

INVESTIGATION SBE 17438.07

FINAL REPORT

11th OCTOBER 2007

Report of an investigation conducted under section 66 of the Local Government Act 2000 by Thelma Warwick, Auditor, into an allegation concerning Councillor James Duddy, Member of Bromsgrove District Council.

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1. SUMMARY OF THE ALLEGATION

- 1.1 Councillor Stephen Peters alleges misconduct by Councillor James Duddy in relation to an alleged Breach of the Council's Code of Conduct that had been referred by the Standards Board for England (SBE) to the Monitoring Officer for local investigation.
- 1.2 It is alleged by Councillor Peters that on two occasions between December 2006 and February 2007 Councillor Duddy failed to comply with the Council's Code of Conduct in that he contacted Peter Lammas, a reporter with the Bromsgrove Advertiser, and provided him with information in relation to local investigation reference SBE 16030.06 and the identity of the Councillor who was the subject of the allegation at a time when the investigation was on-going and, therefore, was confidential.
- 1.3 The allegation was reported to the Standards Board for England on 4th February 2007 and was referred to the Monitoring Officer for local investigation and determination on 7th March 2007 under section 60(2) of the Local Government Act 2000.

2. RELEVANT SECTIONS OF THE CODE

- 2.1 On 23rd January 2002 the Council adopted the Model Code of Conduct set out in the "Code".
- 2.2 Part 1 of the Code at paragraph 3 states:

General Obligations

3(a) A member must not disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so.

3. THE INVESTIGATION

- 3.1 A meeting was held with Councillor Peters to confirm details of the allegation. A copy of the notes recorded at the time of the meeting is included in Appendix A.
- 3.2 I have confirmed that it is the decision of the Standards Committee which hears the final determination to decide when and if the investigation report should enter the public domain. Accordingly, reports remain confidential unless and until the Committee determines otherwise.
- 3.3 The agendas, minutes and accompanying papers for the Standards Committees held on 14th December 2006, 21st February 2007 and for the Special Standards Committee hearing on 21st March 2007 have been

reviewed. I have confirmed that details of the allegation and the names of the councillors concerned in relation to local investigation SBE 16030.06 were not recorded until the minutes of the Special Standards Committee hearing held on 21st March 2007 when the Standards Committee members, Councillor Peters and the Investigating Officer were in accord that the matter should be dealt with in the public domain.

- 3.4 Relevant documents from local investigation SBE 16030.06 have been examined and I have verified that all correspondence and documents in relation to the investigation that were issued either by the Council or the SBE were marked 'Private and Confidential'.
- 3.5 I have reviewed the Bromsgrove Advertiser Internet Archive site for the period December 2006 to March 2007 for evidence of articles relating to local investigations of alleged Breaches of the Council's Code of Conduct. No such articles were found until the 28th March 2007 when an article was published following the Special Standards Committee hearing.
- 3.6 A meeting was held with Debbie Warren who acted as the Investigating Officer for local investigation reference SBE 16030.06 to discuss the investigation. A copy of the notes recorded at the time of the meeting is included in Appendix B.
- 3.7 A meeting was held with Claire Felton, Head of Legal, Equalities and Democratic Services to discuss the investigation of SBE 16030.06 to verify the policy regarding when local investigation reports may enter the public domain. A copy of the notes recorded at the time of the meeting is included in Appendix C.
- 3.8 A telephone conversation was held with Councillor Duddy to provide an opportunity for him to respond to the allegation. A copy of the notes recorded at the time of the conversation is included in Appendix D.
- 3.9 Advice has been sought from Anne Marie Darroch, the Council's Communications & Customer First Manager regarding contacting a member of the press and the potential risks in doing so.
- 3.10 Hearsay evidence was obtained from a telephone conversation and a meeting held with the Communications & Customer First Manager in relation to an informal discussion she had with Peter Lammas of the Bromsgrove Advertiser. Copies of the notes recorded at the time of the conversations are included in Appendices E and F.
- 3.11 The Information Commissioners website has been reviewed to establish whether the press is covered by the Freedom of Information Act.

