

INVESTIGATION SBE 21159.08

FINAL REPORT

14th July 2008

This report has been prepared in relation to an investigation conducted under Section 66 of the Local Government Act 2000 by Vanessa Brown, Litigation Solicitor, into an allegation concerning Councillor Peter Whittaker, Member of Bromsgrove District Council.

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APPENDICES:

- A. Copy of the Code of Conduct implemented by Bromsgrove District Council on 18th July 2007.
- B. Copy of The Code of Conduct Guide for Members (May 2007).
- C. Copy of an attendance note prepared by Vanessa Brown, following a meeting on the 6th June 2008 with Mrs. Deborah Warren – Senior Solicitor and Deputy Monitoring Officer.
- D. Copy of an attendance note prepared by Vanessa Brown, following a meeting on the 18th June 2008 with Councillor Peter Whittaker.
- E. Copy of the Register of Interest Form signed 19th February 2008 and received by the Monitoring Officer on 3rd April 2008.

- F. Copy of the Register of Interest Form signed 19th February 2002 and received by the Monitoring Officer on 21st February 2002.
- G. Letter dated the 11th July 2007.
- H. Letter dated the 21st December 2007.
- I. Copy of the Members Bulletin dated 19th March 2008
- J. Chronology.

1. SUMMARY OF THE ALLEGATION

It is alleged by Councillor MacDonald that following the implementation of the Council's Code of Conduct on the 18th July 2007 that Councillor Whittaker failed to complete and return his Register of Interests Form in accordance with the statutory requirement to do so within 28 days. It is therefore alleged that Councillor Whittaker failed to comply with the Council's Code of Conduct.

The Council's Code of Conduct relevant to this investigation is provided at (**Appendix A**) and is the new Code of Conduct implemented by the authority on 18th July 2007.

The allegation was reported to the Standards Board for England in the early part of 2008 and was referred to the Monitoring Officer for local investigation and determination on 28th March 2008, pursuant to Section 60(2)(b) of The Local Government Act 2000 and the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended.

There is one distinct part to Councillor MacDonald's allegation:

- (i) At the Council Meeting on the 18th July 2007 the Council adopted the new Code of Conduct (**Appendix A**). All Councillors were made aware of the statutory requirement that a Register of Interest Form needed to be completed and return to the Monitoring Officer within 28 days of the Code being adopted by the authority.

It is alleged that Councillor Whittaker was aware of this requirement yet failed to provide a completed Register of Interests Form within the requisite time period.

2. RELEVANT SECTIONS OF THE CODE OF CONDUCT

On 18th July 2007 the Council adopted the Model Code of Conduct set out in the "Code". A copy of the Code of Conduct is provided at **Appendix A**

The allegation made against Councillor Whittaker is covered by the section of the Code of Conduct detailed below:-

Part 3 of the Code – Register of Member's Interests

13. (1) Subject to paragraph 14, you must, within 28 days of:

- (a) this Code being adopted by or applied to the authority; or
- (b) your election or appointment to office (where that is later),

register in your authority's register of member's interests (maintained under section 81 (1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8 (1)(a), by providing written notification to the authority's Monitoring Officer.

- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to the authority's Monitoring Officer.

Sensitive Information

14.(1) Where you consider that the information relating to any of your personal interests is sensitive information and the authority's Monitoring Officer agrees, you need not include that information when registering that interest or as the case may be, a change to that interest under paragraph 13.

- (2) You must, within 28 days of becoming aware of the any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information notify the authority's Monitoring Officer asking that the information be included in the authority's Register of Members' Interests.

- (3) In this Code "sensitive information " means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or an person who lives with you may be subjected to violence or intimidation.

