



ASSESSMENT SUB-COMMITTEE - Wednesday 15 July 2015

NOTIFICATION OF THE DECISIONS MADE

AGENDA ITEM NO	PART 2 ITEMS
6	Complaints 2015/1 and 2015/2

GRAHAM THRUSSELL
Senior Member Services Officer

Assessment Sub-Committee of the Standards Committee

Wednesday 15 July 2015

Complaints 2015/1 and 2015/2

Decision Notice

A – PERSONS PRESENT

Chichester District Council Members

Mrs C M M Apel (Vice-Chairman of the Standards Committee)
Mrs P A Hardwick (Chairman of the Standards Committee)
Mrs J A E Tassell

Mrs Hardwick was elected as the chairman for the meeting

Parish Representative Co-opted Member

Mr D Ribbens (Plaistow and Ifold Parish Council)

Independent Person

Mr A J Plytas

Chichester District Council Officers

Miss N J Golding – Monitoring Officer and Principal Solicitor
Mr G Thrussell - Senior Member Services Officer

Complaint 2015/1

B – SUMMARY OF THE COMPLAINT

(a) *Complainant*

N – a member of the public.

(b) *Date of Complaint*

Tuesday 27 January 2015 (complaint form with attached signature).

(c) *Dates of Receipt of Complaint and Subsequent Supporting Material*

Wednesday 28 January 2015: complaint form with a complaint letter and various appendices which were subsequently supplemented by further attachments sent by a total of seven e-mails

on 9, 11 and 28 (two e-mails) February 2015 and 9 April 2015 (three e-mails) – these appendices and attachments related to both this complaint and complaint **2015/2** below.

In view of the detailed nature of the complaint letter and the extensive amount of supporting documentation the Monitoring Officer requested from **N** a summary of complaint **2015/1** and (see below) **2015/2**, which was provided on Wednesday 10 June 2015.

(d) *Subject Members*

O and **P** – members of **Q** Parish Council.

(e) *Date of Adoption of Q Parish Council's Member Code of Conduct*

Monday 10 November 2012.

(f) *Nature of the Complaint*

The complaint by **N** concerned the alleged conduct of **O** and **P** prior to, during and after **Q** Parish Council's consideration (in its capacity as a statutory consultee) of a planning application which she had submitted to Chichester District Council (CDC) as the local planning authority. **N**'s planning application was subsequently refused by CDC's Planning Committee before it was then allowed on appeal.

N alleged that **O** and **P** (taking advantage of **Q** Parish Council's status as a statutory consultee *vis-à-vis* planning applications) colluded with the subject member, **S**, in complaint **2015/2** below, who was a member of Chichester District Council and sat on its Planning Committee, and a member of the public, **R**, who was closely involved in a local society, to ensure that her planning application was referred to CDC's Planning Committee for determination. **N** asserted that at the CDC Planning Committee meeting **S** exerted undue and improper influence on other members as a result of which the application was refused. **N** claimed that since her successful planning appeal **O** and **P** had challenged (a) the decision by CDC's development management officers to recommend that her planning application be permitted and the procedures followed by those officers and (b) the planning inspector's decision, which, she said, **O** and **P** maintained was contrary to applicable planning policies. **N** complained also that **P** did not respond to her e-mails and telephone calls in a timely manner, thereby demonstrating bias and predetermination. **N** argued that **O** and **P** were not recorded as having made the appropriate declarations of a personal and/or prejudicial interest when considering her planning application at the relevant meetings of **Q** Parish Council, which were attended by **R** and **S**. Accordingly, it was reasoned by **N** that **O** and **P** did not adhere to the constraints of selflessness, integrity, objectivity and accountability while assessing her planning application in formal or informal planning meetings.

In terms of the remedy sought, **N** requested the Assessment Sub-Committee (ASC) (a) to publish its findings in respect of the subject members' conduct, (b) to report its findings to CDC's Council meeting for information and (c) to accept the written apology of the subject members.

(g) *Responses by the Subject Members to the Complaint*

In statements dated 12 March 2015 **O** and **P** rejected and refuted the entirety of the complaint made against them and denied that they had acted in breach of **Q** Parish Council's code of conduct, whether as alleged or at all. A supporting statement on their behalf was also submitted by the clerk to **Q** Parish Council in which complaint **2015/1** was likewise rejected and refuted.

