

## **Report into Alleged Breaches of the Code of Conduct**

Relevant authority concerned:

Wheelton Parish Council

Name of members who the allegation has been made about:

Councillor Richard Scambler and Councillor Kathleen Berry

Name of person who made the allegation:

Councillor Janet Ross-Mills

SBE reference number:

15372.06 & 15373.06

Names of standards committee members:

Chairperson: Mr. Tony Ellwood (Independent Chair)

Member: Councillor Thomas Bedford

Member: Mr. Darren Cranshaw (Parish Council Representative)

Reserve Member: Councillor Thomas McGowan

Name of legal adviser to the standards committee:

Mr. Peter Hassett (Principal Solicitor, Wigan Metropolitan Council)

Name of investigator:

Andrew Docherty (Director of Customer, Democratic and Legal Services, Chorley Borough Council).

The Investigating Officer will be in attendance at the Hearing.

Name of clerk of the hearing:

Miss Ruth Hawes (Assistant Democratic Services Officer)

Date the pre-hearing summary was produced:

9 March 2007

Date and venue for the hearing:

Tuesday, 20<sup>th</sup> March 2007, in the Council Chamber, Town Hall, Market Street, Chorley commencing at 10.00am.

## **The Allegations**

The allegations are as follows:

1. Councillor Scambler's failure to register his interest
2. Councillor Scambler and Councillor Berry's failure to declare a personal interest
3. That Councillor Berry and Scambler used their position improperly to attempt to secure a disadvantage for Mr D

## **The Code of Conduct**

Councillor Richard Scambler and Councillor Kathleen Berry are alleged to have failed to comply with Wheelton Parish Council's Council's code of conduct under the following paragraphs:

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."

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....."

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".

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."

### **Allegation One – Councillor Scambler’s failure to register his interest**

#### The Findings of Fact that are agreed

The “pink land” is not in the area of Wheelton Parish Council.

The “pink land” is owned by Councillor Scambler’s mother.

Councillor Scambler does not have a beneficial interest in “the pink land”.

#### The Findings of Fact that not are agreed

None.

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

#### The Findings of Fact that are agreed

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.

#### The Findings of Fact that are not agreed

It is the wish of the Parish Council that the land should be used to a greater extent than 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. The Investigating Officer does 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, he does

think that it is enough to suggest that her well being would be affected to a degree.

The reason for disagreeing with this is “As there are no officially designated footpaths on the land this would not produce a burden on Mrs Scambler”.  
Suggestion as to how this paragraph should read “This would not produce a burden on Mrs Scambler as there are no footpaths for access on the “pink land””.

Whether there was a need to declare an interest given that the land is not in Heapey Parish.

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

The Findings of Fact that are agreed

The Parish Council invited a member of the public to advise it in relation to the sand quarry.

That member of the public was in a dispute with the current owner of the quarry.

The Findings of Fact that not are agreed

None.

**Representation**

Councillor Richard Scambler and Councillor Kathleen Berry have indicated that Councillor Terry Dickinson (Chairman of Wheelton Parish Council) will present part of the case.

## **The Proposed Procedure for the Hearing**

At the Hearing the Chairman will introduce all those present and outline the procedure for dealing with the Hearing.

The Committee will then consider the “Findings of Fact” and will consider whether or not there are any significant disagreements about the facts contained in the Investigators report.

If there is no disagreement about the facts, the committee can move on to the next stage of the hearing. If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee’s permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the member an opportunity to challenge any evidence put forward by any witness called by the investigator.

The member should then have the opportunity to make representations to support his or her version of the facts and, with the committee’s permission, to call any necessary witnesses to give evidence. At any time, the committee may question any of the people involved or any of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.

If the member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

If the member disagrees with any relevant fact in the investigator’s report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member’s explanation for not raising the issue at an earlier stage, the committee may then:

1. continue with the hearing, relying on the information in the investigator’s report;
2. allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
3. postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is not already.

The committee will move to another room to consider the representations and evidence in private.

On their return, the Chair will announce the committee’s findings of fact.

### Did the member fail to follow the Code?

The committee then needs to consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct.

The member should be invited to give relevant reasons why the committee should not decide that he or she has failed to follow the Code. The committee should then consider any verbal or written representations from the investigator. The committee may, at any time, question anyone involved on any point they raise in their representations. The member should be invited to make any final relevant points. The committee will then move to another room to consider the representations.

On their return, the Chair will announce the committee's decision as to whether or not the member has failed to follow the Code of Conduct.

### If the member has not failed to follow the Code of Conduct

If the committee decides that the member has not failed to follow the Code of Conduct, the committee can move on to consider whether it should make any recommendations to the authority.

### If the member has failed to follow the Code

If the committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the member as to:

1. whether or not the committee should set a penalty; and
2. what form any penalty should take.

The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

The committee will then move to another room to consider whether or not to impose a penalty on the member and, if so, what the penalty should be. On their return, the Chair will announce the committee's decision.

### Recommendations to the authority

After considering any verbal or written representations from the investigator, the committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

### The written decision

The committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing.