BROMSGROVE DISTRICT COUNCIL

STANDARDS COMMITTEE HEARING

FULL WRITTEN DECISION

Complaints relating to the meeting of Full Council held on 20th January 2010

Member subject to allegations:	Former Councillor Ms. J. A. Marshall
Investigating Officer:	Mr. J. Goolden
Date of report:	10 January 2011 (Revised Report for Hearing)
Name of Members' representative:	Ms. F. Randle
Relevant authority concerned:	Bromsgrove District Council
Date of the hearing:	19th July 2011
Standards Committee members:	Mr. N. A. Burke (Chairman) Mrs. G. Bell Mr. J. Cypher Mr. I. A. Hodgetts Councillor Mrs. S. J. Baxter Councillor L. Mallett Councillor Mrs. M. A. Sherrey JP
Standards Committee Legal Advisor:	Ms. B. Evans
Committee Services Officer:	Ms. D. Parker-Jones

Referral for investigation

A number of complaints were made relating to the conduct of certain Members at the meeting of Full Council on 29th July 2009. These matters were considered by the Standards Assessment Sub-Committee on 30th September 2009. A number of allegations relating to (the now) Former Councillor Judy Marshall and Councillors Mrs. Christine McDonald, Peter McDonald, Edward Murray, Sean Shannon and Colin Wilson were referred for local investigation.

The Monitoring Officer appointed Mr. J. Goolden to investigate the allegations.

Subsequently, further complaints were made in relation to the same Councillors arising out of a meeting on 19th January 2010, Full Council on 20th January 2010 and other associated matters. These matters were considered by the Standards Assessment Sub-Committee on 3rd March 2010 and were referred to Standards for England for investigation. Standards for England subsequently directed that the complaints be referred to the Investigating Officer to be included in the ongoing local investigation, under regulation 14 of the Standards Committee (England) Regulations 2008, into the complaints arising from the meeting of Full Council on 29th July 2009.

The Investigating Officer's reports into both the 2009 and 2010 complaints were issued on 30th November 2010. All of the reports were considered by the Standards Committee on 17th December 2010.

In relation to the 2010 complaints, the Committee accepted the Investigating Officer's findings of no failure to comply with the Code of Conduct in relation to certain parts of the complaint. The Investigating Officer also made findings of failure to follow the Code of Conduct by the six Members in relation to the non-disclosure of interests at Full Council on 20th January 2010.

These matters were referred to the Standards Committee for final hearing.

Summary of the Allegation

The complaints alleged that at the Full Council meeting on 20th January 2010 Former Councillor Ms. J. A. Marshall attended the meeting and did not declare an interest in an item of business relating to a transfer of funds from the Council's balances to cover the cost of retaining an external investigator to carry out investigations into complaints involving Former Councillor Ms. J. A. Marshall's conduct.

The complaints alleged that Former Councillor Ms. J. A. Marshall failed to comply with the Code of Conduct for Bromsgrove District Council in that she:

(1) failed to declare a personal and prejudicial interest (in breach of Part 2 paragraph 9 (1) of the Code of Conduct); and

(2) failed to withdraw from the debate in question (in breach of Part 2 paragraph 12 (1) of the Code of Conduct).

Preliminary Issues

The Standards Committee had decided at the initial consideration meeting on 17th December 2010 that the written papers and oral evidence should, at that stage, remain exempt. The Standards Committee considered whether the exemption should be lifted for the purpose of the final hearing. It was agreed (following legal advice) that the exemption should be lifted and the Monitoring Officer's reports and Investigating Officer's report were released into the public domain.

The Legal Advisor introduced the Monitoring Officer's report and also the update report to the Standards Committee which set out the measures taken by the Council in the months since the date of the alleged misconduct. The report detailed the constitutional changes agreed by the Full Council on 22nd June 2011, which were designed to facilitate improvements in the way Council meetings are managed. The report also described recent cross political party discussions which focused on improving public perception of the decision making process at the Council.

Both parties confirmed that the agreed Statement of Facts was acceptable and that, on this basis, it was not their intention to call any witnesses.

The Committee confirmed that it had taken legal advice on its responsibilities and functions as a Standards Committee, which included the importance of ensuring public confidence in the democratic process and the standards of conduct at the Council.

Summary of submissions by the Investigating Officer

Mr. Goolden stated that it was accepted that the context for the advice being given on interests on that occasion was not ideal and he considered the breaches by Former Councillor Ms. J. A. Marshall to be "technical" breaches, rather than serious breaches.

