

INVESTIGATION SBE21308.08

FINAL REPORT DATED 09 JULY 2008

Report of an Investigation conducted under section 66 of the Local Government Act 2000 by Sarah Sellers, Deputy Monitoring Officer, into an allegation concerning Councillor John Puckering Member of Alvechurch Parish Council.

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1. SUMMARY OF THE ALLEGATION

It is alleged by Councillor Mrs June Griffiths that at a meeting of Alvechurch Parish Council on 11 February 2008, Councillor Puckering breached the Code of Conduct by failing to declare an interest in Rowney Green Playgroup. At the meeting Members agreed to send a cheque for £600 to the playgroup; Councillor Puckering's wife is responsible for running the playgroup.

The allegation was reported to the Standards Board on 18 February 2008 and was referred to the Monitoring Officer for local investigation and determination on 17 March 2008 pursuant to section 60(2) of the Local Government Act 2000 and the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended.

2. RELEVANT SECTIONS OF THE CODE

2.1 On 11 June 2007 Alvechurch Parish Council adopted the Model Code of Conduct as set out in the Schedule to the Local Authorities (Model Code of Conduct) Order 2007.

2.2 A copy of the Code of Conduct is attached at Appendix A. The relevant sections to this investigation are as follows:-

- Paragraph 8 – Personal interests
- Paragraph 9 – Disclosure of Personal Interests
- Paragraph 10 – Prejudicial Interests
- Paragraph 12 – Effect of prejudicial interests on participation

3. THE INVESTIGATION

- 3.1 Copies of the relevant records of the Alvechurch Parish Council were obtained from the Parish Clerk Yvonne Goode and are included in this report as appendices B to J.
- 3.2 The Parish Clerk Yvonne Goode was interviewed by telephone as to the procedures for approval of the annual budget and the payment of cheques. A copy of the notes from the telephone interview are included at Appendix K
- 3.3 Councillor Puckering was interviewed and a note of that interview is at Appendix L. Councillor Puckering has co-operated fully in this investigation.

4. FINDINGS OF FACT

- 4.1 The allegation of failure to declare an interest is in relation to the arrangement whereby Alvechurch Parish Council pays an annual grant to Rowney Green Pre-School. I have investigated the history of this arrangement and the information provided by the Parish Clerk shows that an application for a grant was originally considered and approved on 10th December 1996. The details of the original award are set out in the note from the minutes at Appendix J. This document states that at the time the pre-school requested a grant to ensure it's continuity during a period of lower numbers and changes brought about by the Nursery Voucher scheme.
- 4.2 The grant having first been awarded in 1996 has been paid to the pre-school in every subsequent financial year. The amount has increased from time to time and now stands at £600. By way of additional background information, the Parish Council pays out a number of

grants each year as part of its function to support local community groups. In addition to the payment of the grant of £600 to Rowney Green Pre-School, a grant is also paid to Bear Hill Pre-School for the same amount. The Parish Council uses the facility to make grant payments to support various local voluntary organisations including sports clubs, the carers group and the Historical Society. A list of the organisations which received grant payments in the 07/08 budget is set out on page second page of the draft budget attached at Appendix E.

- 4.2 Although many of the grants are paid year on year this is not an automatic arrangement; the payments are considered and approved as part of the planned expenditure for the budget for each financial year. The budget process is that the Finance and General Purpose Committee (FGPC), which is a sub-committee of the Parish Council will meet to formulate and agree the draft budget. This is usually in October/ November for the following financial year. The draft budget once finalised is then presented to the full Parish Council usually in the month of December. The full Parish Council will then approve and adopt the budget.
- 4.3 With reference to the actual mechanism for the payment of the grant, the normal practice is for the organisation concerned to write to the Parish Clerk to request that the payment is dispatched. This request can be made can be at any time during the relevant financial year. When the letter is received, the Parish Clerk will prepare a cheque and add it to the list of bills for payment to be considered at the next meeting of the full Parish Council. Before the meeting the Vice Chair will check the list and a copy is then circulated to members at the meeting. The cheques to be paid will only be discussed at the meeting for clarification if there are any members who are not sure what the payment is for, or if the Parish Clerk has had to include an item of emergency spending which falls outside of the expenditure approved under the budget process.