(h) *Applicable Provisions of Q Parish Council's Member Code of Conduct*

Having regard to the complaint letter and the supporting documentation submitted by **N** with the complaint form, it appeared that one or more of the following provisions in Parts 2 and 4 of **Q** Parish Council's *Code of Conduct* were being invoked by **N** against **O** and **P**:

Part 2 – Scope and General Obligations

2. General Obligations

- ‘(1) When acting in your role as a member of the authority –
- a. **do not** conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
.....
 - c. **do** treat others with respect;
.....’

Part 4 – Other Interests (Personal and Prejudicial)

9. Disclosure of other interests

- ‘(1) where you have a personal interest described in ... paragraph (2) below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, 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 at the relevant time at the meeting, at the commencement of that consideration, or when the interest becomes apparent.
- (2) (A) You have a personal interest in any business of your authority where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of your ward affected by the decision;
- (B) In sub-paragraph (2) (A), a relevant person is—
...
b. any person with whom you have a close association;
....’

12. Non participation in case of prejudicial interest

- ‘(1) Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where 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 your judgement of the public interest and where that business—
- a. affects your financial position or the financial position of a person...described in paragraph 9 (2) (B);
....
- (3) where you have a prejudicial interest in any business of your authority—
- a. you must disclose the interest to the meeting.
.....

- d. you must leave the room whilst the business is discussed, unless the public have the right to attend, in which case you should move to the public seating area. You may then make representations, answer questions or give evidence relating to the business, provided the public are also allowed to attend the meeting for the same purpose.
- e. you must not seek improperly to influence a decision about that business.

.....’

13. Pre-determination or bias

‘.....

- (2) When making a decision, do consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken.’

C – DECISION ON THE COMPLAINT

The ASC had regard to all of the available information for complaint **2015/1** and took into account the advisory views of (a) Mr D Ribbens (Plaistow and Ifold Parish Council), who was the invited parish representative and a co-opted member of the parent Standards Committee and (b) Mr A J Plytas, who is one of CDC’s independent persons, both of whom were present. The ASC unanimously decided:

- The complaint should not be referred to the Monitoring Officer to seek further information or to arrange an investigation or to take other steps.
- No further action should be taken with respect to complaint **2015/1**.

D – REASONS FOR THE DECISION

The ASC gave the following reasons for its aforementioned decision:

- Having regard to the documentation and information supplied it was clear that at all material times with respect to the matters the subject of the complaint **O** and **P** were acting in their roles as members of their authority, **Q** Parish Council, and so they were covered by its code of conduct.
- Sufficient information had been submitted by **N** to enable a decision to be reached at this meeting as to whether or not **N** had demonstrated a potential breach or breaches by **O** and/or **P** of **Q** Parish Council’s code of conduct.
- Having regard to the totality of the material presented, it was not considered that if this complaint in all or any of its constituent parts was subsequently shown to be proven that it would amount to a breach by **O** and/or **P** of **Q** Parish Council’s code of conduct.
 - **N**’s complaint did not specify all of the provisions of **Q** Parish Council’s code of conduct which she considered had or might have been breached by **O** and/or **P**. However, the allegations seemed to point to one or more of the following paragraphs of the code of conduct namely Paragraph 2 in Part 2 (Scope and General Obligations), which imposes obligations owed by an individual when acting as a member of his or her authority, and Paragraphs 9, 12 and 13 in Part 4 (Other Interests (Personal and Prejudicial), which impose a duty to disclose relevant interests in the consideration of any business of the authority and to keep an open mind when making a decision with respect to that business.