Summary of submissions by the Subject Member

Ms. Randle, on behalf of Former Councillor Ms. J. A. Marshall, stated that Former Councillor Ms. J. A. Marshall did not intentionally breach the Code; the context for the advice she received was not clear and that the breaches were procedural breaches which were not pre-meditated and were not, in any way, motivated by personal gain. Ms. Randle asked the Committee to take these points into consideration when making their decision.

Findings of fact

The Investigating Officer and Ms. Randle on behalf of Former Councillor Ms. J. A. Marshall had nothing further to add to the agreed Statement of Facts and the documents which were already before the Standards Committee.

The Standards Committee withdrew to consider the findings of fact and whether there had been a breach of the Code.

The Statement of Facts dated 21st April 2011 as agreed by the Investigating Officer and Steel & Shamash Solicitors, Solicitors for Former Councillor Ms. J. A. Marshall, was adopted by the Committee as the facts of the matter.

Finding as to whether the Subject Member had failed to follow the Code including reasons

The Standards Committee was satisfied that paragraph 10 of the Code applied in that:

- Former Councillor Ms. J. A. Marshall's interest in the matter was a personal interest because an "informed outsider" might reasonably conclude that the outcome of the investigation would affect her wellbeing; and

- Former Councillor Ms. J. A. Marshall's interest in the matter was a prejudicial interest because the interest was one which a member of the public with knowledge of the relevant facts would reasonably regards as so significant that it was likely to prejudice the Councillor's judgement of the matter; and

- The business being considered at the meeting would have affected Former Councillor Ms. J. A. Marshall's financial position.

The Standards Committee found as follows:

That Former Councillor Ms. J. A. Marshall had failed to follow the Code of Conduct by being in breach of Part 2 paragraphs 9 (1) and 12 (1) in that she failed to declare a personal and prejudicial interest and failed to withdraw from the debate in question.

The Standards Committee's reasons for this decision were that the agreed Statement of Facts, the Investigating officer's report and supporting documents contained sufficient evidence to determine that Former Councillor Ms. J. A. Marshall failed to declare a personal and prejudicial interest in the issue being debated and failed to withdraw from the debate at the Full Council meeting on 20th January 2010.

Submissions on sanctions made by Mr. Goolden and Ms. Randle

Mr. Goolden referred to his earlier comments regarding sanctions. Ms. Randle reiterated that she would wish to call witnesses and adjourn the hearing if the Committee was not minded to treat the breaches as "technical" breaches.

The Standards Committee withdrew to consider the sanctions available for the breaches in question.

The Sanctions imposed and reasons for them

After considering the representations made by Ms. Randle and Mr. Goolden, the Investigating Officer's reports and the guidance issued by Standards for England, the Committee decided that in light of the nature of the breach of the Code to impose no sanction.

The Standards Committee acknowledged that, although there were "technical" breaches of the Code (although any kind of breach was still a breach) the nature of the breaches was not malicious or calculated, nor were the breaches motivated by personal gain and there was a level of confusion around the advice given about Former Councillor Ms. J. A. Marshall's interests. Therefore, the Committee decided that imposing a sanction would be unnecessary. The Committee also acknowledged that the only sanction which would have been available to the Committee would have been censure because Former Councillor Ms. J. A. Marshall was no longer a member of the Council at the time of the hearing.

In considering the sanction the Committee had regard to the following:

- Whether the sanction was proportionate and reasonable given the nature of the allegations against Former Councillor Ms. J. A. Marshall.

- The nature of the breaches of the Code at the Council meeting dated 20th January 2010 and the context within which the breaches occurred.

- The positive steps taken by the Council in the 2 years since the events complained of, designed to facilitate improved management of Council meetings and to minimise similar breaches of the Code in the future.

Recommendations to the authority

No formal recommendations were made to the Council. However, the Standards Committee would be examining the improvements already made by the Council and would consider recommending further measures to build on the progress already made.

Right of Appeal

A Member subject to a Standards Committee finding has the right to apply in writing to the First-tier Tribunal of the General Regulatory Chamber (Local Government Standards in England) for permission to appeal the Standards Committee's finding.

A request for permission to appeal has to be made to the First-tier Tribunal within 28 days of the Member's receipt of the Standards Committee's full written decision.

…….....
Chairman of the Standards Committee

Dated: