

STANDARDS SUB-COMMITTEE**8 November 2005**

Attendance:

Mr J Spokes QC (Chairman, Independent Member) (P)

Councillors

Cook (P)

Nelmes (P)

Rees (P)

Parish Representative

Mr R Scaiff (P)

**1. DETERMINATION OF A MATTER REFERRED BY STANDARDS BOARD
ETHICAL STANDARDS OFFICER**

(Report ST45 refers)

The Sub-Committee met to consider a case that had been referred for local determination by the Ethical Standards Officer (ESO) at the Standards Board. The case principally concerned an alleged failure by then Parish Councillor Chapman to declare an interest as the owner of 60 Angelica Way, Whiteley during Whiteley Parish Council's consideration of a proposed Skateboard Park at its meeting on 30 September 2004. The proposed site of the Skateboard Park was nearby to Councillor Chapman's property and, it was alleged, that this could have a detrimental effect on her property.

The Monitoring Officer pointed out that he did not have a conflict of interest in advising the Sub-Committee. This was because the advice to the Clerk and Chairman of Whiteley Parish Council before the Parish Council meeting had been given by Assistant City Secretary (Administration) (Mr Ashcroft). The Monitoring Officer also stated that he had provided procedural advice to the complainants and Councillor Chapman. He explained that this advice only concerned procedure and that he had not provided advice on the merits of the case.

Councillor Chapman had exercised her right to not attend the Hearing. The Sub-Committee noted that Councillor Chapman had indicated that she did not disagree with the ESO finding and that she had submitted written representations which were appended to the Report.

Ms Birtle (Principal Legal Officer at the Standards Board) attended the meeting to represent the ESO. During discussion, Ms Birtle confirmed that she had no further evidence on the facts submitted within the Report.

The Monitoring Officer stated that the references to paragraphs 15 and 16 in paragraph 5.1 of Report ST45 should actually refer to paragraphs 5.2 and 5.3. He also pointed out an error regarding the maps within the Appendices of the Report. The Sub-Committee therefore noted that whilst the location of the properties of Councillors Chapman and Finley were correctly marked on the maps, the house numbers attributed to the properties were incorrect.

The Sub-Committee retired in camera to consider the evidence set out in the Report and the related documents. Following on from this, it considered whether Councillor Chapman had breached of the Code of Conduct and if so, what measures the Sub-Committee should take.

Following discussion in camera, the Chairman read to the public present the following statement, which was the short summary of the Sub-Committee's decision:

"We note that the finding of the Ethical Standards Officer is not now disputed by Councillor Chapman and we have approached the question afresh.

Councillor Chapman did not declare a personal nor prejudicial interest in relation to her property in Angelica Way, Whiteley.

We conclude that she should have done and should have withdrawn from the meeting of 30 September 2004.

She was accordingly in breach of Paragraphs 8 and 10 (a) of the Parish Council's Code of Conduct.

We have taken account of the fact that she has apologised, was a new Councillor and, in the course of the inquiries into the complaint, accepted that she had a personal interest.

We concluded that because of the advice given by the Parish Council's clerk prior to the meeting to consider whether she had a personal and/or a personal and prejudicial interest, she would or clearly ought to have known she had an interest she should have declared.

Accordingly, the Sub-Committee have decided that Councillor Chapman be censured"

The Sub-Committee's full written decision would also be made available.

RESOLVED:

1. That Councillor Chapman be censured for failure to declare a personal and prejudicial interest at the Whiteley Parish Council meeting held on 30 September 2004.
2. That the Sub-Committee's full Written Decision on the case be as set out in Appendix A (attached to these minutes).

2. **GENERAL RECOMMENDATIONS ARISING FROM THE HEARING OF COUNCILLOR CHAPMAN**

Following its consideration of the above case, the Sub-Committee agreed to recommend to the Standards Committee the need to reiterate to all Councillors their duty to consider individually whether they have an interest to declare. In reaching this decision, Councillors should have regard to the circumstances of the case and should seek guidance from the City Council's Monitoring Officer in advance of the meeting if necessary.

The Sub-Committee also agreed to recommend to the Standards Committee that it should discuss the approach to future complaints arising from the same event which (as in the case of Councillor Chapman) involved several Councillors.

RESOLVED:

1. That the Standards Committee be recommended to emphasise to Councillors the need for them to consider on an individual basis whether they have an interest to declare and that advice to both City and Parish Councillors was available from the Monitoring Officer in advance of the meeting.

2. That the Standards Committee be recommended to discuss the approach to future complaints arising from the same event which involve several Councillors and to consider whether it wishes to make any comments to the Standards Board.

