

PRIVATE AND CONFIDENTIAL

FINAL REPORT

Case References: 03/09 and 04/09

Bromsgrove District Council

Report of an investigation by Michael Blamire-Brown appointed by the monitoring officer for Bromsgrove District Council into an allegation concerning Councillor P McDonald

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1 Executive summary

- 1.1 I have been appointed by the Monitoring Officer of Bromsgrove District Council to undertake an investigation into an allegation that Councillor Peter McDonald, a member of Bromsgrove District Council may be in breach of the Code of Conduct of Bromsgrove District Council by disclosing confidential information.
- 1.2 The allegation was on 27th July 2009 referred to the Monitoring Officer by the Standards Assessment Sub-Committee under Section 57A(2) of the Local Government Act 2008.
- 1.3 The outcome of the investigation is that the conduct the subject of the allegation is not a breach of the code of conduct of Bromsgrove District Council.

2 Councillor McDonald's official details

- 2.1 Councillor McDonald was elected to office as a member of Bromsgrove District Council in May 2007 for a term of 4 years. Councillor McDonald is also a member of Worcestershire County Council.
- 2.2 Councillor McDonald gave a written undertaking to observe the code of conduct for Bromsgrove District Council on 9th May 2007.
- 2.3 Councillor McDonald has confirmed that he has received training in the Council's Code of Conduct and is aware of the provisions of the Code and in particular paragraph 4 relating to disclosure of confidential information.
- 2.4 He has completed the register of interests in respect of his Bromsgrove District Council membership.

3 The relevant legislation and protocols

- 3.1 On 19th July 2007 Bromsgrove District Council adopted a code of conduct in the form as set out in the Schedule to the Local Authorities (Model Code of Conduct) Order 2007 with no additions or variations.
- 3.2 The conduct to which the allegation relates took place on 6th July 2009.
- 3.3 Paragraph 4 of the Code of Conduct of Bromsgrove District Council states:

“4. *You must not:*

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought

reasonably to be aware, is of a confidential nature, except where:

- (i) you have the consent of a person authorised to give it;*
 - (ii) you are required by law to do so;*
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or*
 - (iv) the disclosure is:*
 - (aa) reasonable and in the public interest; and*
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or*
- (b) prevent another person from gaining access to information to which that person is entitled by law.”*

4 The evidence gathered

The allegations

- 4.1 Councillors Doyle and Taylor have made a complaint that Councillor McDonald is in breach of the Code of Conduct by disclosing confidential information relating to the Bromsgrove District Council Shared Services Project with Redditch Borough Council when speaking at a meeting of the Lickey and Blackwell Parish Council on 6th July 2009. (See **Documents 1 and 2**).
- 4.2 The alleged disclosure took place at a meeting of the Lickey and Blackwell Parish Council held on 6th July 2009. The meeting was open to the public.
- 4.3 It is standard practice for representatives of the County and District Councils whose wards fall within the parish boundary of Lickey and Blackwell to be invited to parish council meetings and the agenda makes provision for the County and District members to raise any matters they wish at the meeting.
- 4.4 Councillor Mrs Doyle made longhand notes at the parish council meeting about matters raised by Councillor McDonald which she thought were confidential information.
- 4.5 In Councillor Mrs. Doyle's email of 24th July making a complaint to the Monitoring Officer (Claire Felton) she quotes Councillor McDonald as saying at the Parish Council meeting:-

“Everyone should be aware that the Council was wasting the ratepayers money by employing consultants at a cost of £83,000 to review whether the Chief Executive Kevin Dicks should be recommended to continue for the time being as Joint Chief Executive of Redditch and Bromsgrove.”

“The Council had thrown out their recommendations”.

“The post should be advertised to all”.

“It was wrong that two people who would be responsible for setting the Joint Chief Executive salary would be the Head of Legal Services and another employee from the Legal Department, both employees of Bromsgrove District Council”.

“The Joint Chief Executive would be getting a salary of £150,000 a year.”