- The general allegation of collusion had to be considered in terms of the specific points made by **N** as to a failure to declare relevant interests and/or predetermination and/or non-fulfilment of general obligations.
- Even on the basis of **N**'s own case alone but also in the light of the responses of **O** and **P**, neither **O** nor **P** could be said to have a personal and/or prejudicial interest to declare. In order for such an interest to arise with respect to **N**'s planning application it would be necessary to show that their decision in respect of that application might reasonably be regarded as affecting their well-being or financial position or that of someone with whom they had a close association, allegedly **R** and/or **S**, the subject member in complaint **2015/2** below, to a greater extent than the majority of council tax payers, ratepayers or inhabitants of the area affected by the decision. There was no or no sufficient evidence in the disclosed material to show that:
 - the well-being or financial position of **O** or **P** would have been affected by the decision with regard to **N**'s planning application at all let alone than to greater extent than other residents within the area;
 - the nature of the relationship between either **O** and/or **P** on the one hand and **R** and/or **S** on the other hand amounted to a close association;
 - the well-being or financial position of **R** or **S** would have been affected by the decision with regard to **N**'s planning application at all let alone than to greater extent than other residents within the area.
- The complaint if subsequently proven could not, therefore, amount to a breach of Paragraphs 9 and/or 12 of **Q** Parish Council's code of conduct.
- On the basis of **N**'s own case alone the matters complained of, if subsequently proven, could not amount to a breach of Paragraph 2 (1) a. (bringing office or authority into disrepute) or c. (not treating with respect) because of:
 - The foregoing findings that there had been no interests for **O** and **P** to declare.
 - The observance by **O** and **P** of the principles of due process and transparency prior to and when considering and making decisions on planning applications namely to do so publicly in a meeting of **Q** Parish Council's Planning Sub-Committee and not to discuss them in advance in private meetings with any applicant or any other interested individuals. There was no allegation or rudeness or other inappropriate behaviour, for example, that could amount to disrespect.
- On the basis of **N**'s own case alone the matters complained of, if subsequently proven, could not amount to a breach of Paragraph 13 (2) (predetermination of a decision) because of:
 - The foregoing findings that there had been no interests for **O** and **P** to declare.
 - The wish by **O** and **P** to consider **N**'s planning application in the same way as any other application namely only in public at a meeting of the Planning Sub-Committee, which amounted to no more than the observance of openness and was not evidence of predetermination.
- In consequence of the foregoing reasons there was (a) no justification for the complaint to be referred to the Monitoring Officer for an investigation to be carried out and/or other steps to be taken (in view of the subject members' unqualified rejection and refutation of the complaint) or (b) for further information to be requested.

Complaint 2015/2

B – SUMMARY OF THE COMPLAINT

(a) *Complainant*

N – a member of the public.

(b) *Date of Complaint*

Wednesday 28 January 2015 (complaint form with attached signature).

(c) *Dates of Receipt of Complaint and Subsequent Supporting Material*

Wednesday 28 January 2015: complaint form with a complaint letter and various appendices which were subsequently supplemented by further attachments sent by a total of seven e-mails on 9, 11 and 28 (two e-mails) February 2015 and 9 April 2015 (three e-mails) – these appendices and attachments related to both this complaint and complaint **2015/1** above.

In view of the detailed nature of the complaint letter and the extensive amount of supporting documentation the Monitoring Officer requested from **N** a summary of complaint **2015/2** and (see above) **2015/1**, which was provided on Wednesday 10 June 2015.

(d) *Subject Member*

S – a former member of Chichester District Council (CDC).

(e) *Date of Adoption of Chichester District Council's Member Code of Conduct*

Tuesday 9 October 2012.

(f) *Nature of the Complaint*

The complaint by **N** concerned the alleged conduct of **S** prior to and during the consideration by CDC's Planning Committee of a planning application which she had submitted to CDC as the local planning authority. **N**'s planning application was refused by CDC's Planning Committee before it was then allowed on appeal.

N alleged that **S**, who was a member of CDC and sat on its Planning Committee, colluded with the subject members, **O** and **P**, in complaint **2015/1** above, who were members of **Q** Parish Council, and a member of the public, **R**, who was closely involved in a local society, to ensure that her planning application was referred to CDC's Planning Committee for determination. **N** asserted that at the CDC Planning Committee meeting **S** exerted undue and improper influence on other members as a result of which the application was refused.