4.4 The facts concerning Councillor Puckering's involvement in Rowney Green pre-school are as follows. His wife Rosemary has been involved in the running of the pre-school dating back to the 1990s. The up to date position is that Mrs Puckering is employed by the pre-school as a supervisor. As referred to above, the pre-school is a voluntary organisation. It is parent led and managed by a committee of parents. Councillor Puckering is the chair of the committee but he has no involvement in the day to day operation of the pre-school. His main function is to support the annual general meeting which he chairs. This is the only formal meeting he attends each year. His wife's involvement with the pre-school is well known locally. The central record of Register of Members Interests forms maintained by the Monitoring Officer shows that Councillor Puckering declared his involvement with the pre-school on the most recent form he submitted which was received on 17 April 2008.

4.5 Although the allegation relates to the meeting of the Parish Council which took place on 11th February 2008, the payment in question was approved as part of the 07/08 budget. The relevant meetings at which the 07/08 budget was considered were therefore as follows:-

- 27 November 2006 – meeting of the Finance and General Purpose Committee at which the figures in the draft budget were considered and finalised for subsequent approval by the full Parish Council.
- 11 December 2006 – meeting of the full parish Council at which the draft budget was agreed and accepted in full.

The letter from Rowney Pre-School requesting payment of the 07/08 grant is dated 21st January 2008 (Appendix I) and payment of the cheque was therefore referred to the next meeting of the full Parish

Council on 11th February 2008. Full details are set out in the chronology at Appendix N.

- 4.6 At the meeting of the full Parish Council on 11th February 2008 the draft payments list was circulated in the usual way (Appendix D). No interests in the payments were declared by Councillor Puckering or any other Councillors. When the agenda item on the cheques was reached Councillor Griffiths asked a question for clarification relating to the payment of the grant. The Parish Clerk answered and explained what the cheque was for.
- 4.6 On 18 February 2008 Councillor Griffiths reported the allegation of breach of the Code of Conduct to the Standards Board for England.

5. THE ISSUES

5.1 The issues are:-

- Does Councillor Puckering have a personal interest in any business of the authority affecting Rowney Green pre-school?
- Does Councillor Puckering have a prejudicial interest in any business of the authority affecting Rowney Green pre-school?
- Did the approval by the Parish Council of the list of cheques to be paid on 11 February constitute consideration of “business of the authority” in which Councillor Puckering had an interest, or was the “business of the authority” in regard to the pre-school actually conducted when the decision to award the grant was made as part of the budget setting process?

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

- 6.1 The test for whether a member has a personal interest is set out in paragraph 8 of the Code of Conduct. Based on the facts of this case under paragraph 8 (1) (a) (ii) (bb) Councillor Puckering can be said to be “a member or in a position of general control or management of a body directed to charitable purposes”, namely the pre-school. Under paragraph 13 (1) of the Code, interests which fall within the categories listed at paragraph 8 (1) (a) have to be registered on the register of members interests. Councillor Puckering has included the playgroup in section (ii) on his current Register of Members’ Interests form.
- 6.2 There is also a second strand to the personal interest position in that on the facts of the case a personal interest could also be said to arise under paragraph 8 (1) (b). This is the part of the Code which refers to an interest that is not on the register but where the well-being or financial position of a the elected member or a member of their family is likely to be affected by the business of the authority more than it would affect the majority of people in the ward affected by the decision. I have considered this paragraph but have decided that based on the current circumstances it would only come into effect if Councillor Puckering ceased to be the Chair of the pre-school, in which case the source of his personal interest would then be that his wife is employed by the pre-school.
- 6.3 The position therefore is that a personal interest exists currently under paragraph 8 (1) (a) (ii) (b) and also under paragraph 8 (1) (b). At any time that Councillor Puckering was not the chair of the pre-school, his personal interest would no longer be registerable but he would still have a personal interest provided Mrs Puckering was employed by the pre-school due to the effect of paragraph 8 (1) (b). Under paragraph 9 of the Code of Conduct Councillor Puckering would be required to

declare a personal interest if the business of the authority at a meeting he was attending related to the pre-school.

6.4 The test for when a personal interest becomes a prejudicial interest is set out in Paragraph 10 of the Code of Conduct. There are three parts of the test which have to be satisfied. These are :-

- That the matter being decided does not fall within one of the exempt categories; and
- That the matter affects the financial interests of the elected member or relates to a licensing or regulatory matter ;and
- That a member of the public who knows the relevant facts would reasonably think the elected member's personal interest is so significant that it is likely to prejudice their judgement of the public interest.

6.5 Applying this test to Councillor Puckering, if the business of the authority in question were a decision to pay a grant to Rowney Green pre-school then all three elements of the test would be met. Firstly, the decision is not in the category of exempt matters listed at paragraph 10 (2) (c) . Secondly the decision would affect Councillor Puckering's financial interests. The Guidance issued by the Standards Board in May 2007 sets out examples of this category which include an application for grant funding to a body on an elected member's register of interests. Thirdly, it would be reasonable for a member of the public to think that as chair of the pre-school Councillor Puckering's personal interest is so significant that it is likely to prejudice his judgment of the public interest. I therefore conclude that on a decision to pay a grant to the pre-school Councillor Puckering would have a prejudicial interest. In compliance with the Code he would therefore need to declare his interest and leave the room while the matter was decided (Paragraph 12).

6.6 Turning then to the meeting of the Parish Council on 11th February 2008, the next question is whether the business of the authority was such that Councillor Puckering should have declared an interest. I have considered this element of the investigation carefully and I have concluded that there was no requirement for Councillor Puckering to declare an interest. My reasoning for reaching this view is as follows:-

6.6.1 The key question is what was the nature of the business of the authority on 11 February 2008. It is clear that the budget process which approved the payment had been concluded many months previously and the task which remained was for the payment to be made. The Parish Council is a small organisation and unlike the District Council does not have a large support staff to administer its finances. The position therefore is that in accordance with paragraph 5 of the Alvechurch Parish Council Financial Regulations, the procedure is for the schedule of payments to be "authorised" at the meeting of the Parish Council. In a larger Council clearly this stage would be dealt with by officers behind the scenes and my view is that the authorisation of cheques is an administrative process albeit that it takes place at the meeting.

6.6.2 Looking back to prior to the meeting on 11th February, the actual decision to fund the grant was made in two stages at the meeting of the Finance and General Purposes Committee on 26th November 2006 and at the subsequent meeting of the full Parish Council on 11th December 2006. In my view these are the occasions when the business of the authority included a decision which affected the personal interest of Councillor Puckering.

6.6.3 I am reinforced in my view by the evidence received from both the Parish Clerk and Councillor Puckering. The Parish Clerk explained to me very clearly that the cheque in question was a standard item of expenditure approved under the budget setting process in Nov/ Dec

2006. She saw this process as distinct from the procedure whereby the payment was actually sent out. This is a separate procedure, the rules for which are set out in the Financial Regulations. For accounting purposes and to guard against fraud, the system for payment of cheques is such that the clerk cannot sign for them herself, and instead they need to be signed by two councillors. The clerk was in agreement with the proposition that this process was better described as an administrative exercise rather than an actual decision to award a grant. She explained that she would not expect Councillors to declare an interest in the items on the cheque list and queries would be for information only. The sole exception to this rule is when there has been an item of emergency expenditure which has not been approved under the budget process and the payment would be received by a Councillor or a member of their family for example.

6.6.4 When I met with Councillor Puckering he too was very clear that under the procedures currently in place the members of the Parish Council would not expect to be required to declare an interest in the agenda item at meetings for the authorisation of the cheque list. The reason for this is that the decision would have already been made as part of the budget process; the authorising of the cheque was a separate administrative procedure. He went on to explain that he is aware that he has a prejudicial interest in decisions to make financial grants to Rowney Green pre-school, and if this matter is debated at a meeting he is attending he is aware of his duty to declare an interest and leave the room until the matter has been decided. He informed me that this is the practice which he always follows at meetings if the pre-school is discussed.

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

7.1 For the reasons set out in paragraphs 6.6 above I find that at the meeting of the Parish Council on 11 February 2008 the business of the authority was not a decision to make a payment to Rowney Green pre-school. The authorisation of the payments list was an administrative function required as part of the financial procedures of the Council. As the Council were not considering business which affected a personal interest of Councillor Puckering, it follows that there was no requirement for him to declare an interest either personal or prejudicial. Accordingly my finding is that in failing to declare an interest Councillor Puckering did not breach the Code of Conduct.

7.2 As stated in paragraph 6.5, the dates on which the business of the authority affected the personal interest of Councillor Puckering were the meeting of the Finance and General Purposes Committee on 26 November 2006 and the subsequent full meeting of the Parish Council on 11 December 2006. I have not investigated what interests were declared on those occasions. Such enquiries would fall outside the remit of this investigation which is limited to exploring the allegation regarding what happened on 11 February 2008.

Sarah Sellers

Senior Solicitor

09 July 2008