- 4.6 In Councillor Taylor’s email of 20th July 2009 making a complaint to the Monitoring officer he states that at the Parish Council meeting Councillor Peter McDonald had stated:-

“...how disgraceful and unethical it was that BDC was moving towards shared services with Redditch”

“..the vast monies that the Chief Executive was going to earn (£150k), the suspicious method of calculating this that was going to be applied by the officers”

“...how the cost and failure of this shared service was going to cost us all dear”.

The investigation

- 4.7 I have interviewed Councillor Mrs Doyle (See **Document 3**) , Councillor Taylor (See **Document 4**), the complainants and the Parish Clerk Mrs Casey (See **Document 5**).
- 4.8 I have interviewed Councillor McDonald and produced an agreed note of that interview (See **Document 14**).
- 4.9 In addition I have made enquires through the Monitoring Officer as to the status of certain reports and minutes relating to the proposals for shared services between Bromsgrove and Redditch Councils including the proposals for a joint chief executive.
- 4.10 I have considered and referred in this report to the reports and minutes of the Shared Services Board and the Council during the period from August 2008 until July 2009 to establish the extent to which information in those papers was private and confidential.

The circumstances

- 4.11 Bromsgrove and Redditch Councils agreed in June 2008 to appoint a Joint Chief Executive of both Councils for a trial period of 12 months. The role of the Joint Chief Executive was to identify and establish joint

working arrangements with the objective of improving the quality of people's lives in the area of the two authorities and delivering greater value for money.

4.12 The public minute of the full Council meeting of 30th June 2008 states:-

- “(a) that the Council agree to the principle of the appointment of a Joint Chief Executive between Redditch Borough Council and Bromsgrove District Council, subject to the agreement of both Councils on the basis outlined in the report effective from 1st August 2008 for a period of 12 months and subject to a six month review;*
- (b) that the Council delegate to the Head of Legal, Equalities and Democratic Services and the Head of Financial Services in consultation with the Leader the power to determine any detailed arrangements arising from this agreement in principle which are reasonably required to implement the decision;*
- (c) that the Council agree that from 1st August 2008 the remuneration for the post of Joint Chief Executive be increased by 15% and that the full costs be shared equally between the 2 authorities;*
- (d) that the Council agree to the appointment of Kevin Dicks as Acting Joint Chief Executive for Bromsgrove District Council and Redditch Borough Council effective from 1st August 2008 for a period of 12 months but with a review of progress being undertaken after 6 months;*
- (e) that the Council agree that these arrangements can be terminated by either party with a minimum of 3 months notice; and*
- (f) that the Council agree to the release of £40,000 from balances to fund the work necessary to progress the more detailed business case for joint working.”*

4.13 The Council also agreed that a Shared Services Board be established with three members from each authority. That Board met on 1st September 2008 to consider a concordat for joint working as between Bromsgrove and Redditch Councils. The Board's minutes, its recommendations to each Council and the supporting papers were in the public domain (See **Document 6**).

4.14 At the full Council meeting held on 17th September 2008 the full Council considered in public the report of the Shared Services Board and approved the proposed concordat for joint working. The concordat sets out the constitution and terms of reference of the Shared Services Board. It states:-

“The Board will have no decision making power. Its meetings will not be formal meetings of the Councils but will be open to the public, unless the board is considering exempt items. The meetings of the Board will be minuted and the minutes will be made available to all members of both Councils”.