The meeting commenced at 10.00am and concluded at 11.50am
(The Sub-Committee reconvened in camera between 2.30pm and 3.45pm to finalise the wording of the attached Appendix A)

Chairman

Appendix A**Winchester City Council****Standards Sub-Committee****8 November 2005****Full Written Decision****Name of the Authority:**

Whiteley Parish Council

Name of Member who the allegation has been made about:

Councillor Kate Chapman

Name of the person/s that made the original allegation:

Parish Councillor Wright and Ms Hopson

Case reference numbers of the principal authority and The Standards Board for England:

SBE8765.04 and SBE8789.04

Name of the Standards Member who chaired the meeting:

Independent Member John Spokes QC

Names of the Standards Committee who took part in the hearing:

Councillors Nelmes (Vice Chairman), Cook and Rees

Name of the Monitoring Officer:

Stephen Whetnall (City Secretary and Solicitor, Winchester City Council)

Name of the Ethical Standards Officer who referred the matter:

Steven Kingston

Name of the Clerk of the Hearing:

Colin Veal (Committee Administrator, Winchester City Council)

Date of the hearing:

10.00am Tuesday 8 November 2005

Date of the report:

8 November 2005

Councillor Kate Chapman (Case references SBE8765.04 and SBE8789.04)
Whiteley Parish Council - Whiteley Skatepark

Determination of a matter referred by a Standards Board Ethical Standards Officer

Full Written Decision of the Standards Sub-Committee - 8 November 2004

1. Summary of Allegations

- 1.1. The allegations relate to Councillor's Chapman's conduct, as a former member of Whiteley Parish Council, when the Parish Council considered its representations to the City Council upon the provision of a skatepark adjacent to the Meadowside Centre. The meeting took place on 30 September 2004.
- 1.2. In October 2004, a number of complaints were made to the Standards Board. Two of the complaints, one by a Parish Councillor and one by a member of the public living in Whiteley, were made to the Standards Board alleging that Councillor Chapman as the owner of a beneficial interest in 60 Angelica Way, Whiteley had failed to declare a personal and/or prejudicial interest at the meeting and that her property adjoined the recreation ground in which the Meadowside Centre was situated.
- 1.3. After investigation, the Ethical Standards Officer (ESO) concluded in his report dated the 31 August 2005 that Councillor Chapman had failed to declare a personal and prejudicial interest at the Parish Council meeting on 30 September 2004.
- 1.4. The ESO report also made a finding that Councillor Chapman's use of notes as an aide memoir to her participation in the Parish Council meeting was not compelling evidence that she had made up her mind on the matter so as to justify a complaint that there had been a breach of Paragraph 4 of the Code – conduct which could reasonably be regarded as bringing her office or authority into disrepute.
- 1.5. An allegation was also made that Councillor Chapman's then fiancé owned a rental property adjacent to the recreation ground – but the ESO found no evidence to support this.

2. Relevant Sections of the Code Relating to Declarations of Interests

- 2.1. The Code of Conduct includes the following in relation to the declaration of interests:

7.(1) A Member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under Paragraphs 12 or 13 (of the Code), or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well being or financial interest of himself..."

8. A Member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at

the commencement of that consideration, or when the interest becomes apparent.

9. (1)... a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

10. A member with a prejudicial interest in any matter must –
(a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting...

12....a member must register his financial interests in the authority's register... by providing written notification to the monitoring officer of the responsible authority of (f) the address Of any land in which he has a beneficial interest and which is in the area of the authority."

3. Summary of the Evidence and Representations Made

- 3.1. Councillor Chapman exercised her right not to attend the hearing and to rely upon her written submissions. She indicated in her letter of 26 September 2005 that she accepted the findings of the Ethical Standards Officer (ESO).
- 3.2. Ms Natalie Birtle, Principal Legal Officer with the Standards Board, attended the hearing on behalf of the ESO but did not make any additional submissions.
- 3.3. The documents before the Sub-Committee were in Report ST45 Appendices 1-8 inclusive and the documents referred to in Appendix 4 SK1-SK30 and SK31 and SK32 (marked JR/31 and JR/32).
- 3.4. Councillor Chapman was entitled to make the decision whether to appear before the Sub-Committee or not. The correspondence in evidence showed Councillor Chapman relied upon what appeared in the documentation before the Sub-Committee, including the correspondence.

