
CASE STUDY OF A DETERMINATION OF AN ALLEGATION OF MISCONDUCT UNDER THE LOCAL AUTHORITIES (CODE OF CONDUCT) (LOCAL DETERMINATION) REGULATIONS 2003

1 SUMMARY

- 1.1 This report presents a case study for the Committee to consider by way of a training exercise in dealing with the local determination of allegations of misconduct.

2 BACKGROUND

- 2.1 The Local Authorities (code of conduct) (Local Determination) regulations 2003 came into effect on 30th June 2003 enabling Ethical Standards Officers of the Standards Board for England to investigate and then refer a report on allegations of misconduct to the Standards Committee for local determination.
- 2.2 The procedure for dealing with such allegations was subject to detailed guidance issued by the Standards Board in Autumn 2003 which the Committee approved and was incorporated in part 4 of the Council's Constitution.

3 CASE STUDY

- 3.1 An exercise was undertaken shortly after the regulations were introduced and a further training exercise has been prepared to assist members on developing their understanding.
- 3.2 The ethical standards officer's report detailing the complaint and facts of the case, relevant provisions of the code of conduct, cast list and case summary is set out in the attached documents.
- 3.3 For the purpose of this exercise the Ethical Standards Officer does not wish to be represented and will rely on his report being presented by the Reporting Officer. In view of the dispute as to the facts Cllr P Mitchell, Cllr Mrs. D Cotton and Cllr. Mrs J Branning will be called to give evidence. The Respondent does not wish to call any witnesses.

4. DETERMINATION

- 4.1 On hearing the evidence the Committee will consider in private session which of the following findings to adopt:
- (a) That there is no evidence of any failure to comply with the Code of Conduct.

- (b) That the Respondent has failed to comply with the Code of Conduct, but that no action needs to be taken.
- (c) That the Respondent has failed to comply with the Code of Conduct and should be:
 - (i) censured, or
 - (ii) restricted access to the premises and resources of the authority for a period up to a maximum of three months (but ensuring that such restrictions will not unnecessarily restrict the Member's ability to carry out his/her responsibilities as an elected or co-opted member)
 - (iii) suspended or partially suspended for a maximum period of three months, or
 - (iv) suspended or partially suspended for a maximum period of three months or until such time as he/she submits a written apology or undertakes any training or conciliation specified by the Committee.

4 RECOMMENDATION

4.1 It is proposed that the Committee RESOLVES

To undertake the moot and complete the training exercise.

Albert Bugeja

Head of Legal Services

Background Papers:

None

For further information please contact Angela Law on:-

Tel:- 01702318131

E-Mail:- angela.law@rochford.gov.uk

INDEX TO CASE STUDY.

	PAGE
Case Summary	1
Ethical Standards Officer's Report	2-6
Relevant provisions of the Code of Conduct	7
Dramatis Personae	8
Form F (Pre-hearing process summary)	9-12

CASE SUMMARY**THE COMPLAINT**

- The Respondent, Cllr Dennis Watts, failed to treat others with respect.
- The Respondent brought his office and the authority into disrepute.
- The Respondent failed to disclose a personal interest in an item under consideration at the meeting.
- The Respondent failed to withdraw from a Council meeting despite having a prejudicial interest.

DETAILS

On 20/01/05 the Planning Committee considering a planning application for the development of a bail hostel in Getta Way, Somewhere, SO0 0NN. The proposed hostel was to house people who have been ordered by the court to be there as a condition of their bail. It would also house some offenders as a part of their community sentence order or as a condition of their post release prison license.

The hostel was to be built directly opposite Cllr D Watts house, although it would be set back in a field 200 yards or so away. It is alleged that Cllr D Watts has plans to move home and so feared that the location of the bail hostel would affect the market value of the house. In addition, it is understood that he had made it clear in public statements that the offenders would cause the neighbourhood problems.

At the beginning of the meeting Cllr D Watts did not declare an interest on the above item when the Chairman asked members if there were any declarations of interest.

After the item was introduced, Cllr D Watts joined in the debate and began to make a speech. During his speech Cllr P Mitchell shouts ‘Sit down! You shouldn’t even be in the room on this one.’ Cllr D Watts allegedly responded immediately with the words ‘shut up you menacing fool!’ and continued momentarily.

The legal officer at the meeting interjected and reminded the Committee Members of the requirements of the Code of Conduct regarding declaration of interests and that a prejudicial interest precluded members from participating in the determination of the matter and such a situation a Member would have to withdraw from the meeting.

Cllr D Watts reluctantly agreed that he only had a personal interest in the item and decided to stop talking but not leave the meeting.

The meeting continues and the Committee voted against the application and planning consent was refused. Councillor Watts voted on the application.

Date: 1st July 2005

ETHICAL STANDARDS OFFICER'S REPORT TO THE STANDARDS COMMITTEE.

Respondent: Councillor Mr D Watts

**Relevant Authorities
Concerned: Somewhere District Council**

The Complaint.

- The Respondent, Cllr Dennis Watts, failed to treat others with respect.
- The Respondent brought his office and the authority into disrepute.
- The Respondent failed to disclose a personal interest in an item under consideration at the meeting.
- The Respondent failed to withdraw from a Council meeting despite having a prejudicial interest.

1. ESO Findings of Fact.

The Respondent has been a Councillor for Somewhere District Council for 6 years and is a member of the Council's Planning Committee. He was Chairman of the Planning Committee between 2003-2004.

The Respondent signed an undertaking to observe the Council's Members Code of Conduct and provided details of his financial and other interests in the Register. The Respondent last received training on the Code of Conduct and Standards in November 2004.

A planning application was considered on the 20th January 2005 which proposed to develop an empty property in Getta Way to be used as a bail hostel. The Respondent lives in the property opposite the proposed site. At the meeting the Respondent failed only disclosed a personal interest after being challenged and failed to disclose a prejudicial interest on the item under consideration. He did not withdraw from the Chamber.

Councillor Philip Mitchell has been a member of Somewhere District Council for 6 years. At the planning meeting, Councillor Mitchell commented that the Respondent should not be in the meeting speaking on the matter. It is alleged that the Respondent replied in an offensive fashion.

2. Failure to declare an interest.

The Respondent said that he was of the opinion that he did not have to declare an interest. He says that the proposed development was at least 200 metres away from his property. The Respondent says that the day before the planning meeting he had left a message for the legal department but they did not respond.

The Respondent says that he has never failed to declare an interest and that he was fully aware of the procedure. On this occasion he did not think that he had any interests to declare.

The Head of Legal Services confirmed that neither he nor any members of his staff were aware of any messages left by the Respondent. He also spoke to the Committee section and they had not received any messages to contact the Respondent. The Respondent was not able to give the name of the person whom he left the message with.

Councillor Mitchell says that prior to the meeting he had seen the Respondent and commented that he will have to leave the room when the item is being discussed. The Respondent does not recall hearing Councillor Mitchell making the comment.

The ESO accepts that the Respondent made an attempt to contact the Council's legal department but is of the opinion that he should have also contacted the Committee clerk.

The Respondent reluctantly accepted that he had a personal interest in the item after advice from the Legal Officer who was present at the meeting. Although he did not continue to speak, the Respondent did not leave the chamber. The Respondent is of the opinion that his interest is merely personal and not prejudicial and so he was entitled to remain and vote on the item.

The ESO submits that the Respondent has received the correct training and had declared his interests in the past and sees no reason why he should fail to do so on this occasion.