- 4.15 On 8th December 2008 the full Council received in public a report from the Acting Joint Chief Executive which sought authority for the Head of Legal, Democratic and Property Services, in consultation with the Leader of the Council, to agree the terms of and enter into a secondment agreement with Bromsgrove District Council for the secondment of Kevin Dicks to Redditch Borough Council to enable him to perform the role of Acting Joint Chief Executive. That report was approved (See **Document 7**).
- 4.16 On 9th February 2009 the Shared Services Board received a report in public dealing with the six month review of the Acting Joint Chief Executive arrangements (See notes of meeting - **Document 8**). It was agreed in public session that the arrangement should continue for a further six months and a recommendation to that effect was made to the full Council meeting held on 25th February 2009 and duly approved in public.
- 4.17 The report to the Shared Services Board of 9th February 2009 contained a detailed assessment of progress. In particular it points out that external resources need to be procured to complete the business case and that both Councils had agreed to release £40,000 to support production of the wider business case.
- 4.18 On 30th March 2009 the Shared Services Board met in public and received a progress report (See **Document 9**). This was a detailed public report of some 23 pages and includes a statement (see paragraph 7.1 of **Document 9**) that Serco had been appointed as consultants on a fixed price contract of £83,600. The report pointed out that there was a budget shortfall of some £6,370 which needed to be covered. The minutes of the meeting, which are in the public domain refer to the budget shortfall.
- 4.19 On 23rd June 2009 the agenda and reports for a meeting of the Shared Services Board to be held on 29th June were circulated. The agenda (See **Document 10**) and reports were sent by email from Karen Firth (See **Document No. 11**) to all members of the Council. That email states that the report and the business case itself are strictly confidential to councillors only.
- 4.20 The agenda papers included the Serco Report which was the business case and a report by the Leader of the Council. The Serco Report is a substantial document which is not included in the Appendix. The only section which may be relevant for the purposes of this report relates to the possible options for appointment of a chief executive and an extract only is produced as **Document 12**. The Report by the Leader of the Council is **Document 13**.
- 4.21 The Shared Services Board on 29th June 2009 considered the Serco full business case and the Leader's report in private and the papers

remained confidential although the decisions of the Cabinet on 27th July have since been made public. The confidential minute (see **Document 15**).

- 4.22 On 6th July 2009 Councillor McDonald attended a meeting of the Lickey and Blackwell Parish Council as a representative of Worcestershire County Council. Councillor Mrs Doyle and Councillor Taylor attended. It is normal practice for County Councillors and District Councillors to receive the agendas and minutes of parish council meetings. An agenda item enables County and District Councillors to raise any matter they wish. Councillor Taylor had spoken first and had referred to complaints about footpaths. Councillor McDonald objected to this because footpaths were a matter for the County Council. When Councillor McDonald spoke he raised the matter of shared services between Bromsgrove and Redditch Councils. His statements are set out in the complainant's emails and statements which are set out in full in this report.
- 4.23 In summary, he stated that the Council was employing consultants, that the cost was £83,000, he referred to the position of the Joint Chief Executive post and stated that it should be publicly advertised, he referred to the mechanism for determination of salaries and stated that the Joint Chief Executive's salary would be £150,000.
- 4.24 The statement as to the Joint Chief Executive's Salary was incorrect and whether or not Councillor McDonald was referring to the mechanism of calculation of the Joint Chief Executive's pay or the pay of other officers, the statement made was incorrect because it was recommended in the Leader's report to the Shared Services Board of 29th June 2009 (see **Document 13**) that consideration be given to the need for the salaries of the Joint Chief Executive and the Corporate Management to be properly evaluated. It was not the case that any salary would be determined by officers. The role of officers under delegated powers, was made clear by the minute of the Shared Services Board meeting of 29th June 2009 (see paragraph 2(b) of the minutes – **Document 15**).

Councillor McDonald's explanation

- 4.25 Councillor McDonald was invited to submit his response to the allegations and in an email has stated:-
- 1. It is alleged that I disclosed something I should not have (Councillor A.Doyle).
The budget for the Business Case which really includes the consultants costs were debated through the budgeting process with reference to the 1985 Access To Information Act. This was obviously completed earlier in the year. More specific discussion took place regarding costs at the Shared Services Board on Monday 30th March (open papers). This was followed by the*

Cabinet Meeting of the 29th April that accepted the Shared Services Board recommendations (open papers), then off to Full Council. The figures are not secret, nor, should they be having regard to the 1985 Act which the Council had.

