

Local Government Act 2000

Report into Alleged Breaches of the Code of Conduct

Case Numbers: SBE 15372.06 & 15373.06

**Members: Councillor Richard Scambler
Councillor Kathleen Berry**

Council: Wheelton Parish Council

Date Case Referred to Monitoring Officer: 20th July 2006

Date of report: 8th January 2007

1. The Allegations

- 1.1 On the 20th July 2006 an Ethical Standards Officer of the Standards Board for England referred for local investigation an allegation made against Councillors Berry and Scambler that they had breached the Code of Conduct of Wheelton Parish Council. That allegation had been made by a fellow Parish Councillor, Councillor Janet Ross-Mills.
- 1.2 Councillor Ross-Mills alleged that Councillor Scambler had failed to record in the Council's register of interests his ownership of a plot of land adjoining a local sand quarry.
- 1.3 Councillor Ross-Mills also alleged that Councillor Scambler and Councillor Berry (who are brother and sister) participated in discussions and decisions about the quarry at a meeting of the Parish Council held on 5th June 2006 without declaring their interests.
- 1.4 Councillor Ross-Mills further reported of another parishioner who was in a legal dispute with the current owner of the quarry. This parishioner had reportedly offered to advise the Council

[Words omitted]. Councillor Ross Mills alleged that Councillors Berry, Scambler and two other named Councillors agreed to this and thereby used their position improperly to secure a disadvantage for the owner of the quarry.

2. The Code of Conduct

- 2.1 Members of Wheelton Parish Council are bound by a Code of Conduct which follows the Model Code for Parish Councils. For the purposes of this investigation the important provisions are the following:

2.2 **Paragraph 12(f):**

"A member must register his financial interests [including] the address or other description ... of any land in which he has a beneficial interest and which is in the area of the authority."

2.3 **Paragraph 8**

"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 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 position of himself, a relative or friend or....."

2.4 **Paragraph 9**

"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".

2.5 Paragraph 5

"A member - must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage."

3. The Referral for Investigation

- 3.1 Councillor Ross-Mills allegations were considered by an Ethical Standards Officer from the Standards Board for England who referred those made against Councillor Scambler and Berry for local investigation. Councillor Ross-Mills had alleged that two other named Councillors had breached paragraph 5 of the Code. However, those allegations were not referred.
- 3.2 At the time when the referral for local investigation was received the former Monitoring Officer had left the Council. There was therefore a delay in the investigation being commenced pending my arrival as the Council's new Director of Customer, Democratic and Legal Services and Monitoring Officer. I commenced my investigation during September 2006.
- 3.3 During my investigation I have visited the site, reviewed the agenda and minutes of the Parish Council meeting and interviewed the three Councillors concerned. I would take this opportunity to thank each of them for making themselves available promptly and for the courtesy they showed me during the interviews.
- 3.4 In November I presented a draft of my report to each of the Councillors and they all made comments which resulted in me making some changes to the content but not the conclusions of this final report.

4. The Councillors and the Council

- 4.1 Wheelton Parish Council has a total of seven Councillors including the three involved in this case. Most of the Members have served their community for a significant period of time.
- 4.2 The complainant, Councillor Ross-Mills is the current Chair of Heapey Parish Council as well as being a Weelton Parish Councillor. She has been a Parish Councillor for twelve years, for the first eight sitting on both Councils. After a gap of four years she was elected unopposed to Wheelton Parish Council in May 2006.
- 4.3 Councillor Berry has been a Member of Wheelton Parish Council for approximately thirteen years. Her brother, Councillor Scambler, has been a Member of Wheelton Parish Council for over thirty years.
- 4.4 None of the three Councillors has received formal training on the Code of Conduct. Councillor Berry and Scambler both recalled receiving a booklet from the Parish Clerk some time ago about the Code. They also indicated that, in April of this year, the Parish Council had resolved to invite the Monitoring Officer to a future meeting to discuss the Code.