4. FINDINGS OF FACT

- 4.1 The allegation relates to local investigation reference SBE 16030.06. This investigation was carried out by Debbie Warren, Senior Solicitor, between November 2006 and January 2007.
- 4.2 SBE 16030.06 was a local investigation into an allegation made by Councillor Duddy that on 10th January 2005 Councillor Peters failed to comply with the Council's Code of Conduct by failing to declare at a meeting of the Council's Planning Committee a prejudicial interest in connection with planning application B/2004/1389.
- 4.3 Councillor Peters states that whilst the Investigating Officer was carrying out the investigation he received two telephone calls (on 15th December 2006 and 1st February 2007) from Peter Lammas, a reporter with the Bromsgrove Advertiser.
- 4.4 Councillor Peters recalls that during the first telephone conversation on 15th December 2006 Peter Lammas said that he had received information in relation to a Standards Committee agenda item for the meeting held on 14th December and that Peter Lammas informed him that the source of his information was a fellow councillor. Councillor Peters recollects that he asked was Councillor Duddy the source of the information and Peter Lammas confirmed that he was.
- 4.5 The draft report for investigation SBE 16030.06 was issued by the Investigating Officer to Councillor Duddy and Councillor Peters for comment on 19th December 2006.
- 4.6 Councillor Peters reported the telephone conversation to the Investigating Officer via a letter dated 22nd December 2006. Receipt of Councillor Peters' letter coincided with the office being closed for the Christmas break. On her return to the office on 29th December 2006 the Investigating Officer e-mailed the Monitoring Officer, with details of Councillor Peters' letter. Additionally, the Investigating Officer wrote to Councillor Peters to inform him that she had referred his letter to the Monitoring Officer.
- 4.7 Councillor Peters states that he received a second telephone call from Peter Lammas on 1st February 2007. Councillor Peters recalls that Peter Lammas said that he had received new briefing information from Councillor Duddy in relation to the agenda for the Standards Committee that was due to take place on 8th February 2007. Councillor Peters states that the information that Peter Lammas had received named him as the subject of an allegation and details of the allegation.

- 4.8 Councillor Peters recollects that he reminded Peter Lammas that he had telephoned him previously in relation to the allegation; however, Peter Lammas did not recall the conversation.
- 4.9 Councillor Peters states that he informed Peter Lammas that the information was confidential and, therefore, could not be reported.
- 4.10 Councillor Peters believes that he reported the second telephone conversation to the Investigating Officer; however, he has been unable to locate a copy letter.
- 4.11 The final report that detailed the findings of investigation SBE 16030.06 was issued to Councillor Duddy, Councillor Peters and members of the Standards Committee on 19th January 2007. The copy of the final report that was sent to Councillor Duddy was accompanied by a letter dated 23rd January 2007 from the Monitoring Officer, stating that she understood that there had been press interest and requesting that Councillor Duddy ensure that the report did not enter the public domain.
- 4.12 The Standards Committee that was due to take place on 8th February was postponed due to snow. The meeting was re-scheduled for 21st February 2007.
- 4.13 Consideration of SBE 16030.06 investigation findings took place at a Special Standards Committee hearing held on 21st March 2007. It was at this meeting that the Standards committee determined that details of the investigation should enter the public domain.
- 4.14 Peter Lammas used to work with Anne Marie Darroch, the Council's Communications & Customer First Manager. Anne Marie Darroch has spoken with Peter Lammas on an informal basis and has ascertained that Peter Lammas has no recollection of a conversation with any Bromsgrove District Councillor regarding a local investigation during the period December 2006 to March 2007. This includes the fact that Peter Lammas was unequivocal in that he is unable to recall telephoning Councillor Peters.
- 4.15 Peter Lammas informed the Communications & Customer First Manager that he has checked his notebooks and has no written record in relation to a local investigation. Accordingly, it is Peter Lammas' opinion that as he has nothing recorded in his notebooks either he did not receive any information or, if he did receive information, he felt that it was not important or that he could not use it for whatsoever reason.

4.16 Councillor Duddy states that he has never spoken with Peter Lammas over the telephone and has only met him once or twice at Council meetings and once at the Standards Committee hearing that was held on 21st March 2007.

4.17 A chronology of events is at Appendix F.

5. THE ISSUES

5.1 The issue is whether Councillor Duddy did disclose confidential information without the consent of a person authorised to give it.

6. REASONING AS TO WHETHER THERE HAS BEEN A BREACH OF THE CODE

6.1 The test to be applied, as per paragraph 3(a) of the Code as set out in paragraph 2.2 above, is whether it can be proven that Councillor Duddy did disclose confidential information to Peter Lammas, a reporter with the Bromsgrove Advertiser.

6.2 The allegation is based on Councillor Peters' statement that:

- he received two separate telephone calls from Peter Lammas;
- details the gist of the alleged conversations; and
- details who he perceives was Peter Lammas' source of information.

Councillor Duddy has informed me that it is clear in his mind that he has no case to answer. Accordingly, Councillor Peters who made the allegation and Councillor Duddy as the subject of the allegation have opposing perspectives.

6.3 In order to verify Councillor Peter's statement ideally I would have asked Peter Lammas for an interview; however, discussing confidential issues with the press can be problematic and, therefore, I approached the Council's Communications & Customer First Manager, for advice. I was advised by the Communications & Customer First Manager not to contact Peter Lammas. The rationale being that:

- The Communications & Customer First Manager used to work with Peter Lammas and was adamant that if he did agree to a meeting he would not reveal his source of information.
- There was the risk that by contacting Peter Lammas I may have alerted him to an investigation that he was unaware of. This may have resulted in him publishing an article in the Bromsgrove Advertiser in relation to an investigation being carried out. Should such an article have been printed it would have been potentially damaging to both the Council's reputation and that of the Councillor who was the subject of the allegation.

It is acknowledged that if a meeting had taken place it would have provided independent evidence of the validity of Councillor Peters' statement.