2. *The allegations regarding recommendations: to my knowledge the Council had not made any recommendations at the time I spoke at the parish Meeting. I expressed my view which was confirmed by the actions of the Council. I also expressed my group's view that the joint chief executive post should be advertised for well over a year in public and in addition that the only people who will benefit from merging services will be the salaries of chief officers. I must say that it is some what concerning that for expressing my view I end up being investigated. I am still concerned that there has been no evidence put forward to support the allegation being made by Councillor K. Taylor, that I have done anything wrong. The Council's move to share services with Redditch has been common knowledge for some 15 months. The leader of the Council has given many press releases on this and it has been debated many times in chamber. Once again I expressed my feeling as I have stated above.*

4.26 I have interviewed Councillor McDonald and a note of that interview is in **Document 14**.

4.27 In summary, Councillor McDonald's position is that:-

- (a) He would have received the confidential papers for the meeting of the Shared Services Board on 29th June 2009 although he did not print them out and except for the recommendations would not have looked at them in full.
- (b) He did not put any of the material marked private in the public domain and understands that he had an obligation of confidentiality.
- (c) He agrees that he would have stated that the Council were employing consultants and that the cost of those consultants was £86,000 as set out in the report to the Shared Services Board of 30th March 2009.
- (d) He probably did say that consideration was being given to Kevin Dicks continuing as Joint Chief Executive and that this had been in the public domain since at least August 2008.
- (e) In respect of the alleged statement that the Council had "thrown out their recommendations" he said that what he actually said was that he expected that the normal practice of the Council was to employ consultants at great cost and then to throw out their recommendations.

- (f) He agrees he did say the post should be advertised to everybody and states that he had been saying that for two years. He had made it publicly clear that the chief executive post should be publicly advertised and was sure that this had been reported in the press during 2008. This point had nothing to do with what was in the Serco report; it had been the Labour Group's position since shared services first started.
- (g) He disagrees that he said officers would determine the salary or that he was referring to the chief executive. He said that the officers would have a say in determining senior appointments.
- (h) He accepts that he may have mentioned that the chief executive's salary might be £150,000. This figure had not been mentioned in any of the reports, it had come entirely from him. It was his estimation as to what the salary might be in the future.
- (i) In general he does not dispute the statements in Councillor Doyle's email.

The extent of confidentiality

4.28 I have sought clarification from the Monitoring Officer as to the status of the information which is referred to in Councillor Doyle's email and her confirmation that:-

- (a) the statement that the Council was employing consultants as referred to in the report to the Shared Services Board of 9th February 2009 was in the public domain and not confidential.
- (b) the statement that the cost of the consultants was £83,000 was contained in the confidential report to the Shared Services Board of 29th June 2009 (See **Document 13** – paragraph 3.4 – the reference to the cost of the report being on the fixed price of £83,600). The disclosure of this information does not involve the Council in being in breach of any duty to a third party and by 6th July 2009 (the date of the Parish Council meeting) the report had been completed and information as to its cost was not commercially sensitive. As mentioned in paragraph 4.18 above the cost of the consultants had been disclosed in the public report to the Shared Services Board meeting of 30th March 2009.
- (c) The statement that consideration was being given to Kevin Dicks continuing as Joint Chief Executive was not confidential.
- (d) The statement that the post should be advertised was confidential as at 6th July 2009 and would have been formally designated as exempt information when the minutes of the Shared Services Board were submitted to the Cabinet meeting of 29th July.
- (e) Information relating to the statement that "officers would determine the salary", assuming this was a reference to the

delegation that is set out in the minutes of the meeting of the Shared Services board of 29th June (see **Document 15** – paragraph 2(b)), would have been confidential but the minutes of the meeting of 29th June 2009 were not issued until after 6th July 2009. The process for determining the salary of the chief executive was set out in the minutes of the Shared Services Board of 29th June 2009 (see **Document 15** - paragraph 7).

- (f) The reference to the chief executive salary being £150,000 is a misrepresentation of the correct position and is not mentioned in the confidential papers. This reference did not breach any confidentiality.