N alleged that **S** had colluded with **O**, **P** and **R** during the consultation stage for her planning application, in the period up to the consideration of it by **Q** Parish Council's Planning Sub-Committee. She said that as a result of **Q** Parish Council's decision to object to her application it was thereby inevitably referred to CDC's Planning Committee rather than being determined under officers' delegated powers; the officers had recommended that it be permitted. **N** asserted that at the relevant Planning Committee meeting **S**, as one of its members, had participated fully in the determination of her planning application with the outcome that her application was refused. **N** contended that **S** had a personal and prejudicial interest in her application and so he ought to have withdrawn from participation. By not doing so he improperly influenced other members of the Planning Committee in order successfully to achieve a majority in favour of refusing the application. She claimed that **S** had also predetermined her application (he did not have an open mind) and that he sought improperly to confer an advantage on **R** and **O**.

In terms of the remedy sought, **N** requested the Assessment Sub-Committee (ASC) (a) to publish its findings in respect of the subject member's conduct, (b) to report its findings to CDC's Council meeting for information and (c) to accept the written apology of the subject member.

(g) *Responses by the Subject Member to the Complaint*

In letters dated 12 and 23 February 2015 **S** rejected and refuted the entirety of the complaint made against him and denied that he had acted in breach of CDC's code of conduct, whether as alleged or at all. A plan was attached to the second letter showing the location of **R**'s house and **N**'s property (which was the subject of her planning application) in order to demonstrate that **N** was incorrect to say that **R** was a neighbour of hers.

(h) *Applicable Provisions of Chichester District Council's Member Code of Conduct*

Having regard to the complaint letter and the supporting documentation submitted by **N** with the complaint form, it appeared that one or more of the following provisions in Parts 2 and 4 of CDC's *Code of Conduct* were being invoked by **N** against **S**:

Part 2 – Scope and General Obligations

2. General Obligations

'(1) When acting in your role as a member of the authority –

- a. **do not** conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
- b. **do 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;
- c. **do** treat others with respect;

.....'

Part 4 – Other Interests (Personal and Prejudicial)

9. Disclosure of other interests

'(1) where you have a personal interest described in ... paragraph (2) below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, 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 at the relevant time at the meeting, at the commencement of that consideration, or when the interest becomes apparent.

(2) (A) You have a personal interest in any business of your authority where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of your ward affected by the decision;

(B) In sub-paragraph (2) (A), a relevant person is—

...

- b. any person with whom you have a close association;

....'

12. Non participation in case of prejudicial interest

- ‘(1) Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where 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 your judgement of the public interest and where that business—
- a. affects your financial position or the financial position of a person...described in paragraph 9 (2) (B);
 -
- (3) where you have a prejudicial interest in any business of your authority—
- a. you must disclose the interest to the meeting.
 -
 - d. you must leave the room whilst the business is discussed, unless the public have the right to attend, in which case you should move to the public seating area. You may then make representations, answer questions or give evidence relating to the business, provided the public are also allowed to attend the meeting for the same purpose.
 - e. you must not seek improperly to influence a decision about that business.
-’

14. Pre-determination or bias

‘.....

- (2) When making a decision, do consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken.’

C – DECISION ON THE COMPLAINT

The ASC had regard to all of the available information for complaint **2015/2** and took into account the advisory views of (a) Mr D Ribbens (Plaistow and Ifold Parish Council), who was the invited parish representative and a co-opted member of the parent Standards Committee and (b) Mr A J Plytas, who is one of CDC’s independent persons, both of whom were present. The ASC unanimously decided:

- The complaint should not be referred to the Monitoring Officer to seek further information or to arrange an investigation or to take other steps.
- No further action should be taken with respect to complaint **2015/2**.

D – REASONS FOR THE DECISION

The ASC gave the following reasons for its aforementioned decision:

- Having regard to the documentation and information supplied it was clear that at all material times with respect to the matters the subject of the complaint **S** was acting in his role as a member of his authority, CDC, and so he was covered by its code of conduct.

- Sufficient information had been submitted by **N** to enable a decision to be reached at this meeting as to whether or not **N** had demonstrated a potential breach or breaches by **S** of CDC's code of conduct.
- Having regard to the totality of the material presented, it was not considered that if this complaint in all or any of its constituent parts was subsequently shown to be proven that it would amount to a breach by **S** of CDC's code of conduct.
 - **N**'s complaint did not specify all of the provisions of CDC's code of conduct which she considered had or might have been breached by **S**. However, the allegations seemed to point to one or more of the following paragraphs of the code of conduct namely Paragraph 2 in Part 2 (Scope and General Obligations), which imposes obligations owed by an individual when acting as a member of his or her authority, and Paragraphs 9, 12 and 14 in Part 4 (Other Interests (Personal and Prejudicial)), which impose a duty to disclose relevant interests in the consideration of any business of the authority and to keep an open mind when making a decision with respect to that business.
 - The general allegation of collusion had to be considered in terms of the specific points made by **N** as to a failure to declare relevant interests and/or predetermination and/or non-fulfilment of general obligations.
 - Even on the basis of **N**'s own case alone but also in the light of **S**'s responses, **S** could not be said to have a personal and/or prejudicial interest to declare. In order for such an interest to arise with respect to **N**'s planning application it would be necessary to show that his decision in respect of that application might reasonably be regarded as affecting his well-being or financial position or that of someone with whom he had a close association, namely **R** and/or **O** and/or **P**, to a greater extent than the majority of council tax payers, ratepayers or inhabitants of the ward affected by the decision. There was no or no sufficient evidence in the disclosed material to show that:
 - the well-being or financial position of **S** would have been affected by the decision with regard to **N**'s planning application at all let alone than to greater extent than other residents within the area;
 - The nature of the relationship between **S** on the one hand and **R** and/or **O** and/or **P** on the other hand amounted to a close association. **S** had in fact spoken to CDC's Monitoring Officer prior to the Planning Committee meeting in question and had stated to her that he did not have a close association with **R**. **S** had in fact declared a personal interest with reference to **N**'s application, namely by virtue of his having been appointed by another local authority as its representative on a body which had been consulted in respect of **N**'s application;
 - the well-being or financial position of **R** and/or **O** and/or **P** would have been affected by the decision with regard to **N**'s planning application at all let alone than to greater extent than other residents within the ward.
 - The complaint if subsequently proven could not, therefore, amount to a breach of Paragraphs 9 and/or 12 of CDC's code of conduct.
 - On the basis of **N**'s own case alone the matters complained of, if subsequently proven, could not amount to a breach of Paragraph 2 (1) a. (not bringing office or authority into disrepute) or b. (not improperly conferring an advantage for any other person) or c. (not treating with respect) because of:
 - the foregoing findings that there had been no other interests beyond that interest in fact declared for **S** to declare.
 - The way in which **S** participated in the public debate and decision on **N**'s planning application at CDC's Planning Committee was entirely consistent with his role as

local ward member who was fully entitled to raise issues of concern and even, as had been the case here, to propose a refusal of the application in order to try to overturn the officer's recommendation. The minutes of that Planning Committee (copies of which had been provided for information to the ASC and the independent person) in fact revealed that at that particular meeting there were a total of five overturns: two applications being refused instead of permitted (one of these was **N**'s application) and three were permitted instead of being refused. On the basis of what **N** asserted, **S**'s conduct could not be construed as amounting to bringing his office or authority into disrepute;

- the absence of any evidence that any tangible advantage had or could have been conferred on (as alleged by **N**) **R** or **O**;
 - the absence of any allegation of rudeness or other inappropriate behaviour, for example, that could amount to disrespect.
- On the basis of **N**'s own case alone the matters complained of, if subsequently proven, could not amount to a breach of Paragraph 14 (2) (predetermination of a decision) because of:
- The foregoing findings that there had been no interests for **S** to declare and the performance by **S** of his role as a ward member.
 - The consideration by **S** of **N**'s planning application was undertaken in public at the CDC's Planning Committee in the course of a full debate in which many members participated, there had been public speakers and professional advice had been received from officers.

In consequence of the foregoing reasons there was (a) no justification for the complaint to be referred to the Monitoring Officer for an investigation to be carried out and/or other steps to be taken (in view of the subject members' unqualified rejection and refutation of the complaint) or (b) for further information to be requested.

[Friday 31 July 2015]