

Hearing in relation to a possible breach of the Code of Conduct

Standards Board for England ("SBE") Ref: 177770.07

Introduction

SBE reference number: SBE: 17770.07

Date of report: 11th October 2007

Name of Member: Councillor W. R. Newnes

Name of Member's representative: N/A

Relevant authority concerned: Bromsgrove District Council

Ethical Standards Officer: Ms. J. Rogers

Investigating Officer: Mrs. T. Warwick

Date of the hearing: 23rd November 2007

Names of Standards Committee members:

Chairman: Mrs. N. E. Trigg
Mr. S. E. Allard
Mr. N. A. Burke
Mr. J. Cypher
Councillor S. P. Shannon
Councillor E. C. Tibby

Standards Committee Legal Adviser: Mrs. D. Warren

Committee Services Officer: Ms. D. Parker-Jones

Section 1: Preliminary documents

The referral from the ethical standards officer:

On 17th May 2007 the ESO referred an allegation about Councillor Newnes to the Monitoring Officer for investigation. The allegation was investigated by Mrs. T. Warwick, Auditor, who prepared a report of her findings.

The Investigating Officer's report concerns a possible breach of the Code of Conduct and under paragraph 5(7)(d) of the Regulations. The Investigating Officer referred her report to the Standards Committee for a hearing in accordance with the Regulations.

Summary of the Allegation:

That Councillor Newnes failed to comply with the Council's Code of Conduct (namely the code of Conduct adopted by the Council in 2002) by:

- (1) at a meeting of the Council on 27th February 2007, not declaring a personal or personal and prejudicial interest in relation to a debate regarding the lease to Bromsgrove Rovers Football Club notwithstanding that Councillor Newnes was a close associate of the Chairman of the Football Club and also holds regular discos on the premises of the club (paid);
- (2) in that in his official capacity he attempted improperly to confer an advantage for the Football Club by asking the Conservative Group to support the wishes of the Football Club by not charging a full commercial rent.

Section 2: Oral and written submissions (procedural)

No oral or written submissions were made.

Section 3: Findings of fact

3.1 The following facts in the Investigating Officer's report were undisputed:

The facts set out in paragraphs 4.1 to 4.19 were undisputed.

3.2 The following facts in the Investigating Officer's report were disputed:

As per the Pre-hearing Questionnaire:

- (i) paragraph 6.8 of the Investigating Officer's report - that Councillor Newnes receives a financial gain from the referral arrangement with the Football Club;
(Note: this was not described as a finding of fact in the Investigating Officer's report but was treated as a finding of fact.)

- (ii) paragraph 7.2.1 of the Investigating Officer's report – that Councillor Newnes in his official capacity used his position as a Member improperly to confer an advantage for the Football Club.
(Note: this was included by Councillor Newnes in the pre-hearing questionnaire as a disputed finding of fact, but was treated by the Committee as a dispute as to whether he failed to follow the Code of Conduct.)

3.3 Summary of evidence:

The evidence is summarized in paragraphs 6.6 to 6.8 of the Investigating Officer's report.

3.4 Summary of submissions about disputed facts by Councillor Newnes:

As per the Pre-hearing Questionnaire:

- (i) paragraph 6.8 of the Investigating Officer's report – that he would not be financially affected in any way if he did not provide discos at the Football Club

Councillor Newnes gave oral evidence, confirming that:

- his disco business is a small, part-time business which amounts to approximately 2 discos per month in total;
- approximately 1 disco per month results from events held at the Football Club;
- he is paid by the customer direct and not by the Football Club;
- he has lighting permanently positioned at the Football Club;
- he acknowledged that his card or contact details were given out to hirers of the Football Club facilities but denied this amounted to a referral arrangement.

Councillor Newnes called Mr. T. Herbert, Chairman of the Football Club, to give oral evidence. He confirmed:

- a hirer of the Football Club facilities is given the contact details (sometimes orally and sometimes on a sheet of paper) of approximately 4 or 5 disco providers.

3.5 Summary of submissions about disputed facts by the Investigating Officer:

The Investigating Officer reiterated paragraphs 6.6 to 6.8 of her report.

3.6 Standards Committee's findings of fact:

The Standards Committee made the following findings in relation to the facts in dispute after considering the submissions of the parties and the evidence before the Committee:

As regards paragraph 6.8 of the Investigating Officer's report - that the Investigating Officer had correctly determined the position regarding a financial gain.