Linkage to official duties

- 4.29 The statements made by Councillor McDonald at the meeting of the Lickey and Blackwell Parish Council held on 6th July 2009 were made at a public meeting which was attended by Councillor McDonald in his capacity as a county councillor.
- 4.30 Paragraph 2 of the Code of Conduct provides that the code applies whenever a member conducts the business of the authority or wherever the member acts or claims to act as a representative of the authority.
- 4.31 Although the shared services proposals were matters which were relevant to the business of Bromsgrove District Council rather than the County Council, it is clear that Councillor McDonald was giving the impression that he was speaking as a member of Bromsgrove Council about business which was before that Council and as such I conclude that he was acting within the scope of his official duty and was subject to the provisions of the Code of Conduct for Bromsgrove District Council when attending the meeting of the Lickey and Blackwell Parish Council on 6th July 2009.

5 Summary of the material facts

- 5.1 Councillor McDonald is a member of Bromsgrove Council and is subject to the Council's code of conduct having given a written undertaking to comply with the code.
- 5.2 Councillor McDonald was present at a meeting of Lickey and Blackwell Parish Council on 6th July 2009.
- 5.3 There is virtually no dispute as to what Councillor McDonald said at the meeting with the exception of his explanation about the alleged statements that the Council had "thrown out their recommendations" and the alleged statement that the officers would be determining the salary.

- 5.4 At that meeting it is alleged that Councillor McDonald made certain statements:-
- (a) That the Council was employing consultants;
 - (b) That the cost of consultants was £83,000;
 - (c) That consideration was being given to Kevin Dicks continuing as Joint Chief Executive of Redditch and Bromsgrove Councils.
 - (d) That the Council had thrown out their recommendations;
 - (e) That the post of chief executive should be advertised to all;
 - (f) That officers would determine the salary; and
 - (g) That the salary would be £150,000.
- 5.5 The Council had been considering the issue of a joint chief executive with Redditch Borough Council since before June 2008 and the feasibility of sharing services. The Council's decisions in relation to these matters had been placed in the public domain by the Council. The Council had appointed Serco as consultants to advise upon the business case of shared services and Serco's report had been submitted to all members as a private and confidential document. The accompanying Leader's report was also a private and confidential document.
- 5.6 Information that the Council was employing consultants and their cost was not confidential as that information had already been provided in the public report to the meeting of the Shared Services Board of 30th March 2009 (see **Document 9** - paragraph 10.6). That information was however repeated in the confidential papers for the 29th June 2009 meeting of the Shared Services Board.

6 Reasoning as to whether there have been failures to comply with the Code of Conduct

- 6.1 Paragraph 4 of the Code of Conduct provides that a member must not "*disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature*".
- 6.2 Members will in the course of their duties have access to information which is subject to an obligation of confidence. The civil law prohibits wrongful disclosure of information which is not in the public domain and will provide remedies where the obligation is breached. Where the Council provides documents to its members on a confidential basis the obligation of confidence will apply and the Council can expect that members will respect the confidential status of documents.

- 6.3 There are certain exceptions where disclosure of confidential information is permitted under the Code and the circumstances of disclosure may need to be considered.
- 6.4 Standards for England in its guidance have defined information as confidential as follows:-
- *if it is about something serious and not trivial*
 - *if the nature of the information is sensitive or personal, for example it is a business secret*
 - *if it is information that you would expect people would want to be private*
 - *if it was divulged in a way which implied it should be kept confidential*
 - *if disclosing the information would be detrimental to the person who wishes to keep it confidential*

If the council, the executive or a committee of the council has voted to treat the information as exempt, then you should maintain it as confidential.

