

INVESTIGATION : ref 14/08

FINAL REPORT

14th August 2009

This report has been prepared in relation to an investigation conducted under Section 59 of the Local Government Act 2000 by Vanessa Brown, Litigation Solicitor (appointed by the Monitoring Officer) into an allegation concerning Parish Councillor Dale Carter a member of the Catshill and North Marlbrook Parish Council who it is alleged has failed to complete and submit a Register of Interest Form within the statutory time limit.

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APPENDICES:

Schedule of evidence taken into account.

- A.** Code of Conduct implemented by the Catshill and North Marlbrook Parish Council 26th June 2008
- B.** Copy of the meeting notes prepared by Vanessa Brown following a meeting on 3rd June 2008 with Mrs. Deborah Warren - Deputy Monitoring Officer and Senior Solicitor.
- C.** Copy of the meeting notes prepared by Vanessa Brown following a meeting 21st May 2009 with Ms. Gill Lungley, Parish Clerk for Catshill & North Marlbrook.

- D. Copy of the Agenda and Minutes from the Catshill and North Marlbrook Parish Council meeting on the 26th June 2008.
- E. Copy correspondence from the Mrs. Warren – (Deputy Monitoring Officer and Senior Solicitor), dated 8th September 2008, and 9th December 2008, and from Mrs. Felton (Monitoring Officer) dated 6th January 2009.
- F. Copy of the Register of Interest form signed on the 28th January 2009 received by the Monitoring Officer on the 3rd February 2009.
- G. Decision Notice: Referral for Investigation.
- H. Chronology.
- I. Schedule of Unused Material.

1. SUMMARY OF THE ALLEGATION

It is alleged that following the implementation by the Catshill & North Marlbrook Parish Council of the new Code of Conduct on the 26th June 2008 that Councillor Dale Carter 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 Carter has failed to comply with the Code of Conduct.

The Code of Conduct relevant to this investigation is provided at **Appendix A** and is the new Code of Conduct implemented by the Catshill and North Marlbrook Parish Council on the 26th June 2008.

The allegation was reported to the Standards Assessment Sub-Committee for consideration and was referred to the Monitoring Officer for local investigation and determination, pursuant to Section 57A (2) of The Local Government Act 2000 as amended.

There is one distinct part to the allegation:

- (i) At the Catshill and North Marlbrook Parish Council meeting held on the 26th June 2008 the Parish Council adopted the new Code of Conduct (**Appendix A**). All Parish Councillors were 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.

It is alleged that Councillor Carter was aware of this requirement yet failed to provide a completed Register of Interests Form within the statutory time. That time period ended on the 24th July 2008 and it is alleged that Councillor Carter failed to complete and return his Register of Interest Form until 3rd February 2009 which is the date it was received by the Monitoring Officer.

2. PARISH COUNCILLOR DALE CARTER – OFFICIAL DETAILS

The information obtained in relation to this section of the report has been obtained from the internet and from the Parish Clerk to Catshill and North Marlbrook as Councillor Carter has chosen not to contribute in the preparation of this report.

Councillor Dale Carter became a Parish Councillor in Catshill and North Marlbrook in May 2007. He sits on the committees for Planning, Events, Youth Groups and Appeals.

3. RELEVANT SECTIONS OF THE CODE OF CONDUCT

The new Code of Conduct was introduced in 2007 and on the 26th June 2008 the Catshill & North Marlbrook Parish Council adopted the full Code of Conduct **(Appendix A)**.

The allegation made against Councillor Carter 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.

4. EVIDENCE GATHERED

In the course of this investigation I have had regard to the following evidence: -

- 4.1 The Code of Conduct **Appendix A**.
- 4.2 A meeting was held with Mrs. Deborah Warren, Deputy Monitoring Officer and Senior Solicitor. The attendance note is found at **Appendix B**.
- 4.3 A meeting was held with Ms. Gill Lungley the Parish Clerk for Catshill & North Marlbrook. The attendance note is found at **Appendix C**.
- 4.4 Documents provided by Ms. Lungley, include the Agenda and Minutes of the meeting held on the 26th June 2008 and they can be found at **Appendix D**.
- 4.5 There are three letters dated 8th September 2008, 9th December 2008 and 6th January 2009 which were sent to Councillor Carter from the Monitoring Officer and Deputy Monitoring Officer. These three letters are provided at **Appendix E**.
- 4.6 The completed Register of Interest Form signed by Councillor Carter on the 28th January 2009 and received by the Monitoring Officer on the 3rd February 2009. **Appendix F**.

- 4.7 The Decision Notice provided with instructions to commence the investigation is provided at Appendix G.
- 4.8 Chronology of events is provided at **Appendix H**.
- 4.9 Schedule of Unused Material is provided at **Appendix I**.

5. SUMMARY OF THE MATERIAL FACTS

- 5.1 The allegation faced by Councillor Carter, centres on the implementation of the new Code of Conduct which was introduced in 2007.
- 5.2 Parish Councils were required to adopt the Code and could do so either in its entirety or they could exclude paragraph 12 (2) relating to “Effect of Prejudicial Interest on Participation”.
- 5.3 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 adoption the Code of Conduct. In this instance the 28 days expired on the 24th July 2008.
- 5.4 The Minutes held by the Catshill & North Marlbrook Parish Council indicate that a copy of the new Code was distributed to the parish councillors at a meeting held in October 2007 although there was nothing noted to say the new Code had been adopted at the same time.
- 5.5 In early 2008 Ms. Lungley took up the position of parish clerk and in reviewing the records noted that the new Code did not appear to have been formally adopted. Therefore at a meeting held on the 26th June 2008 the adoption of the new Code of Conduct was included on the Agenda.
- 5.6 The Agenda item is specific with regards to the completion of the Register of Interests Form and a blank form for completion was included with the papers for the meeting. **(Appendix D)**.
- 5.7 The Agenda item states:

“ ...members were required to complete a new Register of Interests form at the same time to comply with the conditions of the Revised (2007) Code, despite having already completed one only a few months earlier. These forms are retained at Bromsgrove District Council and can be viewed by any member of the public who so requests to see them. BDC have been in touch

recently asking for the Register of Interest forms, of which only six have been fully completed by members of this parish council.

A blank form is being sent with these papers to those members who do not yet appear to have completed a form- and apologies to those who receive a form herewith and have already completed one, however BDC do not have them on record. If BDC do not receive these forms they are obliged to inform the local Standards Committee, who will be obliged to bar such a member from office.”

- 5.8 The Minutes prepared following the meeting confirmed that it had been agreed that the parish council would adopt the revised (2007) Members’ Code of Conduct with paragraph 12 (2). It is also noted that councillors were reminded of the need to complete the Register of Interest form.
- 5.9 The Minutes also confirm that Councillor Carter was present at the June 2008 meeting. **(Appendix D)**.
- 5.10 Whilst the parish clerk provided the blank Register of Interest Form to the parish councillors, responsibility for completing the form and ensuring it reached the Monitoring Officer rested entirely with the individual councillors.
- 5.11 Once completed, the forms could be either given to the parish clerk who would forward them to the Monitoring Officer or the councillor could send them directly to the Monitoring Officer at Bromsgrove District Council.
- 5.12 Mrs. Warren (Deputy Monitoring Officer) was able to confirm that over the last two years requests have been made of parish clerks to provide copies of their adopted Code of Conduct and also Register of Interests Forms for parish councillors so that a central record could be kept at the Council House. Additionally, completed forms received directly from the councillors would generally be copied and forwarded to the parish clerks to enable them to hold their own records
- 5.13 On the 8th September 2008 Mrs. Warren was contacted by the Parish Clerk for Catshill and North Marlbrook who was missing Register of Interests Forms for two parish councillors. The same day Mrs. Warren wrote to both councillors, one of whom was Councillor Carter, to request the completed Register of Interests Form and advising that failure to provide the completed form within 28 days of the Code being adopted could amount to a breach of the Code of Conduct. **(Appendix E)**
- 5.14 In November 2008 the Ms. Lungley the Parish Clerk also wrote to Councillor Carter and sent him another blank Register of Interests Form for completion. A short time later in the course of a conversation Councillor Carter confirmed to the Ms. Lungley that he “had not got round to completing the form”. Councillor

Carter declined a further form stating that he had still the one previously provided.

5.15 The parish clerk notified Mrs. Warren (Deputy Monitoring Officer) of the conversation with Councillor Carter and this resulted in a further letter being sent to Councillor Carter on the 9th December 2008 again to requesting a completed Register of Interests Form. **(Appendix E)**

5.16 There was no response to this letter and so the matter was referred to the Monitoring Officer, Mrs. Felton who wrote to Councillor Carter on the 6th January 2009 to again request the completed form. **(Appendix E)**

5.17 The lack of response to any of the letters of request resulted in the matter being referred to the Standards Assessment Sub-Committee for consideration. It was determined that the matter should be referred the Monitoring Officer for investigation. **(Appendix G)**

5.18 On the 3rd February 2009 the Monitoring Officer received the completed Register of Interests Form from Councillor Carter. **(Appendix F)**. It was sent in by the parish clerk.

5.19 In discussion with Mrs. Warren (Deputy Monitoring Officer and Senior Solicitor) and the Ms.Lungley (Parish Clerk) it has been established that there are no training sessions available for parish councillors on either the implementation of the new Code or the Register of Interests Form.

5.20 Councillor Carter has been written to on three occasions asking him to meet with me to discuss the allegation made against him. There has been no response to these requests nor has Councillor Carter taken up the offer to provide written representations to be included in this report.

5.21 From information provided by the parish clerk and from information available on the internet, I am able to confirm that Councillor Carter has been a councillor since May 2007 and sits on committees for Planning, Events and Appeals. Ms. Lungley (Parish Clerk) describes Councillor Carter as an active member who willingly participates in all aspects of parish council work. I am unable to expand on this information having not had the opportunity to meet with Councillor Carter or to discuss this matter with him.

5.22 A chronology of events is at **Appendix H**.

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

- 6.1 The new Code of Conduct was adopted by the Parish of Catshill and North Marlbrook at a meeting held at the village hall on the 26th June 2008.
- 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 statutory time period specified. In this case that time period expired on the 24th July 2008.
- 6.3 At an earlier Parish Council meeting held in October 2007 guidance copies of the Code were distributed to parish councillors. I am unable to establish whether or not Councillor Carter received a copy of the guidance at this time.
- 6.4 I am able to establish from the Minutes obtained (**Appendix D**), that Councillor Carter was present at the meeting held on the 26th June 2008 when it was resolved to adopt the full Code of Conduct. I am satisfied that Councillor Carter was provided with a copy of a blank Register of interests form and I am equally satisfied that both the Agenda and Minutes reflect the clear need for the Register of Interests Form to be completed within the 28 day statutory period.
- 6.5 Ms. Lungley (Parish Clerk) was able to advise me that at the beginning of the meetings attended by Councillor Carter that he always made a Declaration of Interest that he was a member of NWWA. (**Appendix D**). This demonstrates Councillor Carters' understanding of the need for transparency when attending meetings and it is therefore surprising that the same attention to detail was not exercised when required to complete the Register of Interests Form.
- 6.6 Ms.Lungley (Parish Clerk) contacted Mrs. Warren (Deputy Monitoring Officer) to assist in her attempts to obtain the completed forms from two councillors who by September 2008 had still not completed the forms and submitted them to the Monitoring Officer. On the 8th September 2008 Mrs. Warren (Deputy Monitoring Officer) wrote to the councillors and not only requested the form be returned but also gave clear advice that failure to do so could amount to a breach of the Code.
- 6.7 In November 2008 Ms. Lungley, the parish clerk, also wrote to the Councillor Carter requesting the form be completed and submitted. There was no response to this letter or to the letter sent by Mrs. Warren (Deputy Monitoring Officer) in September 2008.

- 6.8 Shortly after this time Ms. Lungley (parish clerk) saw Councillor Carter at a parish council meeting and when asked about the form he confirmed he “had not got round to it”.
- 6.9 On the 9th December 2008 Mrs. Warren (Deputy Monitoring Officer) was again alerted to the fact the forms had not been received and a further letter was sent making the same request. Again there was no response.
- 6.10 The matter was then referred to Mrs. Felton, the Monitoring Officer who on the 6th January 2009 wrote to Councillor Carter again requesting the completed form.
- 6.11 There was a total lack of response from Councillor Carter up until this time and even then it was only on the 28th January 2009 that the form was signed. It was received by the Monitoring Officer on the 3rd February 2009 having been forwarded by the parish clerk.
- 6.12 I have had particular regard to the fact Councillor Carter was present at the meeting at which the Code was adopted and it is clear from his regular declaration this he is aware of the importance of considering possible conflicting interests at the beginning of all meetings. In my opinion such factors compound his failure to complete the form within the time limit
- 6.13 I have considered and have had significant regard to the four letters sent to Councillor Carter requesting the completed form. It is regrettable that the first letter did not prompt a response and that three further letters making the same request was necessary.
- 6.14 I have considered the comments made to Ms. Lungley (Parish Clerk) in November 2008 in which Councillor Carter stated he “had not got round to it”. By this time there had been attempts by both Mrs. Warren (Deputy Monitoring Officer) and Ms. Lungley (Parish Clerk) to obtain the form yet it still took a further letter from Mrs. Warren on the 9th December 2008 (**Appendix E**) and the intervention of the Monitoring Officer on the 6th January 2009 (**Appendix E**) to secure the completed Register of Interests Form. (**Appendix F**)
- 6.15 Mrs. Warren (Deputy Monitoring Officer) at one stage thought the form may have been received but upon checking the records it was apparent that the form remained outstanding. This is supported by the comments made by Councillor Carter to Ms. Lungley (Parish Clerk) in November and the lack of response from him to the contrary.
- 6.16 I am unable to include comments/representation from Councillor Carter as he has declined to contribute to the investigation and ultimately to the preparation of this report.

- 6.17 Upon reviewing the completed Register of Interests Form I have noted that it contains little information and I doubt would have taken more than a few minutes to complete. Yet the amount of time and effort afforded by others to obtain this form is extensive and could have been avoided had Councillor Carter addressed his mind to any of the numerous requests made of him
- 6.18 The Parish Clerk made it very clear in the Agenda and is reflected in the Minutes of the June 2008 meeting, that it was imperative for the Register of Interests Form to be completed and submitted. The Code was adopted by the Parish Council and I take the view that all councillors irrespective of their attendance at the meeting are bound by the Code and the obligations it places upon them as individuals.
- 6.19 The Code of Conduct is agreed and adopted 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 those representing their interests as it represents the standard against which the public will judge the conduct of the any councillors. Its purpose is to ensure transparency in all work carried out in the name of the council.
- 6.20 I anticipate that only a relatively small percentage of the public ever come into direct contact with their parish councillor. Unless there is a personal issue that directly affects them, most will never need to examine the Code of Conduct or look at the Register of Interests. It is therefore absolutely essential that those who do examine the Register of Interests have access to the information in accordance with the Code of Conduct and the time limits attached to it.
- 6.21 It must therefore follow that had a member of the public wished to look at the Register of Interests they would have been deprived of any relevant information pertaining to Councillor Carter.
- 6.22 It is without doubt solely the responsibility of the individual councillors to ensure that they complete the Register of Interests Form and submit it to the Monitoring Office within the statutory time limit. In the absence of any comments or representations from Councillor Carter it is difficult to explain why it took almost 7 months for him to complete such a simply task.

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 Carter 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 Catshill and North Marlbrook Parish Council on the 26th June 2008. 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 Carter failed to comply with Part 3 paragraph 13 (1) of the Code of Conduct as he did not provide the Monitoring Officer with the completed Register of Interests Form within 28 days of the Code of Conduct being adopted by the parish council and I therefore find that Councillor Carter has breached the Code of Conduct.

Councillor Carter has not contributed to the preparation of this report despite being given opportunity to do so. I am therefore unable to assess whether this breach of the Code is a mere oversight or a blatant disregard to the Code of Conduct and the obligations attached to it.

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 is the final report prepared by Vanessa Brown which represents the findings and conclusions of the investigation into an allegation made against Parish Councillor D Carter.

This final report will be presented to the Standards Committee

Signed

Dated