The Committee noted that the amount of money involved was not substantial but nevertheless Councillor Newnes gained financially by carrying out the disco business by reason of the referral arrangement with the Football Club.

The Committee noted that Councillor Newnes had pointed to a number of possible discrepancies in the report but found that these did not relate to the issues under consideration; it was therefore not necessary to make a finding of fact in respect of these points.

3.7 Legal Advice relied upon by the Standards Committee

None

Section 4: Decision on whether the Code was breached

4.1 Summary of submissions by Councillor Newnes:

- 4.1.1 In relation to the allegation that Councillor Newnes failed to comply with the Council's Code of Conduct by not declaring a personal or personal and prejudicial interest in relation to a debate regarding the lease to

Bromsgrove Rovers Football Club at a meeting of the Council on 27th February 2007;

Councillor Newnes admitted that he failed to declare personal interests on the basis of his friendship with Mr. Herbert, his disco business and by reason of his involvement with the Bromsgrove Football Development Plan Committee and that these should have been declared when the lease to the Football Club was discussed.

- (i) Regarding his personal interest arising from his friendship with Mr Herbert, Councillor Newnes submitted that he treated everyone as a friend but that:
- he and Mr. Herbert did not mix socially;
 - Mr. Herbert first contacted him in his capacity as the Ward Member for the Football Club; and
 - that their only contact was at the Charity Ball, on those occasions when Councillor Newnes was holding a disco at the Football Club and Mr. Herbert was on the premises and if they were both spectators at a match.

Councillor Newnes called Mr. Herbert to give evidence and he confirmed that:

- he had known Councillor Newnes for about seven and a half years; and
 - he only became involved with Councillor Newnes as the Football Club's Ward Councillor.
- (ii) Regarding the personal interest arising from his disco business, Councillor Newnes:
- admitted this amounted to a personal interest which should have been declared at the meeting at the point the lease to the Football Club and whether or not a full commercial rent should be payable was discussed; and
 - that he did not do so as he was very frustrated and angry, having just discovered that a previous decision by the Conservative Group to financially support the Football Club (in the form of a grant to cover the rent payable) had been overturned at a Group meeting which had taken place earlier that day and to which he alleged he had not been invited.
- (iii) Regarding the personal interest arising from his position on the Bromsgrove Football Development Plan Committee, Councillor Newnes admitted this amounted to a personal interest which should have been declared as:
- he had a position of management or control at the time as, although the Committee was not formally constituted, he was chairing its meetings.

(iv) Councillor Newnes did not consider that any of these personal interests amounted to prejudicial interests. He made the following submissions:

- his disco business did not generate sufficient income for it to amount to a prejudicial interest; and
- if he ceased the disco business insofar as it was generated from the Football Club he would not be “financially burdened”.

4.1.2 In relation to the allegation that Councillor Newnes failed to comply with the Council’s Code of Conduct in that in his official capacity he attempted improperly to confer an advantage for the Football Club by asking the Conservative Group to support the wishes of the Football Club by not charging a full commercial rent.

Councillor Newnes strongly denied this allegation and in particular:

- he did not misuse his position nor take advantage of his position;
- he considers the Council’s handling of the negotiations and offer to grant a new lease to the Football Club to be inappropriate;
- he passionately supports the promotion of youth activities;
- his involvement was only in his capacity as a Ward Councillor;
- his paper submitted to the Conservative Group meeting was prepared at the request and invitation of two senior Group Members;
- he declared a personal interest at the Group Meeting at which his paper was discussed; and
- he did not give any consideration to the fact that if the proposed commercial rent caused the Football Club to fold as stated in his paper, that this might affect his financial position; he was not motivated by his personal situation but by concern for the young people of the district.

4.2 Summary of submissions by the Investigating Officer:

- In relation to the allegation that Councillor Newnes had improperly attempted to confer an advantage on the Football Club, the Investigating Officer reiterated paragraphs 6.13 – 6.19 of her report.
- She outlined guidance given to her by the Standards Board for England on “improper” influence, namely that improper influence would be any attempt by a Member to use his or her position to further his or her own interests in a way that would not be open to ordinary Members of the public.

