

## **COMPLAINT SC0802**

### **MONITORING OFFICER ADVICE FOR THE MEETING OF THE STANDARDS COMMITTEE ON 11<sup>TH</sup> SEPTEMBER 2009.**

#### **1 INTRODUCTION**

1.1 The Standards Committee on the 11<sup>th</sup> September has been convened in order to hold a hearing in respect of the above complaint. The matter was referred for investigation by the Assessment Sub Committee on 28<sup>th</sup> July 2008. The Decision Notice identified the following potential breaches:

- lack of respect
- bullying
- intimidating/attempting to intimidate someone involved in an allegation
- disrepute
- failing to declare a personal interest

The final report of the investigation is dated 2 February 2009.

1.2 On 27 March 2009 the Standards Committee decided that the allegation of a failure to declare a prejudicial interest should be referred for hearing. It decided there should be no further action in relation to the other potential breaches.

1.3 The complainant subsequently issued a complaint under the Council's complaints procedure. This complaint was in essence about the quality of the investigation report and the processes of the investigation.

1.4 The investigation under stage 3 of the council's complaints procedure and the local determinations process are separate and the stage 3 complaint cannot be used as an appeal against decisions of the Standards Committee.

1.5 However the stage 3 investigation has revealed some possible shortcomings in the investigation report which may have an impact on the hearing and which has therefore led to the issuing of this advice.

#### **2 Issues to consider**

2.1 The matter before the Committee for hearing is solely in respect of whether Councillor Myers failed to declare a prejudicial interest. This appears to be in relation to the development of the Thorney Orchard site. This is a site which was, but is no longer, in the ownership of the complainant. However the investigation report does not make any distinction between this site and the site which continues to be in the complainant's ownership (Orchard House) and simply refers to 'the site'.

- 2.2 Councillor Myers is said to own land directly adjacent to 'the site' (Thorney Orchard in this instance) and is alleged to have intervened on a number of occasions in the course of discussions about the development of the site, seemingly to prevent the development from going forward.
- 2.3 There is no mention in the Assessment Sub Committee's referral for investigation as to whether there was a potential breach of Paragraph 6(a) of the Code of Conduct for Parish and Town Councils. This paragraph says:
- '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'
- 2.4 If Councillor Myers had a prejudicial, interest in relation to this site, then it is possible that any intervention by him might be in breach of paragraph 6(a). This is not considered in the investigation report.
- 2.5 The Standards Committee on 27<sup>th</sup> March 2009 agreed that there should be no further action in respect of letters written by Councillor Myers to Laing O'Rourke, Severn Trent Water and Enterprise plc although the investigation report did find that Councillor Myers had written these letters in his capacity as a parish councillor. These letters were in relation to activity on Orchard House, the complainant's land. There was evidence in front of the Committee both from the complainant and from Councillor Myers that this intervention had directly led to the loss of a contract between the complainant and those companies.
- 2.6 It does not appear to be the case that the Assessment Sub Committee was directed to and in any event did not consider whether there was also a potential breach of Paragraph 6(a) in relation to the writing of these letters.. As the report did not distinguish between the two different sites (Thorney Orchard and Orchard House) on the face of it there was a finding that Councillor Myers had a prejudicial interest in relation to both sites. If Councillor Myers had a prejudicial interest in relation to Orchard House and wrote the letters to Laing O'Rourke and others then he may have been in breach of paragraph 6(a).
- 2.7 Furthermore it is not clear from the investigation report whether Councillor Myers was acting with the authority of the Parish Council when he wrote those letters. Councillor Myers' evidence was that he was writing in a personal capacity but the investigation report found that he was writing in his capacity as a parish councillor. If he wrote without authority as a parish councillor then this too could be a breach of paragraph 6(a). None of this is considered in the investigation report.

### **3 Courses of Action open to the Standards Committee**

- 3.1 The Standards Committee will need to decide what to do in the light of the information set out above. In essence, there are two course of action open to it.
- 3.2 Regulation 18(8) of the Standards Committee (England) Regulations 2008 allows the Standards Committee at any stage prior to the conclusion of the hearing to adjourn the hearing and require the Monitoring Officer to seek further information or undertake further investigation on any point specified by it. The Committee may only adjourn once for such purposes.
- 3.3 If the Standards Committee is of the view that the issues identified above are sufficiently serious then it cannot make decisions on them on September 11<sup>th</sup> as this would be manifestly unfair to Councillor Myers who would have had no time to prepare his case. The Standards Committee would have no alternative but to adjourn for further investigation to take place and a new hearing date would need to be fixed. In adjourning, the Standards Committee would need to specify what issues required further investigation and set out a timetable for this and for the hearing.
- 3.4 The alternative is for the Standards Committee to agree to proceed on the basis of the matter referred for hearing, that is the allegation that Councillor Myers may have breached the Code by his failure to declare a prejudicial interest. In doing so the Standards Committee would need to disregard the information set out above and only consider what is put before it in the rest of the papers.
- 3.5 Although this complaint has already suffered from significant delay, my advice is that the Standards Committee should adjourn the hearing in order to investigate the matters set out in paragraphs 2.1 – 2.7 above. Otherwise the Standards Committee cannot be certain that the case before it is the proper case for it to consider.
- 3.6 An adjournment will require a supplemental report to be prepared by the investigating officer.