3. THE INVESTIGATION

- 3.1 The Code of Conduct and the Code of Conduct Guide for Members booklet has been considered. **(Appendix A and Appendix B).**
- 3.2 A meeting was held with Mrs. Deborah Warren who is a Senior Solicitor and also the Deputy Monitoring Officer. The attendance note is found at **Appendix C.**
- 3.3 The letter dated the 11th July 2007 sent to all Councillors' prior to the meeting on the 18th July 2007 has been obtained. **(Appendix G).**
- 3.4 The letter dated the 21st December 2007 which was sent to the Councillors who had failed to return their Register of Interests form has been obtained. **(Appendix H).**
- 3.5 The most recent Register of Interest form signed by Councillor Whittaker on the 19th February 2008 and received by the Monitoring Officer on the 3rd April 2008 has been considered. **(Appendix E).**
- 3.6 The previous Register of Interest form signed by Councillor Whittaker on the 19th February 2002 and received by the Monitoring Officer on the 21st February 2002 has been considered. **(Appendix F).**
- 3.7 The Members Bulletin dated the 19th March 2008 has been considered and it was noted that it specifically makes members aware of their statutory obligation to ensure their Register of Interest forms are up to date. **(Appendix I).**
- 3.8 A meeting was held with Councillor Whittaker on the 18th June 2008 and a copy of the notes recording the discussions is provided at **Appendix D.**
- 3.9 A chronology of events is at **Appendix J.**

4. FINDINGS OF FACT

- 4.1 The allegation faced by Councillor Whittaker, centres on the implementation of the new Council's Code of Conduct which was adopted by the Council on the 18th July 2007.
- 4.2 With the implementation of the Code of Conduct came the statutory requirement that all members return a completed Register of Interests form to the Monitoring Officer within 28 calendar days of the Council adopting the Code of Conduct. The 28 days expired on the 15th August 2007.

- 4.3 Prior to the meeting on the 18th July 2008 all Councillors were provided with a letter dated the 11th July 2007, inviting them to familiarise themselves with the new Code. Details of the training sessions available were also provided along with a copy of the Register of Interests form for completion. **(Appendix G)**.
- 4.4 Councillor Whittaker believes he was at the Council meeting when the Code was adopted although due to the passage of time he cannot recall with clarity the details of that meeting. Councillor Whittaker has seen the letter of the 11th July 2007 and anticipates that he would have received the same but again he has no clear recollection of it.
- 4.5 Committee records state that Councillor Whittaker was present at the meeting.
- 4.6 In discussion with Mrs. Warren it has been established that training sessions were made available for all members. Councillor Whittaker confirmed that he had attended a training session and he accepted that training records indicated this was 4th June 2007. **(Appendix C and Appendix G)**.
- 4.7 At the training sessions each Councillor would have been provided with a copy of the Code of Conduct Guide for Members booklets. Whilst Councillor Whittaker can not recall being provided with one of the booklets at the training session, he was able to confirm that he had several copies of the booklet and had read it through. **(Appendix B)**.
- 4.8 On the 21st December 2007 a letter was sent to all of the Councillors who had failed to provide a completed Register of Interests Form requesting them to return the form as soon as possible. A further copy of the form was enclosed with the letter. **(Appendix H)**.
- 4.9 A Members' Bulletin dated the 19th March 2008 included a statement to remind members' to provide their up to date Register of Interest form as the information was soon to be accessible on the internet. **(Appendix I)**.
- 4.10 Councillor Whittaker is an established and long serving member of the Council having been the Councillor for Tardebigge since 1999. It is also clear that he is an active member of the Council and attends Planning Committee, Licensing Committee, Licensing Sub Committee, and the Local Development Framework Working Party. **(Appendix D)**.
- 4.11 During discussions with Councillor Whittaker he accepted that he was fully aware of the relevant section of the Code of Conduct and the statutory requirement to provide his Register of Interest form within the 28 days of the Code being implemented. **(Appendix D)**.

- 4.12 The date by which the form should have been returned was the 15th August 2007. The Register of Interest form completed by Councillor Whittaker has been obtained and clearly shows the date the form was signed as the 19th February 2008 and received by the Monitoring Officer on the 3rd April 2008. **(Appendix E).**
- 4.13 The previous Register of Interest form provided by Councillor Whittaker was signed on the 19th February 2002 and was received by the Monitoring Officer on the 21st February 2002. **(Appendix F).**
- 4.14 The details and information relevant to each Councillor is to be found on the intranet and the internet. Specifically the public have access to the Register of Interest forms.
- 4.15 At the meeting with Councillor Whittaker on the 18th June 2008 he accepted that he had breached the Code of Conduct in failing to provide his Register of Interest form within the correct time period. **(Appendix D).**
- 4.16 A chronology of events is at **Appendix J.**

5. THE ISSUES.

There is one distinct issue to be considered:

- (i) Whether Councillor Whittaker failed to provide his completed Register of Interests form within 28 calendar days of the Council adopting the Code of Conduct.