4. Findings of Fact

- 4.1. The Sub-Committee considered all the evidence afresh rather than relying on the summary in the ESO Report in Appendix 2. The Sub-Committee then made the following findings of fact on matters that from the written evidence did not appear to be in dispute.
- 4.2. On 25 July 2004, Councillor Chapman signed her acceptance of office as a co-opted Councillor for Whiteley Parish Council. The acceptance contained an undertaking to abide by the Parish Council's Code of Conduct.
- 4.3. Councillor Chapman is an elected member of Winchester City Council for Whiteley, having been elected in June 2004.
- 4.4. Pursuant to the Standing Orders of Whiteley Parish Council (in the form agreed on 6 October 2003) all members must observe the Code of Conduct

(Order 33(a)). Standing Order 57 and Standing Order 58 contained like provisions to those in the Code of Conduct as to the procedures to be followed by a member with a personal interest and a personal interest which was also considered by the member to be a prejudicial interest.

- 4.5. At all material times Councillor Chapman owned dwelling premises at 60 Angelica Way, Whiteley. She resided at the premises until 17 July 2004. These premises then remained unoccupied until let to a tenant at some date after 30 September 2004.
- 4.6. Councillor Chapman signed a form (dated 25 July 2004) registering her interest which included the statement that she was the owner of the premises at 60 Angelica Way. On the 5 September 2004, the Clerk to the Council signed the statement as an acknowledgement of receipt. A like acknowledgement was signed by the Winchester City Council Monitoring Officer on 27 September 2004.
- 4.7. On 16 October 2003, the Parish Council passed a resolution supporting the provision of an area for skateboarding at or immediately adjoining the Meadowside Leisure Centre at Whiteley, subject to a proviso concerning disturbing neighbours.
- 4.8. On 30 September 2004, the Parish Council held an Extraordinary Meeting, to re-consider the provision of the skateboarding facilities. The meeting was held pursuant to a request from a number of Councillors, including Councillor Chapman.
- 4.9. The Clerk to the Parish Council had circulated a document to Parish Councillors (including Councillor Chapman) advising in relation to the forthcoming meeting concerning the skateboard proposals "would all councillors consider carefully whether they have a personal and/or prejudicial interest in the outcome of the decision." The document circulated by the Clerk to the Parish Council included a 2003 Standards Board case summary relating to a complaint made that a councillor had failed to disclose a personal and prejudicial interest when the town council of which he as then a member had been discussing matters relating to facilities for skateboarding. The documents circulated also drew attention to the provision contained in paragraphs 7 to 10 inclusive of the Code of Conduct.
- 4.10. In August 2004 the Clerk to the Parish Council had spoken to Mr Ashcroft, Assistant City Secretary to Winchester City Council, seeking advice on the matter of declaration of personal and prejudicial interests relating to the proposed meeting to reconsider the skateboard proposals. His advice in summary was that it was the decision for the Councillor whether personal and/or prejudicial interests existed and were to be acted on, but those who lived near the proposed skateboard facilities might well have a personal and/or prejudicial interest.
- 4.11. Councillor Chapman attended the meeting on 30 September 2004. Councillor Chapman spoke at the meeting and voted in favour of a resolution not to agree to the provision of skateboarding facilities at the Meadowside Centre. The resolution was carried by 5 votes to 4.
- 4.12. Councillor Chapman did not declare a personal interest in relation to the matter of the subject of the resolution. Two other councillors present at the

meeting (one of whom was the Chairman of the meeting) declared a personal interest in relation to their addresses at premises at Whiteley. No Councillor declared an interest to be prejudicial as well as a personal interest.

- 4.13. The minutes of the meeting record after the declaration of personal interests that the Chairman of the meeting of 30 September 2004 had wished to minute the following: “..after taking legal advice he was able to state that he was confident that he did not have a prejudicial interest to declare and consequently believed that no other councillor had prejudicial interests to declare.”
- 4.14. Although Councillor Chapman’s property was not adjacent to nor overlooked the site of the proposed skatepark, it was located approximately 170 to 200 metres from the site. Noise from the proposed skatepark might be audible from Councillor Chapman’s property. It was noted that the only vehicular access to the skatepark was from the access to the Meadows Centre. However, one of the pedestrian access routes into the recreation ground from the adjacent residential area went past the property.
- 4.15. On 24 November 2004, Councillor Chapman resigned as a member of Whiteley Parish Council. She continues to be a Winchester City Councillor.