5. Background

- 5.1. All three allegations relate to a former sand quarry and land adjoining it. The land is shown edged in black on the plan which appears at Appendix one to this report. It is an attractive area of countryside very close to the Leeds Liverpool Canal.
- 5.2. The quarry site was formerly three separate plots of land. The late father of Councillor Scambler and Berry, who farmed land locally, owned one of those plots. After quarrying had started on one of the other plots, Mr Scambler agreed to sell part of his land for inclusion in the quarry. He retained though a piece of land fronting Kenyon Lane. The retained land is shown edged pink on the plan. For ease I shall subsequently refer to that land as “the pink land”.
- 5.3. None of the land in question is within Wheelton Parish although it is close by. The former quarry site and “the pink land” are all within Heapey Parish but the main entrance is on Copthurst Lane, which is in Whittle le Woods Parish.
- 5.4. Quarrying stopped some years ago and the land has been informally used by local people for walking etc. since that time. There are also two public footpaths which run across the land. Ten to fifteen years ago a proposal emerged that the land be purchased for community use for walking, woodland and recreation, including the creation of sports pitches. Planning permission has been obtained to use the land for those purposes and the three Parish Councils of Heapey, Whittle le Woods and Wheelton have been discussing this over the years and had agreed to work together to acquire the land.
- 5.5. A previous attempt to purchase the land failed since the landowner would not sell for the price which the District Valuer had assessed the land as being worth. The possibility of the land being compulsorily purchased has been considered in the past but not been proceeded with to date. While the proposal to acquire the land has not been formally shelved, neither has it been significantly progressed.
- 5.6.

. [Paragraph omitted]
- 5.7. The “pink land” is an area of rough grass which rises away from Kenyon Lane. There was formerly a stone wall separating “the pink land” from the Lane and Councillor Scambler removed that wall about two years ago after Chorley Council had expressed concerns about it being unsafe. Councillor Scambler says that the wall had become unsafe due to people stealing the stones from which it was made up. The “pink land” is now accessible directly from the highway. There is a relatively new, low fence separating this land from the quarry site.
- 5.8. The plan shows two paths across the “pink land” which are not established public rights of way. I visited the site on the 17th October 2006. On my visit I noted that one of the paths is more obviously used than the other. One “path” appears on the ground merely as slightly flattened grass. Councillor Scambler and Berry both say that this “path” was created as a result of water

draining from the higher ground. The other path is more obviously used as such. It is quite narrow but is worn to bare earth. The fence has been broken down at the point where the fence crosses that path and I was easily able to access the quarry site using this path.

- 5.9. Councillors Scambler and Berry both told me that Lancashire County Council objected to a proposal some time ago to create a new access to the quarry through the pink land.
- 5.10. Although there is a car park for use of visitors to the pub which is situated at the corner of Copthurst Lane and Kenyon Lane, there is very limited public parking for visitors to the quarry site other than on the road.

6. The Parish Council meeting

- 6.1 The Agenda for Wheelton Parish Council meeting held on 5th June 2006 included the following item:

"7. Sand Quarry".

To discuss the latest position regarding the joint acquisition of the Sand Quarry"

- 6.2 At the meeting Councillor Ross-Mills advised the Council of an offer from the current landowner,

[Words omitted]

- 6.3 It is common ground that neither Councillor Berry nor Councillor Scambler declared an interest in that item. It is also common ground that the Parish Council resolved by a majority to ask Mr. G to attend their next meeting to present to them with proposals. This followed a suggestion from the Council Chairman.
- 6.4 Councillors Berry and Scambler both told me that they abstained from the vote in relation to inviting Mr G to the meeting. Councillor Ross-Mills does not have the same recollection. The minutes do not assist in resolving this issue but, for reasons which I will make clear later, it is not something that I have found it necessary to explore in great detail.

7. Findings

Allegation One – Councillor Scambler's failure to register his interest

- 7.1 Councillor Ross-Mills was under the impression that Councillor Scambler owned the "pink land" because he had been seen to demolish the wall. Councillor Scambler accepts that he did demolish the wall. However, both Councillor Scambler and Councillor Berry have advised me that the owner of the land is, in fact, their mother. The proprietorship register at the Land Registry confirms that the land is owned by Mary Jane Scambler.
- 7.2 The requirement to register interests in land contained in paragraph 12 (f) of the Code is to register the address of land in which the Councillor has a

beneficial interest and which is *in the area of the Authority*. There is no evidence that Councillor Scambler has a beneficial interest in “the pink land” and it is in any case not in the area of Wheelton Parish Council.

7.3 Accordingly I find that Councillor Scambler has not breached paragraph 12 of the Code of Conduct in respect of the register of interests.