3. Failure to treat another member with respect.

Councillor Mitchell says that he was taken aback by the comment made by the Respondent in calling him a 'menacing fool' and took this to be offensive and rude. He says that their friendship had deteriorated in recent weeks. He was aware that the Respondent was not happy with the proposal and recalls that he had asked Councillor Mrs J Branning how she viewed the proposal and if she knew any other members who would support the application. The Respondent further commented how the development would cause unwanted nuisance in the neighbourhood and mentioned something along the lines that 'the crime rate in that road would no doubt increase.' Councillor Mitchell says he intervened in the conversation because in his opinion it was not appropriate and the Respondent did not say anything further. Councillor Mitchell says that he was aware that the Respondent was considering moving and

thought that his concerns were that the development would decrease the value of the property.

The Respondent denies calling him a ‘menacing fool’. The Respondent says that the debate was quite intense and heated and he was carried away by the moment but does not recall calling Councillor Mitchell a ‘menacing fool’. He is surprised that Councillor Mitchell took offence as they are old friends and it is not unusual for them to joke about and call each other all sorts of names. The Respondent said that they remain friends and it was not unusual for them to have their own opinions and arguments over matters.

Councillor Mrs D Cotton was sat next to the Respondent and she recalls being surprised at the angry tone that he had taken in calling Councillor Mitchell a ‘menacing fool’. After the meeting, she was speaking to other members and they were also surprised at the outburst from the Respondent. She was aware that they were old friends but did feel that the Respondent had responded in an inappropriate manner. Councillor Mrs Cotton was not aware that their friendship had broken down and says that after he sat down he muttered something to the effect that Councillor Mitchell ‘could not stay out of it.’

Councillor Mrs J Branning says that she was also surprised by the Respondent’s reaction during the meeting. She says that the Respondent did not appear to be at all happy with the situation.

4. Discussions with Councillor J Branning prior to the Planning meeting

Councillor Mrs Branning says that she remembers that the Respondent had asked her on her opinion regarding the proposal on the bail hostel and whether she knew how other members may vote on the matter. She recalls the Respondent saying that the bail hostel would not fit in with the surrounding residential area. Councillor Mrs Branning felt that the Respondent was extremely unhappy with the proposal but stopped the conversation after Councillor Mitchell intervened.

Councillor Mrs Branning was aware that the Respondent was in the process of selling his house and thought it slightly unusual for him to comment on the application. She did not question the Respondent on this matter as he has been a member of the Council for 6 years and is experienced in such matters.

The Respondent says that it is not unusual for members to discuss certain items prior to the meeting. He has done so in the past and feels that he has done nothing wrong. Also, he admits that he had been considering moving house but the plans were not set in stone and had not taken any steps to go ahead with the move.

The ESO submits that it appears that other members also felt that the Respondent’s reaction was uncalled for. There is no reason for the ESO not to accept the testimonies of Councillor Mrs Cotton and Councillor Mrs Branning.

5. The ESO's Submissions

- 5.1 Were the application to be approved by Members, the new development may have caused the market value of the Respondent's property to decrease. There was the possibility that the Respondent stood to lose financially. In addition, through the testimonies of Councillor Mrs D Cotton, Councillor Mrs J Branning and Councillor P Mitchell it appears that the Respondent was clearly unhappy with the development believing that it would cause some nuisance in the neighbourhood.
- 5.2 The ESO has considered all the witnesses testimonies and accepts them to be a true account of the facts. Councillor Mrs Cotton and Councillor Mrs Branning have no personal or financial interests and the ESO sees no reason why their evidence cannot be relied upon. As for Councillor Mitchell his account of the facts appears to be consistent with Councillor Mrs Cotton and Councillor Mrs Branning. On the balance of probabilities the ESO accepts Councillor Mitchell's evidence that the Respondent was made aware of his interest in the matter but ignored the facts.
- 5.3 The Respondent appears to have made a weak attempt in contacting the Legal Services for advice. He did not appear to seek advice from any other Officer nor did he attempt to contact the Committee Section. The ESO finds it hard to believe that there were no Officers available to return the call, if the Respondent had left a message.
- 5.3 Paragraph 8 of the Code of Conduct requires a member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered to disclose the existence and nature of that interest. The purpose requiring the disclosure of the nature of the interest is so that other members may be aware of the details of the member's interest if the member decides that the interest is personal but not prejudicial and therefore stays in the meeting and participates.
- 5.4 Paragraphs 9 and 10 of the Code of Conduct cover those instances where a member concludes that he has a prejudicial interest. Paragraph 12 of the Code of Conduct requires a member with a prejudicial interest in a matter to withdraw from the room where the meeting is being held unless he has dispensation to stay and also requires the member not to seek improperly to influence a decision on that matter.
- 5.5 The Respondent clearly had a personal interest in the application being considered in that it affected his property to a greater extent than other council tax payers, ratepayers, inhabitants of the Council's area and the well being or his financial position (paragraph 8).
- 5.6 Paragraph 10 of the Code of Conduct states that a Member with a personal interest also has a prejudicial interest in a matter if the interest 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 Member's judgement of the public interest.

- 5.7 The ESO submits that a reasonable person with knowledge of the relevant facts would have considered the Respondent's interest so significant that it would have prejudice his judgement of the public interest. The Respondent was clearly not happy with the application and sought to influence other members of the committee on the decision of the matter.
- 5.9 The ESO submits that the Respondent had the opportunity to leave the chamber when the Legal Officer intervened during the meeting to advise on this procedural point. The Respondent did not withdraw and continued to vote on the matter. His presence and voting on the matter is seen to be influencing the committee's consideration of the application.
- 5.10 The ESO submits that the above failure to comply with the Code is considered to be a failure to comply with paragraph 5 of the Code of Conduct whereby it can be reasonably regarded as having brought his office and authority into disrepute.
- 5.11 Paragraph 2 requires a member to treat others with respect. The ESO accepts that in times of debate the atmosphere can become rather tense and heated. However, this does not allow for a member to err from the Code of Conduct. The ESO submits that the Respondent's behaviour by calling Councillor Mitchell 'menacing fool' in a wilful fashion was unacceptable and he has failed to comply with the Code of Conduct.

Dated 1st July

Signed Ian Beale
Ethical Standards Officer

RELEVANT PROVISIONS OF THE CODE OF CONDUCT.

Paragraph 2

A member must –

- (b) treat others with respect.

Paragraph 4

A member must not in his/her capacity, or any other circumstance, conduct him/herself in a manner which could reasonably be regarded as bringing his/ her office or the Council into disrepute.

Paragraph 5

A member must not in his/her official capacity, or in any other circumstance, use his/her position as a member improperly to confer on or secure him/herself or any other person, an advantage or disadvantage.

Paragraph 8

A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 13 and 14 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well being or financial position of himself, relative or a friend....

Paragraph 10

- (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest 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 member's judgement of the public interest.

Paragraph 11

A member with a prejudicial interest in any matter must –

- (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at the meeting, unless he/she has obtained dispensation from the authority's standards committee; and
- (b) not seek improperly to influence a decision about that matter.

'DRAMATIS PERSONAE'

ROLE OF	POSITION	PLAYED BY
Anon	Complainant	Not Applicable
Councillor D Watts	The Respondent	Ray How
Mr I Beale	The Ethical Standards Officer	Not Applicable
Mr F Butcher	The Reporting Officer	Nick Khan
Councillor P Mitchell	Member of District Council	Fred Laycock
Councillor Mrs D Cotton	Member of District Council	Jennifer Bradley
Councillor Mrs J Branning	Member of District Council	Angela Law
	Committee Clerk	John Bostock
	Legal Advisor (Monitoring Officer)	John Honey

ROCHFORD DISTRICT COUNCIL

STANDARDS COMMITTEE DETERMINATION

FORM F

PRE-HEARING PROCESS SUMMARY

DATE OF SUMMARY: 05/07/05

MEMBER SUBJECT OF ALLEGATION:

Councillor D Watts

ROCHFORD DISTRICT COUNCIL CASE REF.

00002

MONITORING OFFICER:

John Honey

STANDARDS BOARD FOR ENGLAND CASE REF.