- 6.4 To overcome the risks associated with contacting the press, the Communications & Customer First Manager offered to speak informally with Peter Lammas. To ensure that confidentiality was maintained I did not reveal the identities of the councillors concerned or details of the allegation. I did provide the Communications & Customer First Manager with open ended questions.

The outcome of the Communications & Customer First Manager's conversation with Peter Lammas is that he has stated that he has no recollection of any conversations with any Bromsgrove District councillors regarding a local investigation of an alleged breach of the Code. Furthermore, Peter Lammas has stated that he has no written record in his notebooks in relation to having received any information in respect of a local investigation.

Journalists maintain notebooks in which they annotate information received in whatsoever format. Accordingly, as Peter Lammas does not remember any conversations or hold a record that he has received any information in any format there is no independent evidence to support Councillor Peters' allegation.

I have no method of compelling Peter Lammas to divulge any information that he may have received or of reviewing any records that he holds. The Information Commissioner's website has been reviewed to ascertain whether information could be obtained via the Freedom of Information Act; however, it has been confirmed that the Act only applies to public authorities or companies owned by public bodies and, therefore, does not apply to the Bromsgrove Advertiser.

- 6.5 When I first wrote to Councillor Duddy to invite him to meet with me (letter dated 21st May 2007) Councillor Duddy telephoned me to say that he would not arrange a meeting without first viewing Peter Lammas' statement.

Following a second invitation (letter dated 10th July 2007) Councillor Duddy again telephoned me and informed me that he had never spoken with Peter Lammas over the telephone and that he had only met him once or twice at Council meetings and once at the Special Standards Committee hearing held on 21st March 2007.

Councillor Duddy has informed me that he believes that he should have been the last person to be interviewed.

My interpretation of Councillor Duddy's opinion is that without Peter Lammas' statement Councillor Duddy perceives that he has no case to answer.

- 6.6 From the meeting held with the Investigating Officer for local investigation SBE 16030.06 it was ascertained that there may have been some confusion at the beginning of investigation as to when details of the investigation could be made public. At first the Investigating Officer perceived that details of the investigation became public at final report stage. Accordingly, at the start of the investigation councillors may have been under the impression that the report would enter the public domain once it was finalised.

However, as I have confirmed that all letters and documents in relation to the investigation were marked 'Private and Confidential' there should have been no confusion that information was not in the public domain. Furthermore, during the course of the investigation and before the final report was issued it was clarified and confirmed that the decision as to when the report would enter the public domain was to be taken by the Standards Committee.

- 6.7 The alleged first telephone call from Peter Lammas to Councillor Peters was made on 15th December 2006. If on the balance of probabilities the view is taken that Councillor Duddy did provide Peter Lammas with information it was before the draft report was issued on the 19th December 2006 and, therefore, definitely prior to either the report being finalised (19th January 2007) and the Special Standards Committee hearing (21st March 2007).

- 6.8 The alleged second telephone call from Peter Lammas to Councillor Peters was made on 1st February 2007. Whilst it is acknowledged that the second telephone call was made after the final report was issued (19th January 2007) by this time the position regarding when details of an allegation could be made public had been clarified. Furthermore, the Monitoring Officer had sent a letter dated 23rd January 2007 to Councillor Duddy with the final report stating that she understood that there had been press interest in the matter and requesting that the report did not enter the public domain.

If on the balance of probabilities the view is taken that Councillor Duddy did provide Peter Lammas with information on a second occasion it was definitely prior to the Special Standards Committee hearing (21st March 2007).

- 6.9 Councillor Peters clearly affirms that he received two telephone calls from Peter Lammas. If Councillor Peters made the allegation against Councillor Duddy in retaliation for the allegation that Councillor Duddy had made against him, he would have to have been in collusion with Peter Lammas to ensure that Peter Lammas supported his allegation whereas in actuality Peter Lammas has been unable to substantiate Councillor Peters' statement.

6.10 At the time of the alleged telephone calls and up until the final report was issued full details of investigation SBE 16030.06 would only have been known by the:

- Investigation Officer – Debbie Warren;
- Monitoring Officer – Claire Felton;
- Subject of the allegation – Councillor Peters;
- Complainant – Councillor Duddy; and
- SBE.

Therefore, if Peter Lammas did receive information regarding the investigation he could only have received it from one of the above or from an associate of one of the above.

As Peter Lammas is unable to recall whether he did receive information and the Freedom of Information Act does not apply there is no method of ascertaining who, if anyone, did contact Peter Lammas regarding the investigation.

7. FINDINGS AS TO WHETHER THERE HAS BEEN A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

7.1 For the reasons set out in paragraphs 6.2 to 6.4 above as Peter Lammas has stated that he has no recollection or records regarding a local investigation there is no independent evidence to support that the alleged breach of the Code did occur.

7.2 The SBE publication 'How to conduct an investigation' (page 9 within the section entitled 'Evaluating') states that when deciding if the alleged conduct occurred "you do not need absolute certainty – it is acceptable to come to your conclusion based on the balance of probabilities".

For the reasons set out in paragraphs 6.5 to 6.10 when an opinion is drawn on the balance of probabilities I find that there is insufficient evidence to support that a breach of the Code did occur.