- 6.5 The reference to “exempt information” is information which falls within the statutory definition of exempt information as set out in the Local Government Act 1972.
- 6.6 It is clear that the information contained in the report to the Shared Services Board of 29th June 2009 was provided in confidence. However information which has already been properly brought into the public domain because it has already been published by the Council cannot be confidential. Councillor McDonald’s response is that his statements were of matters which were already in the public domain. It is necessary therefore to look at each statement made by Councillor McDonald and consider its status. The fact that the Council were considering certain issues relating to shared services in private does not prevent members expressing their views in public meetings provided that do not disclose information which is subject to an obligation of confidentiality.
- 6.7 The statement that the Council were employing consultants was clearly not confidential as this had been referred to in the Shared Services Board minutes for 9th February and 31st March.
- 6.8 The cost (£83,600) was explicitly stated in the public report to the 30th March meeting.
- 6.9 The statement that consideration was being given to the Acting Joint Chief Executive’s position was clearly in the public domain as the appointment with effect from 1st August 2008 was publicly made on the basis that it was for 12 months. As at 6th July a decision had not been made on that issue.

- 6.10 The statement that the Council had “thrown out” their recommendations does not in my view amount to the disclosure of confidential information. I accept Councillor McDonald’s explanation that what he was referring to was his perception that the Council’s normal practice was to engage consultants and then throw out their recommendations.
- 6.11 The statement that the Chief Executive post should be advertised reflects consideration in the Serco Report of the options which might be adopted by the Council. One option was that the existing Joint Chief Executive would be appointed for the duration of the transformation period during which shared services were to be established and after which the post would be externally advertised. The other option was for the Chief Executive Post to be appointed for the transformation period from within a “ring fence” open to directors and service heads from both councils. Both options envisaged that at the end of the transformation period the post would be externally advertised.
- 6.12 My conclusion is that the statement that the post should be advertised does not in these particular circumstances amount to a disclosure of confidential information. It does not pass the tests set out in the Standards for England Guidance and it does not articulate the detail of the options as set out in the Serco Report or the Leader’s report to the 29th June Shared Services Board. Although the Standards for England Guidance states that where the Council has treated the information as “exempt” then its confidentiality should be maintained, account needs to be taken that the fact that it was already in the public domain that the Joint Chief Executive post was to be reviewed in July 2009.
- 6.13 In respect of the statement that the officers were to determine the salary, Councillor McDonald’s explanation is that he was referring not to the Chief Executive’s position but to the appointment of other senior staff. There is no statement in the Leader’s report to the Shared Services Board as to the mechanism of determining the Chief Executive’s salary or any other salaries, except the recommendation that they would need to be properly evaluated. There is no statement that officers would be responsible. The minutes of the meeting of 29th June were not available until after the parish council meeting of 6th July. There were earlier references in the public papers in respect of the full Council meeting of 8th September 2008 to authority being given to officers in consultation with the Leader to agree the terms of the secondment agreement with Redditch Council. The recommendation of the Shared Services Board as expressed in the minute (see **Document 15**) contains similar wording. My conclusion is that the statement itself lacks the characteristics of confidentiality.
- 6.14 In respect of the statement that the salary of the Chief Executive would be £150,000, I conclude that Councillor McDonald would have known that this statement was factually incorrect at that time. In my view it was inappropriate for him to have made a statement which gave a

misleading impression and was an error of judgement on his part. A member who makes incorrect or misleading statements in a public forum runs the risk of bringing his office or authority into disrepute which potentially is a breach of paragraph 5 of the Code of Conduct. In the circumstances I accept Councillor McDonald's explanation that it was his own estimation of the future position and on balance I consider it was not an attempt to deliberately mislead. It was not a disclosure of information provided to him in confidence. The salary figure is not mentioned in any of the reports and the statement does not constitute the disclosure of confidential information. On all these points the facts do not amount to a breach of the Code of Conduct.

- 6.15 The fact that some of the information was included in a confidential report does not prevent Councillor McDonald from raising general issues about shared services in a public forum. Overall I conclude that Councillor McDonald's statements at the parish council meeting on 6th July 2009 did not involve disclosure of confidential information.

7 Finding

- 7.1 In accordance with paragraph 14(8)(ii) of the Standards Committee (England) Regulations 2008 I find that in respect of the matters which are the subject of this investigation Councillor McDonald did not fail to comply with the code of conduct of Bromsgrove District Council.

Signed: 

Date: 19th January 2010

Appendix

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