it should qualify for a grant of at least £10,000.
- 5.6.3 Cllr H became a director of the company concerned on 2 February 2007. This was a not-for-profit community interest limited company. Cllr H accepted that, with hindsight, he should have declared an interest at the meeting on 5 February and either withdrawn the motion or left the room when it was discussed. He stated that he was not motivated by personal financial interest when he became a director and that he resigned as a director on 12 February so that he could continue to support the shop project at parish council meetings.
- 5.6.4 The evidence before the ESO indicated that Cllr H signed the post office form on behalf of the Village Shop Steering Group, which was not a committee or sub-committee of the council and as such, Cllr H was not acting in his capacity as a councillor when doing so. The ESO concluded that even if Cllr H had been acting as a councillor, there was no evidence that he sought to mislead the post office authority by not mentioning the location of existing post offices nearby.
- 5.6.5 The ESO noted that Cllr Hs' statement to the council about the grant, as minuted, was inaccurate, as no grant had been awarded at that stage for the village shop project. However, on balance the ESO did not consider Cllr H had deliberately sought to mislead the council, and was acting based on the assurance he had received from the ViRSA adviser.
- 5.6.6 The ESO considered that, as a director of the company, Cllr H had a personal interest when the village shop project was discussed at the council meeting on 5 February. By failing to disclose it, he breached the Code of Conduct. As the item concerned the question of whether the council should grant a lease to the company and what the financial terms should be, the ESO considered that Cllr Hs' personal interest was significant enough to prejudice his judgement of the public interest and that he should have left the room when the item arose. By not doing so, Cllr H failed to comply with the Code of Conduct.
- 5.6.7 The ESO noted that Cllr H did not stand to gain personally from the company's financial success and that he did not see his roles as a director and parish councillor as conflicting, as both the council and the company wanted the shop project to benefit the community. The item was deferred and so Cllr H did not take part in any discussion of it. Taking this into account, the ESO found that no action was necessary.

5.7 **CLLR D-C & CLRR E-C (Case no. SBE18036.07 and SBE18037.07)**

**Allegation: The members improperly secured an advantage or disadvantage and failed to disclose a personal interest**

- 5.7.1 The complainant alleged that Borough Cllrs D-C and E-C used their positions as members improperly to influence council officers' decisions about a development site near their own property. The complainant further alleged that Cllr D-C failed to declare a personal and prejudicial interest at a council meeting when the planning application for the site was considered. Both councillors denied the allegations.
- 5.7.2 The ESO considered that both councillors repeatedly raised issues with council officers regarding the planning application, mainly because of its impact on their own lives but also its impact on the wider public. The ESO did not consider this to be inappropriate conduct or a failure to comply with the Code of Conduct. Councillors are not precluded from raising concerns with officers even where the issue may have a personal impact – particularly as members of the public would also be able to do so.
- 5.7.3 However, the ESO noted that Cllr E-C attempted to raise concerns at a number of planning briefing meetings attended only by members and officers. This was improper as the meetings were not open to the general public and she was using the opportunity to raise issues primarily of concern to her, although there was no evidence to suggest that she was dishonest with officers about her concerns.
- 5.7.4 The ESO considered that Cllr D-C failed to declare a personal and prejudicial interest at a meeting when matters concerning the complainant's planning application were discussed. Cllr D-C should have declared a prejudicial interest in the matter because his property bordered the site and his well-being would have been more affected by it than that of other council residents. The ESO took into account, however, that Cllr D-C genuinely considered there to be no need to declare an interest because the council were not making a decision on the matter on that occasion.
- 5.7.5 Given all the circumstances, the ESO found that no further action was necessary.

5.8 **CLLR B (Case no. SBE19500.07)**

**Allegation: The member failed to complete the register of interests.**

- 5.8.1 The complainant alleged that Parish Cllr B failed to notify in writing the monitoring officer that he had purchased a house within the boundary of an adjoining parish.
- 5.8.2 As the property was not in the Parish Council area Cllr B was not required to provide written notification of the purchase of the property to the monitoring officer and there could be no failure to comply with the Code of Conduct.

**COURT DECISIONS**

5.9 **NEATH PORT TALBOT COUNTY BC v WARE (2007)EWCA Civ 1359 CA (Civ Div)**

- 5.9.1 The Borough Council appealed against the quashing of a planning consent and a hazardous substance consent that it had granted for a development by National Grid of a natural gas pressure reduction station. The Council had approved the development, but in judicial review proceedings, a judge had found the consents to be invalid on the ground of procedural irregularity, namely that four councillors had under a

misapprehension of law abstained from voting because they had received "wrong advice" from the monitoring/deputy monitoring officer. He found that the four councillors had felt under pressure not to participate in the voting. A costs order had been imposed against the local authority. Although the validity of the consents was not a live issue by the time the instant appeal was heard, it was accepted that the public law grounds on which the judge had quashed the consents raised a point of some general importance and raised questions that could have repercussions for local authorities in future similar cases.

5.9.2 The Court of Appeal held that the appeal should succeed because:

- (1) In substance, the relevant (and unchallenged) evidence of the four councillors in the court below had been that they were left to make their own decisions and to exercise their own judgment about voting on the item in the meeting. They had not been pressured to abstain from voting, and the judge's summary of the advice given to the four councillors was inaccurate in several significant respects. In particular, the advice that the judge had held to be wrong was not the advice that was, in fact, given. Therefore there had been no procedural irregularity.
- (2) The instant case underlined the importance of the evidence and of the court identifying correctly and with precision the advice that was in fact given to councillors and the respects (if any) in which the advice was wrong. It was not necessary or desirable for the court to express views on numerous other grounds of appeal relied on by the local authority, since they were better left for detailed argument and decision as and when they arose in other cases.

6. **APPENDICES**

None

7. **BACKGROUND PAPERS**

Standards Board for England website - case summaries

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