Allegation two – Councillor Scambler and Councillor Berry’s failure to declare a personal interest

7.4 The requirement to declare interests arises firstly if the matter relates to an interest which must be registered. I have already found that this is not the case here. However, the requirement also arises if a decision upon the matter might reasonably be regarded as affecting the well-being or financial position of a relative to a greater extent than other local people.

7.5 The mother of a Councillor certainly comes within the definition of relative. The question then is whether a decision in relation to the acquisition of the sand quarry could reasonably be regarded as affecting her financial position or well being more than others given her ownership of “the pink land”.

7.6 In the first edition of “the Case Review” published by the Standards Board in 2003 the Board said this of the requirement in paragraph 8:

“What kinds of interests are covered by paragraph 8?”

The definition of a personal interest under paragraph 8 is deliberately very broadly drafted. A personal interest can arise not only from the employment, business interests and shareholdings of the member concerned but also from the employment, business interests and shareholdings of his or her relatives or friends. The scope of paragraph 8 is much wider than the list of interests that must be registered under paragraphs 14 and 15 of the Code. This is to enable a relatively wide range of personal interests to be declared in authority meetings without unnecessarily limiting participation. The wide scope here reflects the policy of promoting transparency in local government that lies at the heart of the Code’s drafting. The much more restrictive definition of prejudicial interests under paragraph 10(1) ensures that members are not unnecessarily excluded from decision-making.”

7.7 In relation to well being the same publication says the following:

‘Wellbeing’ can be described as a condition of contentedness, healthiness and happiness. Anything that could be said to affect a person’s quality of life, either positively or negatively, is likely to affect their wellbeing. It is not restricted to matters affecting a person’s financial position. The range of personal interests is, accordingly, likely to be very broad.”

This definition has subsequently received judicial approval.

7.8 In considering this matter I have reminded myself that the test is an objective one. I have though considered the following points which emerged from my discussions with Councillor Berry and Scambler and I do not dispute them:

- The land is not within Wheelton Parish.

- There is no real possibility of a vehicular access being created to the quarry across the pink land and it has no separate development value.
- The pink land has never been part of the quarry land. Although people have walked across the pink land to get to the quarry site, there is no public right of way and there is now a fence separating the land from the quarry.
- Councillor Scambler believed he had as much as anyone to contribute to the debate. Having a farming background he understands the amount of work that will be required to drain and level land to create usable pitches.

7.9 Looking at this objectively, I do though believe that a decision by the Parish Council to purchase the quarry site might reasonably be regarded as affecting the well being of Councillor Scambler and Berry's mother more than other people in the area.

7.10 It is the wish of the Parish Council that the land should be used to a greater extent that it is currently. It is very likely that increased use of the land would lead to an increase in use of the paths across the pink land. Mrs Scambler would either have to take active steps to control the use or accept the use. If she accepted the use she would either have to accept that the paths would become dedicated eventually as public rights of way or take steps to prevent that happening. As the landowner she would owe legal duties to those coming on to her land. While the burden of those duties might still be light they would clearly be greater the more the land is used. I do not suggest that any of this would be especially burdensome but, taking the broad interpretation of well being that the case law and guidance suggests, I do think that it is enough to suggest that her well being would be affected to a degree.

7.11 Councillor Scambler also told me that if the Parish Councils did purchase the quarry then his mother may well feel inclined to give the "pink land" to the Councils. Clearly that may not happen and, if it did, it would be a generous gesture. In terms of the Code though this does seem to me that this is another indicator that the Parish Council's decision could reasonably be seen as affecting Mrs Scambler's well being (or even her financial position) to a greater extent than others.

7.12 In commenting on the draft of my report both Councillor Scambler and Berry stated that this would be more likely to be to the detriment of their mother. This may well be right but the Code makes no distinction between matters which affect a Councillor's well being for the better or for the worse.

7.13 In most cases where a Councillor (or their relative) owns land adjoining land which the Council is considering developing then the Councillor's interest is likely to be both personal and prejudicial. I consider this case to be unusual in that the land owned by the Councillors' mother is land which is some distance from her home and which has very limited development potential. The impact on her of developing the quarry is therefore much less significant than in the usual case of a development close to a Councillor's house. I also note that the Parish Council discussions were still very much at an "in

principle” stage. There was no “deal on the table” or detailed plans to be agreed. I consider this to be important in judging how significant the interest was.

