

DECISION NOTICE: FOR HEARING. CONFIDENTIAL

Reference SCO802

History

On 30th June, 2008 Herefordshire Council's Monitoring Officer received a complaint. The case was referred to Herefordshire Council's Standards Committee.

The Assessment Sub-Committee of the Standards Committee met on 28th July, 2008 and determined that the case should go for investigation locally.

The Monitoring Officer assigned the investigation to the Deputy Monitoring Officer. His report was completed on 2nd February, 2009, some two working days over the recommended timescale of six months. The Standards Committee is satisfied as to the reasons for this slight delay, and that it has not prejudiced the conduct of this case in any way. The report concluded :

"Finding as to whether there has been a breach of the Code of Conduct

I find that Parish Councillor Myers did breach the Code of Conduct in the following respect:

- (a) I consider that Councillor Myers has breached the Code of Conduct by failing to declare his clear prejudicial interest in the meeting of 12th March 2008, by reason of his ownership of Wythall, a property within close proximity to the Complainant's address.
- (b) There is no compelling independent evidence to suggest abuse or a lack of respect by Councillor Myers in relation to his dealings with the Complainant. I do not find a breach of the Code of Conduct in respect of that allegation.
- (c) I do not consider that the letters written to Severn Trent plc or Laing O'Rourke amounted to a breach of the Code of Conduct."

On 27th March, 2009 the Standards Committee of the Council met to consider the report arising from the investigation of the complaint.

The Committee comprised:-

Robert Rogers (Independent Chairman), David Stevens (Independent Member), John Hardwick (Town and Parish Council representative), Councillor John Stone (Herefordshire Council representative) and Councillor Beris Williams (Herefordshire Council representative).

±

Complaint

The Complainant, Simeon Cole, alleged that the subject member, Frank Myers M.B.E., a Member of Walford Parish Council:-

- a) failed to declare a prejudicial interest at a meeting of Walford Parish Council on 12th March, 2008 at which an item relating to Thorny Orchard was considered. Thorny Orchard is a property adjacent to the subject member's own property, Wythall. It was alleged that the proximity of the two properties meant that the subject member should have declared a prejudicial interest in respect of that item.
- b) wrote to companies concerned with the Thorny Orchard site, namely Laing O'Rourke, Enterprise plc and Severn Trent Water in misleading terms, and prompted neighbours to do the same, the result of which was that these companies ceased to use Thorny Orchard. This resulted in a loss of income to the complainant.
- c) orally harassed the complainant and his wife on several occasions, indicating his intention to close their business down at one location and stop development at another location owned by them.

Evidence Considered

1. The report of 2nd February, 2009 by the Deputy Monitoring Officer, and supporting documentation.
2. Further comments in writing submitted by the complainant on 8th March, 2009 and the comments of the subject member e-mailed on 26th March, 2009.

Findings

The Committee are satisfied that the subject member was a serving Councillor at the material times, and still is so.

In respect of the allegation that the subject member failed to declare a prejudicial interest in regard to the item concerning Thorny Orchard on 12th March, 2008 the Committee noted that by virtue of paragraph 8 of the Code of

Conduct applicable to Walford Parish Council, a personal interest includes the business of the Council where a decision in relation to that business might reasonably be regarded as affecting the subject member's wellbeing or financial position (paragraph 8(b)). Under paragraph 10 of the Code, a personal interest is a prejudicial interest where the interest in question is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the subject member's judgement of the public interest (paragraph 10(1)). The Committee also noted the effects of prejudicial interests contained in paragraph 12 of the Code (principally the requirement to withdraw, unless covered by a dispensation) .

The Committee considered that assessment of prejudicial interest should not be based on the contiguity or proximity of properties alone, but that other factors affecting the quality of life or amenity (in this case the movement of plant and equipment) may reasonably be taken into account.

The Committee noted that the complainant's further comments of 8th and 26th March did not bear directly on the issues in this case.

In respect of the allegation that the subject member's letters to the public utilities were in some way improper or misleading, the Committee noted that they were signed by the subject member with his title as Vice-Chairman of the Council, but on his personal headed writing-paper. The Committee noted the subject member's view that these letters were written in a personal capacity, but concluded that they were in practice written as a member and Vice-Chairman of Walford Parish Council. The Committee considered that these letters expressed firmly held views but that they did so in a restrained and proper fashion. The Committee did not identify any part of the letters as misleading, accepting that there might well have been personal differences of view between the complainant and the subject member over the issues raised therein.

The Committee considered the provisions of paragraph 6(a) of the Code (improper securing of advantage) and concluded that these were not engaged in this case.

In respect of the final allegation that the subject member orally abused or harassed the complainant and his wife, the Committee noted: the differing views of subject member and complainant; that, with the exception of the occasion on which the subject member delivered correspondence from the Herefordshire Council Ward Member, there was no reference to any oral exchanges between the parties; and no comments or behaviour cited in evidence that were readily identifiable as harassment. They had before them no corroborative evidence from the complainant with regard to the visits by the subject member to view the complainant's properties.

Decision

The Committee accepted the conclusions of the Report. The Committee did not think that it was necessary that the Adjudication Panel for England should hear this case.

In accordance with section 57A(2)(c) of the Local Government Act 2000 as amended, the Committee decided that no action should be taken in respect of the allegations at b) and c) under “Complaint” above.

In accordance with Regulation 17(1)(b) of the Standards Committee (England) Regulations 2008 a hearing is required to be held under Regulation 18 in respect of the allegation at a) above only.

This Decision Notice is sent to the person or persons making the allegation, the Member against whom the allegation was made and the Standards Board for England.

There is a right to request review of this decision, by virtue of section 57B of the Local Government Act 2000 as amended, exercisable within thirty days of the date of this Notice.

Signed Date

Chair of the Herefordshire Council Standards Committee