4.3 The Standards Committee's decision on whether or not there has been a breach of the Code.

The Standards Committee reached the following decision after considering the submissions of the parties:

4.3.1 In relation to the allegation that Councillor Newnes failed to comply with the Council's Code of Conduct by not declaring a personal or personal and prejudicial interest by reason of his disco business in relation to a debate regarding the lease to Bromsgrove Rovers Football Club at the meeting of the Council on 27th February 2007:

4.3.1.1 The relevant sections of the Code of Conduct are paragraphs 8(1), 9(1) and 10(1).

4.3.1.2 Councillor Newnes failed to comply with paragraphs 8(1), 9(1) and 10(1) of the Code of Conduct as follows:

Councillor Newnes failed to declare a personal interest in relation to the disco business he conducted pursuant to the referral arrangement with the Football Club and that this was also a prejudicial interest.

The Standards Committee's reasons for this decision were:

- the Standards Committee had found as a matter of fact that Councillor Newnes has a referral arrangement with the Football Club which generated income;
- that approximately 50% of Councillor Newnes' income from his disco business was generated as a result of the referral arrangement with the Football Club;
- that Councillor Newnes' belief, as evidenced in his paper to the Conservative Group meeting on 19th February 2007, was that if a full commercial rent was charged the Football Club would fold;
- if the Football Club did fold, Councillor Newnes' income from his disco business arising from the referral arrangement with the Football Club would be adversely affected;
- therefore his financial position would be affected to a greater extent than other council tax payers, ratepayers or inhabitants by the decision relating to the lease to the Football Club; and
- that a member of the public with knowledge of the relevant facts would reasonably regard this as so significant that it was likely to prejudice his judgment of the public interest.

4.3.2 In relation to the allegation that Councillor Newnes failed to comply with the Council's Code of Conduct by not declaring a personal or personal and prejudicial interest by reason of his involvement with the Bromsgrove Football Development Plan Committee ("BFDPC") in relation to a debate regarding the lease to Bromsgrove Rovers Football Club at the meeting of the Council on 27th February 2007:

4.3.2.1 The relevant sections of the Code of Conduct are paragraphs 8(1), 9(1) and 10(1).

4.3.2.2 Councillor Newnes failed to comply with paragraphs 8(1) and 9(1) of the Code of Conduct as follows:

Councillor Newnes failed to declare a personal interest by virtue of his position of management or control with the "BFDPC". The Committee did not consider that this amounted to a prejudicial interest.

The Standards Committee's reasons for this decision were:

- notwithstanding that the BFDPC had not been formally constituted by the time of the Council meeting on 27th February 2007 Councillor Newnes was actively participating in and chairing its meetings, and therefore had a position of management or control;
- the BFDPC was a public body as it comprised representatives from local schools, sports clubs and Bromsgrove District Council;
- the BFDPC was exercising functions of a public nature by reason of its expressed aims of linking together local clubs, schools, soccer schools and Bromsgrove Rovers Football Club to enable football development in the town, as set out in more detail in Appendix F of the Investigating Officer's report;
- that his position of management or control with the BFDPC was one in respect of which notification must be given under paragraph 15 of the Code of Conduct and because of that, Councillor Newnes must regard himself as having a personal interest in the matter; and
- Councillor Newnes believed, as evidenced in his paper to the Conservative Group meeting on 19th February 2007, that if the Council were to stop supporting the Football Club by charging a full commercial rent the aims of the BFDPC would not be able to move forward. However, the Standards Committee did not consider that a member of the public with knowledge of the relevant facts would reasonably regard this

personal interest as so significant that it was likely to prejudice Councillor Newnes' judgment of the public interest.

4.3.3 In relation to the allegation that Councillor Newnes failed to comply with the Council's Code of Conduct by not declaring a personal or personal and prejudicial interest by virtue of his friendship with Mr. Herbert in relation to a debate regarding the lease to Bromsgrove Rovers Football Club at the meeting of the Council on 27th February 2007:

4.3.3.1 The relevant sections of the Code of Conduct are paragraphs 8(1), 9(1) and 10(1).

4.3.3.2 Councillor Newnes did not fail to comply with paragraphs 8(1), 9(1) and 10(1) of the Code of Conduct as follows:

Councillor Newnes did not fail to declare a personal interest by virtue of his friendship with Mr. Herbert.

The Standards Committee's reasons for this decision were:

- The Standards Committee found that the relationship between Councillor Newnes and Mr. Herbert did not amount to a friendship as referred to in paragraph 8 (1) of the Code of Conduct but was limited to that of acquaintance and Ward Member and constituent.