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

- 6.1 The relevant Code of Conduct was adopted by Bromsgrove District Council at a Council meeting on the 18th July 2007 and committee records show that Councillor Whittaker was present at that meeting.
- 6.2 The Code of Conduct includes under Part 3, Register of Interest paragraph 13 (1) a requirement that members must, within 28 days of the Code being adopted provide written notification of their personal interests. The Register of Interests form should have been completed and provided to the Monitoring Officer within the time period specified.

- 6.3 In advance of the meeting on the 18th July 2007, all Councillors were provided with a letter dated the 11th July 2007 (**Appendix G**) and whilst Councillor Whittaker does not recall receiving the same, I am satisfied that is more likely than not that he did receive it.
- 6.4 The letter of the 11th July 2007 (**Appendix G**) includes, inter alia, a paragraph specifically dealing with the statutory requirement to complete a new Register of Interests form and the need to do so within 28 days of the Code being adopted. It is of significance that the new form differed from the previous form as it combined both "Interests and Gifts and Hospitality". A copy of the Register of Interests form was enclosed with the letter.
- 6.5 Training sessions to include the new Code of Conduct were available for all members and training records show that Councillor Whittaker attended on the 4th June 2007. Councillor Whittaker was unable to recall the details of the training or whether at that stage he was provided with the Standard Board for England guidance booklet. However, he did recall attending the training session.
- 6.6 I am entirely satisfied that in light of Councillor Whittaker's presence at the Council meeting on the 18th July 2007, the training session and the letter of the 11th July 2007 (**Appendix G**) that at the time the Code was adopted Councillor Whittaker was fully aware of his statutory duty to complete and return the new Register of Interest form.
- 6.7 I consider Councillor Whittaker to be a long serving member of the Council and his attendance at Planning Committee, Licensing Committee, Sub Licensing Committee and the Local Development Framework Working Party indicates that he is an active member of the Council. It is therefore of concern that Councillor Whittaker failed to complete and return the Register of Interests form within the specified period as to hold such a position within the Council without having regard to this statutory requirement must, in my opinion, be negligent.
- 6.8 Attendance at the committees such as indicated above should have acted as a reminder to Councillor Whittaker of the need to submit the Register of Interest form as each and every meeting requires all Councillors to address in their own mind the need to declare any relevant interests.
- 6.9 Councillor Whittaker was sent a letter dated 21st December 2007 again requiring the completion of the Register of Interests form. A further copy of the form was enclosed. Councillor Whittaker accepts that he received this letter with enclosures but as it arrived close to Christmas he failed to deal with the request at that time. Whilst it may be understandable that the matter was not dealt with immediately upon receipt of the letter, it is of concern that Councillor Whittaker did not view the matter of such importance to address the contents of the letter after the Christmas festivities. (**Appendix H**).

- 6.10 The Register of Interests form was eventually signed on the 19th February 2008. However, it was not received by the Monitoring Officer until the 3rd April 2008. Regrettably this is another indication of the lack of priority given to this matter by Councillor Whittaker. **(Appendix E)**.
- 6.11 I have looked at the Member's Bulletin dated the 19th March 2008 as an example of the way in which members are reminded of their responsibility to complete and return the Register of Interests form. **(Appendix I)**. Councillor Whittaker did not return his form until after this date, namely the 3rd April 2008.
- 6.12 It is important to note that the public have access to the Register of Interest forms via the Bromsgrove District Council web site and I therefore see the necessity for the information to be up to date as of paramount importance.
- 6.13 The Register of Interest form that accompanied the new Code of Conduct differs in substance to the old form. The differences were clearly stated in the letter dated the 11th July 2008. **(Appendix G)**. As already indicated the changes to the form relate specifically to gifts and hospitality. Thus such information was previously omitted from the form and it therefore seems to me that the need to have the completed forms within the 28 day time period is essential to ensure the public are not placed at a disadvantage by not having access to information to which they are entitled.
- 6.14 In discussions with Councillor Whittaker he stated that the only information that would have changed between the Register of Interests form from February 2002 and the one submitted in April 2008 is the fact that he no longer works in partnership with his brother. **(Appendix E & F)**.
- 6.15 I have examined the two Register of Interest forms and whilst I would agree that the new form refers to Councillor Whittaker as a "self – employed farmer" as apposed to "The partnership in which I am an equal partner carries out the business of farming....." I have also found additional information on the new form that did not appear on the old form.
- 6.16 The information now disclosed on the Register of Interest form received 3rd April 2008 is as follows;
- That Councillor Whittaker is a member of the West Midlands Regional Assembly (Housing commission).
 - That Councillor Whittaker is a member of the Bromsgrove Farmers Club
 - That on occasion Councillor Whittaker has work for Harris Coaches of Catshill.

- 6.17 This information, along with all other information disclosed on the Register of Interests form should have been made available to the Monitoring Officer by no later than the 15th August 2007. Regrettably Councillor Whittaker did not return his Register of Interests form until the 3rd April 2008 some seven and a half months later.
- 6.18 It must therefore follow that the public were deprived of the “new” information until some significant time after the details should have been available.
- 6.19 I anticipate that only a relatively small percentage of the public ever come into direct contact with their Councillor. Unless there is a personal issue that directly affects them ie a planning application that is being heard by the Planning Committee, most will never need to examine the Code of Conduct or look at the Register of Interest. It is therefore absolutely essential that those who do examine the Register of Interest have complete confidence in its accuracy.
- 6.20 The Code of Conduct is agreed by all Councillors and as such, in my opinion, should be viewed as carrying the same weight as legislation. I see the Code of Conduct as the only true way in which the public can measure the trust it places in the Council as it represents the standard against which the public will judge the conduct of the Councillors. Its purpose is to ensure transparency in all work carried out in the name of the Council.
- 6.21 In my discussions with Councillor Whittaker it soon became apparent that he had not appreciated the full impact of his failure to provide the Register of Interest form until he had had an opportunity to consider the allegation made against him. I formed the view that Councillor Whittaker takes his participation in Council business very seriously and has now appreciated the full implications of his failure to comply with his statutory requirement to provide his Register of Interests form within the correct time period. **(Appendix D)**.
- 6.22 Councillor Whittaker expressed genuine remorse for allowing the situation to escalate and I accept entirely that his action were as a result of an oversight and not a deliberate attempt to withhold information. I do not find that Councillor Whittaker had a blatant disregard for the Code of Conduct simply that he had not addressed his mind to the importance of providing the Register of Interest form within the requisite time as he had believed that the information he had previously provided was adequate.
- 6.23 It is my opinion that Councillor Whittaker had simply not addressed his mind to the consequences of failing to provide his Register of Interests form. By which I mean the public perception not the Investigation to which he has been subject.
- 6.24 Councillor Whittaker was clearly most sincere in his regret at the situation that has arisen and he was anxious to make me aware that he was immediately bringing to the Monitoring Officers attention the fact that he had recently been

treated to a day at the races by a couple who owned a computer company. This demonstrates that Councillor Whittaker now has the need to disclose information upper most in his mind!

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

- 7.1 With regard to the allegation that Councillor Whittaker failed to comply with the Code of Conduct in that he did not return a completed and signed Register of Interest form within 28 days of the new Code of Conduct being adopted I find as follows:

The new Code of Conduct was adopted by Bromsgrove District Council on the 18th July 2007. There is a statutory requirement that all Councillors complete a Register of Interest form and return it to the Monitoring Officer within 28 days of the Code being adopted.

For the reasons set out at paragraph 6 I find that Councillor Whittaker failed to comply with Part 3 paragraph 13 (1) of the Code of Conduct as he did not provide the Monitoring Officer with the Register of Interests form within 28 days of the Code of Conduct being adopted by the authority and I therefore find that Councillor Whittaker has breached the Code of Conduct.

The evidence collated in the course of this investigation has been carefully considered and assessed and my findings are based on the balance of probability burden of proof.

This the final report prepared by Vanessa Brown which represents the findings and conclusions of the investigation into an allegation made against Councillor Whittaker. This final report will be presented to the Standards Committee.

Signed: Vanessa Brown

Dated: 22.07.08