5. Findings as to Breach of the Parish Code

- 5.1. The first issue considered was whether a personal interest should have been declared.
- 5.2. Paragraph 7(1) of the Code provides that:

“ A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 12 and 13 below...”
- 5.3. The Sub-Committee considered that a beneficial interest in the property was required to be registered under para 12(f) – “ ...the address... of any land in which (the member) has a beneficial interest and which is in the area of the authority..”
- 5.4. The register entry referred to 60 Angelica Way and, having regard to the respective locations of this property and the proposed skatepark, the existence of the entry required a personal interest to be declared. The fact that Councillor Chapman no longer resided there was irrelevant. She still had a beneficial interest in the property even though she was not in occupation at the time the interest was not declared.
- 5.5. Paragraph 7(1) of the Code also provides that:

“A member must regard himself as having a personal interest in any matter if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority’s area the well-being or financial position of (the member)....”.
- 5.6. The Sub-Committee considered that Councillor Chapman’s continued ownership of the property meant that this aspect of paragraph 7(1) of the Code also meant that she had a personal interest. It might be reasonably

regarded that her financial position could be affected to a greater extent than other council taxpayers etc. because the proposed skatepark might affect value, or the ability to sell or let the property, even though she no longer resided there.

- 5.7. The second issue considered was whether a prejudicial interest should have been declared.
- 5.8. Paragraph 9(1) of the Code provides that:

“Subject to paragraph 9(2) below, a member with a personal interest in a matter also has a prejudicial interest if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest.”
- 5.9. On the facts none of the exceptions in paragraph 9(2) of the Code had been raised.
- 5.10. The Sub-Committee concluded that the proximity of Councillor Chapman’s property to the proposed skatepark meant the above test had been met. The property was likely to be affected by increased numbers of people travelling to the site, with the potential for nuisance/disturbance. It could also be affected by noise from the site itself.
- 5.11. On the facts Councillor Chapman had not declared a personal and prejudicial interest. This meant that she was in breach of paragraphs 8 (failure to disclose a personal interest) and 10(a) (failure to withdraw from the room in relation to a prejudicial interest) of the Code.
- 5.12. The ESO report also made a finding that Councillor Chapman’s use of notes as an aide memoir to her participation in the Parish Council meeting was not compelling evidence that she had made up her mind on the matter so as to justify a complaint that there had been a breach of Paragraph 4 of the Code – conduct which could reasonably be regarded as bringing her office or authority into disrepute. On the basis of the written evidence before it, the Sub-Committee noted this conclusion.

6. Whether a Penalty Should Be Imposed

- 6.1. The Sub-Committee considered the following options that were open to it:
 - (a) a finding that no further action needed to be taken
 - (b) censure
 - (c) whether any additional advice should be given to the Member concerned.
- 6.2. The Sub-Committee took into account the fact that Councillor Chapman was a new councillor and in the course of inquiries into the complaint finally accepted in August 2005 that she had a personal interest and apologised. It also noted that she had decided not to contest the ESO’s findings and indicated a willingness to undertake further training. The Sub-Committee also acknowledged that Councillor Chapman’s letter of 26 September 2005 to the Monitoring Officer indicated that she very much regretted her failure to

disclose an interest at the time of the Parish Council meeting and that the matter had been a salutary lesson for her.

- 6.3. However, the Sub-Committee considered that because of the advice given by the Parish Council's Clerk prior to the meeting to consider whether she had a personal interest, or a personal and prejudicial interest, she would or clearly ought to have known that she had an interest she should have declared. The fact that it was clearly a controversial issue made the failure even less excusable.
- 6.4. The Sub-Committee noted that the Parish Council Minutes for 30 September 2005 stated:

“ Cllr Finlay (Chairman) and Cllr Hall declared personal interests due to their addresses.

Cllr Finlay (Chairman) wished to minute that after taking legal advice he was able to say he was confident that he did not have a prejudicial interest to declare and consequently believed that no other councillors had prejudicial interests to declare.”

Such a statement does not remove the onus on the individual councillor who failed in this case even to declare a personal interest.

- 6.5. For the above reasons the Sub-Committee decided that Councillor Chapman be formally censured for the failure to comply with paragraphs 8 (failure to disclose a personal interest) and 10(a) (failure to withdraw from the room in relation to a prejudicial interest) of the Code.

7. Right of Appeal

- 7.1. The member who is the subject of a Standards Sub-Committee finding may apply in writing to the President of the Adjudication Panel for England for permission to appeal against that finding. The application has to be made within 21 days of the Member receiving notice of the decision of the Standards Sub-Committee.

- 7.2. The application should be made to:

The Adjudication Panel for England
23 Victoria Avenue
Harrogate
HG1 5RD

- 7.3. Further details are contained in pages 16-19 and 48 of the Standards Board Booklet “Standards Committee Determinations – Guidance for Monitoring Officers and Standards Committees.”