TEST 2

The Standards Committee has received responses from the Member and the Ethical Standards Officer (ESO) - this is a summary of the main aspects of the case to be heard.

DETAILS OF THE ALLEGATION:

The name of the person who made the original allegation is: ANON

The relevant section(s) of the Code of Conduct: Paragraphs 2, 4, 5, 8, 10 and 12

Summary of the allegation:

- The Respondent sought improperly to influence the decision of the Committee.
- The Respondent brought his office and the authority into disrepute
- The Respondent failed to withdraw from a Council meeting despite having a prejudicial interest in an item under consideration at the meeting
- The Respondent failed to treat another member with respect.

DETAILS OF THE ETHICAL STANDARDS OFFICER & REPORT:

The name of the ESO who referred this matter is:

Mr I Beale

The findings of fact in the ESO's report that are agreed:

The Respondent lives in a property within close proximity with the proposed development.

The Respondent was intending to sell his property and considered the proposed development to be a hindrance.

The Respondent objected to the proposed development.

The Respondent had a personal and prejudicial interest in the application being considered by the Planning Committee.

The Respondent made one attempt to seek advice from the Council's legal department.

Councillor Mitchell had made the Respondent aware that he had an interest in the application and should withdraw from the chamber during consideration of the matter.

The Respondent did enter into discussion with Councillor Mrs Branning in relation to the application and sought to improperly influence his decision.

The application was considered at the Planning Committee on the 20th January 2005.

The Respondent did not withdraw from the chamber and participated in the meeting to consider the application.

The Respondent did not treat Councillor Mitchell with respect.

The Legal Officer did intervene to advise members on procedural points and declaring personal and prejudicial interests.

The Respondent declared a personal interest and remained in the meeting but did not continue to speak.

The Respondent voted against the application.

The application was refused.

The findings of fact in the ESO’s report that are not agreed:

- The Respondent lives within close proximity to the proposed development.
- The Respondent did not make more than one attempt for an Officer to return his call.
- The Respondent did seek to influence another member’s decision.
- The Respondent did have a prejudicial interest in the matter.
- The Respondent did not treat another member with respect.
- It was possible to influence the committee decision by remaining in the chamber when the application was under consideration.

Will the ESO, or a representative, attend the Hearing: NO

DETAILS OF THE HEARING

Date of the Hearing: 19th July 2005

Time of the Hearing: 2pm

Place of the Hearing Committee Room 4, Civic Suite, Rayleigh

The name of the member of the Standards Committee who will chair the hearing: Councillor C A Hungate

The name of the clerk of the hearing (or other administrative member): Mr J Bostock

The name of the ESO, or representative, (if attending): Not attending

The names of any witnesses who will be asked to give Evidence: 1) Cllr Mitchell
2) Cllr Branning
3) Cllr Mrs Cotton

PROPOSED PROCEDURE FOR THE HEARING:

1. Introduction by the Chairman who will be:
 - Announce the purpose of the hearing
 - Identify the respondent with the Respondent's representative (if any) and any witnesses he/she intends to call.
 - Identify the Ethical Standards Officer (ESO) (if present) and any witnesses he/she intends to call.
 - Identify the Reporting Officer and any witnesses he/she intends to call.
2. Receipt of representations (if any) from any party on procedural issues relating to the hearing.
3. Presentation of the ESO report by the Reporting Officer (or ESO if present) supporting witnesses being called as agreed.
4. Representations from the Respondent in support of his/her version of the facts, supporting witnesses being called as agreed.
5. The Reporting Officer (or ESO if present) to be invited to make closing statements.
6. The Respondent (or Respondent's Representative) to be invited to make closing statements.
7. The Hearing Panel to retire to consider, in private session, which finding to adopt.
8. The Hearing Panel to return and the Chairman to announce the decision and the reasons for that decision.

Note: The Hearing Panel may ask questions at any point during the Hearing. Other parties or their representatives will only be allowed to challenge any oral evidence by questions directed through the Chairman.