4.3.4 In relation to the allegation that Councillor Newnes failed to comply with the Council's Code of Conduct in that in his official capacity he attempted improperly to confer an advantage for the Football Club by asking the Conservative Group to support the wishes of the Football Club by not charging a full commercial rent.

4.3.4.1 The relevant section of the Code of Conduct is paragraph 5(a).

4.3.1.2 Councillor Newnes failed to comply with paragraph 5(a) of the Code of Conduct.

The Standards Committee's reasons for this decision were:

- the Standards Committee was satisfied that in lobbying the Conservative Group at its meeting on 19th February 2007 Councillor Newnes was acting in an official capacity, and relied on the fact that the purpose of Group meetings is to enable elected Members to discuss Council business; only elected Members are present and the principal business considered is Council as opposed to political business;

- the purpose of Councillor Newnes' lobbying of the Group was to confer an advantage on the Football Club;
- the Committee recognized that it can be entirely proper for Members to use their influence to lobby for support for causes which they passionately support, when the result of such lobbying would result in an advantage being conferred. The Standards Committee considered, however, that in this instance Councillor Newnes' influence was improper as an indirect result of his lobbying was the potential continuance of income from his disco business arising from his referral relationship with the Football Club;
- by using his position as a Member to influence the decision on whether or not the Council should charge a full commercial rent Councillor Newnes was indirectly furthering his own interests in a way that would not be open to ordinary members of the public, as the public would not have access to meetings of the leading political group at which views are taken on whether or not proposals should be supported; and
- it was irrelevant that the attempt to influence the Council failed.

4.4 Details of legal advice given

None

Section 5: Sanction

5.1 Summary of submissions as to sanction by Councillor Newnes:

Councillor Newnes submitted a reference from the Reverend W. Moore as to his character which was given to the Committee.

In addition he made the following submissions:

- his failure to declare interests at the meeting of the Council on 27th February 2007 arose from his anger and frustration at learning that the Conservative Group's decision to support his proposal not to charge the Football Club a full commercial rent had been reversed earlier in the day without him being notified of, or invited to, the meeting at which that decision was taken;
- his failure to declare interests was unintentional and not malicious;
- at no time did he intend to benefit himself;

- he passionately supported the promotion of youth activities;
- there was bitterness between him and the Member who had made the allegations; and
- he had not attended any training on the Code of Conduct for at least 12 months.

5.2 Summary of submissions by the Investigating Officer:

None

5.3 The Standards Committee's decision on what sanction, if any, ought to be imposed:

- 5.3.1 The Standards Committee reached the following decision after considering the written evidence and submissions of the parties and the following sanction will be applied:

Councillor Newnes will be suspended as a Councillor for a period of 2 months, to take effect from 1st January 2008. The suspension will be reduced to 1 month if Councillor Newnes completes training on the Code of Conduct by 31st January 2008.

- 5.3.2 The Standards Committee's reasons for deciding to impose this sanction are:

- attempting to use his position as a Member improperly to confer on or secure for himself or any other person an advantage is a serious breach of the Code of Conduct and therefore, in accordance with the guidance issued by the Standards Board for England, may be appropriate for suspension;
- in view of the number of breaches of the Code of Conduct found, a suspension was appropriate to ensure Councillor Newnes was aware of the gravity of not following the Code of Conduct in order to promote and maintain high standards of conduct by the Members and Co-opted Members of the Council;
- attendance and completion of a training session on the Code of Conduct by 31st January 2008 would reduce the suspension from two months to one month; this is to reflect the fact that the purpose of the sanction is to promote and maintain high standards of conduct by the Members and Co-opted Members of the Council, and in particular Councillor Newnes' knowledge of the Code; and
- by deferring the start of the suspension, Councillor Newnes would have the opportunity of resolving any constituency matters before the suspension took effect;

- the Standards Committee considered the guidance of the SBE (set out in paragraph 3.8 of the covering report to the Standards Committee) in determining sanctions and considered this sanction to be reasonable and proportionate.
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Section 6: Right to appeal

- 6.1 Councillor Newnes has the right to apply in writing to the President of the Adjudication Panel for England for permission to appeal the Standards Committee's findings. The President of the Adjudication Panel must receive written notice requesting permission to appeal within 21 days of the receipt by Councillor Newnes of notification of the Standards Committee's finding.
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Section 7: Recommendations to the authority

- 7.1 The Standards Committee made no recommendations in relation to the promotion and maintenance of high standards of conduct by the Members and Co-opted Members of the Council.
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Chairman of the Standards Committee

Dated: