

Agenda item:



Walsall Council

Standards Committee

12 April 2010

Case Law Update

Summary of Report

To provide members with case summaries of a few recently decided cases to encourage debate and facilitate learning.

Recommendations

- (1) That the content of the report be noted;
- (2) That the Monitoring Officer circulates the report to all elected members.

Resource Considerations:

Financial:

None arising from this report

Legal:

None arising from this report

Staffing:

None arising from this report

Citizen Impact:

None arising from this report

Community Safety:

None arising from this report

Environmental:

None arising from this report

Performance and Risk Management:

Risk:

None arising from this report

Performance Management:

None arising from this report

Equality Implications:

This report complies fully with the Council's policies on equality and diversity

Consultation:

None arising from this report

Background papers

All published

Signed:



Bhupinder Gill
**Assistant Director Legal &
Constitutional Services and Monitoring
Officer**

Date: 24 March 2010

Signed:



Rory Borealis
Executive Director (Resources)

Date: 29 March 2010

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Background

The Local Government Act 2000 (the Act) introduced the mandatory Code of Conduct for elected members (the Code) which was revised in May 2007.

Up until May 2008, complaints of alleged breaches of the Code were made to Standards for England (SfE) which were investigated either by an Ethical Standards Officer (ESO) or if the complaint is referred for local investigation, by someone appointed on behalf of the Monitoring Officer.

The more serious breaches of the Code are heard and determined by the Adjudication Panel for England, who subsequently publish their decisions on their website. This not only indirectly comprises part of the sanction that is imposed on the member but also provides an excellent channel for the education of all stakeholders who have an interest in the Code either by being subject to its provisions or who are involved in advising on its application. Cases are decided on a daily basis and decisions can be viewed at either www.standardsboard.gov.uk or www.adjudicationPanel.co.uk.

From May 2008 onwards, the procedure changed with all complaints of alleged breaches of the Code of Conduct now sent to local Standards Committee for determination.

Three recent decisions are detailed below for member's information.

Case Study 1

Councillor Ian Fowler - Blackpool Borough Council

It was alleged that Councillor Fowler brought his office or authority into disrepute when he signed a letter stating that he did not know about two donations which had been made to Blackpool South Conservative Association by Kensington Developments Limited when he did. The complainant alleged that Kensington Developments had made the donations to the general election fighting fund for Councillor Ron Bell, who is the Conservative Party's prospective parliamentary candidate for Blackpool South. The complainant alleged that Councillor Fowler knew about the two donations when he signed the letter, because he was the proposed election agent for Councillor Ron Bell, and therefore responsible for donations to Councillor Bell's campaign.

The Conservative Group members of Blackpool Council met on 17 September 2009 and 21 September 2009. On 17 September, Councillor Peter Callow, the Conservative Group Leader, asked the councillors present if they knew about two political donations to Blackpool South Conservative Association. At the end of

the meeting on 21 September, a document was passed around the group members to sign. It stated:

“We the undersigned wish it to be known that we did not know that the two donations given to Blackpool South Conservative Association were from Kensington Developments Ltd”

No council officers were present at either meeting and no present or future council business was discussed. The title ‘Councillor’ is not used in the document. Named individuals signed the document. Councillor Fowler has printed his name and signed.

Group members who were not at the 21 September group meeting were given the opportunity to sign the document after the full Council meeting on 23 September. The document was not discussed in the full Council meeting on 23 September 2009.

Councillor Fowler took the document, without any covering letter, to the Blackpool Evening Gazette newspaper, on instructions from Councillor Callow. The signed document was not passed to the Council.

The meetings on 17 and 21 September 2009 were political meetings. There is no evidence that anything was put forward by way of additional statement, or covering letter, which suggested that the document signed was about council business. Neither was the document considered as council business at the full Council meeting on 23 September.

Those who signed the document were not acting, claiming to act or giving the impression that they were acting as representatives of their authority when they signed the document. Councillor Fowler identified himself with his party and political ward. In common with the other members he wished to “clear his name” with the electorate in relation to the donations. He was not describing his involvement in any actions the political group had taken as councillors. The local Conservative Association is not the political group to which Councillor Fowler belongs at the Council.

The Ethical Standards Officer found no evidence that Councillor Fowler was acting as a councillor or performing the functions of his authority when he signed the document. Neither is there any link between Councillor Fowler’s conduct and the resources of the Council.

The Ethical Standards Officer considered that in signing the document Councillor Fowler was not acting as a councillor and, therefore, was not covered by the Code. Therefore, whether or not he knew of the donations is not an issue about which she needs to form a view.

The allegations in this case relate to paragraph 5 of the Code of Conduct.

Paragraph 5 states that “you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute”.

The ethical standards officer found that the member did not breach the Code of Conduct.

Case Study 2

Councillor J Houldsworth - Blackpool Borough Council

It was alleged that Councillor Houldsworth failed to declare a personal or a prejudicial interest at a Development Control Committee meeting on 8 June 2009 during consideration of a planning application by Kensington Developments Limited. The application was to build housing in the Marton Moss area of Blackpool. The complainants alleged that by the date of the meeting on 8 June 2009, Councillor Houldsworth knew that Kensington Developments had made a political donation of £5,000 to the Blackpool South Conservative Association, of which he is a member.

On 22 July 2008, Kensington Developments submitted an outline planning application for the large scale development of parts of the Marton Moss area of Blackpool. On 14 May 2009 they appealed to the Planning Inspectorate against the Council's non-determination of that application. On 3 June 2009, Kensington Developments submitted a further planning application to the Council.

On 8 June 2009, the Council's Development Control Committee considered the first planning application because of the appeal. The Committee was asked to say whether the application would have been rejected or approved if it had come before the Committee for determination. Councillor Houldsworth was at the meeting and did not declare a personal or prejudicial interest in the application.

Councillor Houldsworth is a member of Blackpool South Conservative Association. The Association maintains a "fighting fund" account. Donations for the prospective parliamentary candidate were put in the fighting fund and were for the exclusive use of the parliamentary candidate's election expenses. No payments are made from the fighting fund to ward members or other candidates.

On 19 May 2008, Kensington Developments donated £5,000 made payable to Blackpool South Conservative Association. They sent the cheque to Councillor Ron Bell, prospective Conservative Party parliamentary candidate for the Blackpool South constituency. He presented it at a meeting of the Association on 20 May 2008 as a donation for his campaign. The donation was paid into the fighting fund account. Councillor Houldsworth remembered Councillor Bell

presenting the £5,000 donation at the 20 May 2008 meeting. He said that he did not know who the donor was.

The Conservative Group members met on 17 September 2009 and 21 September 2009. No council officers were present at either meeting, and no present or future council business was discussed. On 17 September, Councillor Peter Callow, the Conservative Group Leader, asked the councillors present if they knew about two political donations to Blackpool South Conservative Association. At the end of the meeting on 21 September, a document was passed around the group members to sign. It stated:

“We the undersigned wish it to be known that we did not know that the two donations given to Blackpool South Conservative Association were from Kensington Developments Ltd”.

Councillor Houldsworth did not sign the document. He said that he was not aware that Kensington Developments was the donor until 11 August 2009 at a political group meeting. He said that he did not know the source of the donation when he participated in the Development Control Committee meeting on 8 June 2009.

The Ethical Standards Officer found that the donations were paid into the Association's fighting fund account for the use of the prospective parliamentary candidate. There is no evidence that these donations were available to any ward candidates, ward members or other members of the Association. The Ethical Standards Officer therefore considered that it was not necessary to resolve any conflicts in the evidence about whether Councillor Houldsworth was aware of source of the political donation when he participated in the Development Control Committee meeting on 8 June 2009.

The Ethical Standards Officer considered that the donations do not amount to an interest that Councillor Houldsworth was required to register. The Development Control Meeting was not considering business which related to or was likely to affect the Association. The business under consideration was an application by Kensington Developments. Kensington Developments would be affected by any decision made by the Committee but not the Conservative Association.

Councillor Houldsworth would have had a personal interest if the decision could have affected his well-being or financial position or that of a member of his family or someone else with whom Councillor Houldsworth has a close association, more than that of the majority of the Council's ratepayers, taxpayers and inhabitants. The Ethical Standards Officer found no evidence of this.

In the absence of a personal interest, it is not possible for Councillor Houldsworth to have had a prejudicial interest.

The Ethical Standards Officer therefore considered that Councillor Houldsworth did not fail to comply with paragraph 12 of the Code of Conduct in respect of his conduct at the Development Control Meeting.

The allegations in this case relate to paragraphs 5, 9, and 12 of the Code of Conduct.

Paragraph 5 states that “you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute”.

Paragraph 9 states that “...where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest...”.

Paragraph 12 states that “...where you have a prejudicial interest in any business of your authority you must...withdraw from the room or chamber where a meeting considering the business is being held....”.

The Ethical Standards Officer found that the member did not breach the Code of Conduct.

Case Study 3

Councillor Brian Martin Smith – City of Bradford Metropolitan District Council

It was alleged the member attempted to use his position improperly to secure an advantage for himself or others, failed to register an interest, and brought his office or authority into disrepute.

The complainant alleged that Councillor Brian Martin Smith failed to declare he was an elected member when he was submitting applications for planning permission for members of the public. The complainant further alleged that Councillor Smith failed to register his interest in his planning consultancy business, Sharphaw Designs, on the members’ register of interests.

The Ethical Standards Officer considered that development control is one of the most controversial and high profile functions of a local authority. It is important the public has confidence in the planning process, and confidence that decisions are taken objectively, for justifiable reasons and without unfair advantage to those connected with the decision-making process.

The Ethical Standards Officer found that Councillor Smith had repeatedly acted as a planning agent, within a protocol created at his instigation in 1999, at odds with Bradford Council policy. However, there was no evidence that in doing so Councillor Smith had acted improperly or disreputably.

The Ethical Standards Officer considered that there were areas of tension between Councillor Smith's role as a constituency member with an active interest in planning matters, and his role as a planning agent promoting his clients' applications in the same ward. Planning officers had been expected to interact with him as an agent promoting planning applications, as a ward member at times opposing planning applications, and as a senior member of the executive with a significant cabinet portfolio.

There was also a tension, which Councillor Smith did not appear to have addressed, between the reasonable expectation of his constituents that he should act only in the public interest in the course of transacting council business and his role as an agent receiving payment for pursuing the interests of clients. These concerns were compounded in the Ethical Standards Officer's view by Councillor Smith's failure to register his company name.

The Ethical Standards Officer considered that the right approach to managing these tensions had always been available to officers within the Council's planning policy, namely referring all of Councillor Smith's planning applications to the relevant area planning panel for determination. The Ethical Standards Officer expressed his expectation that officers would now implement the planning code in future in this way without pressure from Councillor Smith.

The Ethical Standards Officer considered that Councillor Smith's failure to register the name of his company in the member's register of interests was at the lower end of the scale of seriousness. The failure appeared to have arisen from some confusion and naivety on the member's part about what was required. Although there is no evidence that he informed Planning Officers of his new trading name, he traded in the same way from the same address, signing applications with his own name, with the justifiable expectation that applications he acted for would be attributed to him. The Ethical Standards Officer also noted Councillor Smith's recent registration of the relevant details in the member's register of interests.

Consequently, the Ethical Standards Officer found that the only breach of the Code that had occurred was the failure to register interests correctly. These breaches were not intentional and there was no evidence to suggest that Councillor Smith had ever attempted to conceal his interests deliberately. Consequently he found that no further action was necessary.

The Ethical Standards Officer made recommendations about the council's planning service as a result of the investigation, which are intended to help the council strengthen its arrangements for openness and transparency.

The allegations in this case relate to paragraphs 5, 6(a) and 13(2) of the Code of Conduct.

Paragraph 5 states that “a member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute”.

Paragraph 6(a) states that a member "must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage".

Paragraph 13(2) states that a member must: “within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority’s monitoring officer.”

The Ethical Standards Officer found that the member failed to comply with the Code of Conduct, but in the circumstances of the case, no further action needed to be taken.