7.13 Having taken into account the factors set out in the preceding paragraph I do not believe that the interests of Councillor Berry and Scambler were prejudicial. That being the case they were quite entitled to participate in the debate and vote on issues relating to the quarry land. The difference, had they declared their interest, would have been one of transparency. Councillor Ross-Mills and any other Parish Councillor who did not already know the situation would have been clearer about the nature of the interests and, importantly, the Parish Council minutes ought also to have reflected the fact and nature of the interests.

7.12 Having met with Councillors Berry and Scambler, I am absolutely sure that they have not intended to breach the Code. They did not consider that their mother’s ownership of the “pink land” was a secret and they did not seek to hide it. I believe that they have both confused the limited requirements to register interests with the much broader requirements to declare them. I also believe that they have not distinguished between the requirement to simply declare personal interests and the need to withdraw from meetings where the interest is both personal and prejudicial. No doubt this reflects the very limited training that they have received.

7.14 In commenting on a draft version of my report both Councillors Berry and Scambler said:

“Advice from Chorley Borough Council always stated interest had to be declared in own authority. If that is the case, how can I be judged to have failed to inform Council, as this land is outside Wheelton Parish Council. Wheelton Parish Council knew ownership of the land shaded in pink, as I have declared interest when discussions have arisen on the land regarding footpaths.”

7.15 They go on to refer to a Parish Council minute of a meeting held on 3rd July 2006 when they both did declare an interest in relation to the Sand Quarry – presumably because footpaths were being discussed. This meeting predated the Councillors receiving notification of the complaint made against them to the Standards Board.

7.15 In my view, this response from Councillors Berry and Scambler reinforces my conclusion that they have confused the requirements to register interests with those relating to declaring interests at meetings.

7.16 *I find therefore that Councillor Berry and Scambler have, albeit inadvertently, breached paragraph 8 of the code of conduct by failing to declare a personal interest at a meeting.*

Allegation three – that Councillor Berry and Scambler used their position improperly to attempt to secure a disadvantage for Mr D.

Councillor Ross-Mills says that the two Councillors participated in inviting Mr G to speak to the Parish Council. She says that they used their position

improperly to invite Mr G at a time [Words omitted]
and in an attempt to put Mr D at a disadvantage.

- 8.3 In her original allegation to the Standards Board Councillor Ross-Mills named two other Councillors as having likewise breached this paragraph based on the same set of facts. The Standards Board found no evidence of a breach and did not refer the cases of those two Councillors to me. The apparent inconsistency of this was pointed out to me during the interviews and I have raised the issue with the Standards Board. Nevertheless, I have investigated the matter.

The suggestion that Mr G be invited to a future Parish Council meeting came from the Chairman of the Council. It appears that Mr G had offered to advise the other Councillors in respect of legal matters affecting the quarry
. Councillor Ross–Mills feels

[Words omitted]

- 8.5 Councillor Ross–Mills tells me that me that members of the public were present when this item was discussed – two Borough Councillors and a police officer – although this is not evident from the Minutes. She feels that this had the potential or intention to be damaging to the interests of Mr. D.
- 8.6 Councillors Berry and Scambler both say that they abstained from voting on this issue but say that they believe their colleagues voted in favour of inviting Mr. G to talk to them because they wanted to know whether he had anything to contribute which could assist the Council in achieving its aims for the quarry site.
- 8.7 In my view a Council is quite entitled to invite anyone to speak to it who might be able to assist the Council in achieving its aims. Likewise, I take the view that there is nothing necessarily wrong in having a public discussion about steps that the Council intend to take. Indeed Councils are generally encouraged nowadays towards openness. The Code is not breached simply because the Council or a Councillor takes action which disadvantages one person. The question is whether a Councillor has used their position **improperly** to secure that disadvantage.
- 8.8 It is of course possible for a Councillor to agree to a course of action which might be justified for other reasons but do so with improper motives in order to cause harm to another person. In order to make such a finding in this case I would need to find evidence that Councillors Scambler and Berry had both participated in the discussion and vote on this matter and had done so for some improper motive. There is a difference of recollection as to whether the Councillors participated in the discussion and vote. I do not need to resolve that difference because I have not seen any specific evidence to suggest that Councillor Scambler or Berry acted improperly.

Accordingly I find that Councillor Scambler and Berry have not used their position improperly to secure a disadvantage for Mr D and thereby breached paragraph 5 of the Code of Conduct.

9. Next Steps

- 9.1 This report represent my final findings. It will now be presented to the Standards Committee for a hearing.