



OUTCOME OF STANDARDS SUB-COMMITTEE HEARING

Name of Authority:	Rodmell Parish Council
Name of Councillor the subject of complaint:	Councillor Pauline Burnaby-Davies (in attendance, unrepresented)
Name of Complainant:	Mrs Lindy Smart
Reference:	08/03
Standards Committee Members who took part in the Hearing:	Mr G Eysenck (Independent Member - Chair) Councillor B Clutterbuck (Ditchling Parish Council) Councillor E Russell (Lewes District Council)
Date, Time and Place of Hearing:	30 October 2009, 10.00am, Lewes House
Adviser to the Committee:	Mark Reynard, Deputy Monitoring Officer (in attendance)
Investigating Officer:	Catherine Knight (in attendance)
Committee Officer:	Jackie Gavigan (in attendance)
Witnesses:	None

Summary of Complaint:

The complainant, Mrs Lindy Smart, alleged that Councillor Burnaby-Davies failed to declare an interest in a matter under discussion at meetings of Rodmell Parish Council held on 17 November 2008 and 5 January 2009. The complainant alleged that Councillor Burnaby-Davies participated in the discussion of this matter when she should not have done so.

Findings of Fact in the investigation report that were agreed/not agreed:

All of the findings of fact were agreed apart from two:

- (i) whether or not the Chair declared that Councillor Burnaby-Davies had a personal interest at the meeting held on 5 January 2009.

- (ii) whether Councillor Burnaby-Davies had a prejudicial interest at the meetings on 17 November 2008 and 5 January 2009.

Relevant Sections of the Code of Conduct:

Rodmell Parish Council has adopted a Code of Conduct in which the following paragraphs are included:

- “8(1) You have a personal interest in any business of your authority where...

(b)...a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of your authority’s area.

(2) ... a relevant person is –

a member of your family or any person with whom you have a close association.”

- “9(1) ... where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.”

- “10(1) ... where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where 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 your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business –

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8.”

- “12(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority –

(a) you must withdraw from the room or chamber where a meeting considering the business is being held –

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting ... but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise."

Evidence:

The Investigating Officer presented her report.

Councillor Burnaby-Davies gave evidence as follows:

- At the outset of both meetings, namely that held on 17 November 2008 and that held on 5 January 2009, the Chair of Rodmell Parish Council declared that Councillor Burnaby-Davies had an interest in the matter relating to the Forges footpath and that she would not be participating in the consideration of that item.
- Councillor Burnaby-Davies did not believe her interest to be a prejudicial one in that there was no financial gain to herself or her nephew. Her nephew had undertaken the work on the fence himself and there was no expenditure save, perhaps, the cost of gate hinges etc.
- So far as Councillor Burnaby-Davies was aware, no councillor from Rodmell Parish Council had ever withdrawn from the meeting room after declaring a (prejudicial) interest. They had remained in the room but not participated in the debate/vote on the item.
- The Parish Council had changed its procedures as a direct consequence of this particular matter. There was now a standing item on the agenda which required any declarations of interest to be made at the start of the meeting. There was now an opportunity for open questions from members of the public at the beginning of the meeting.
- There had been training provided as a direct consequence of this incident. That training covered the matter of declarations of interest. Councillor Burnaby-Davies had attended this training.

Advice:

The Deputy Monitoring Officer gave advice on the nature of prejudicial interests and, in particular, what might constitute a financial interest.

He stated that the use of the word “financial” in this context was to be construed broadly and could include marginal financial interests. He drew attention to guidance issued by the Standards Board (page 104 ‘Guide for authorities’):

Q “What does “affect your financial position” mean?

A This phrase should be broadly construed. A member’s financial position can be affected directly or indirectly, favourably or unfavourably, substantially or marginally.”

Finding:

The Sub-Committee found as follows:

- It accepted Councillor Burnaby-Davies’ evidence that the existence and nature of her interest had been declared on her behalf by the Chair at the meeting held on 5 January 2009 as well as at the meeting held on 17 November 2008.
- It determined that Councillor Burnaby-Davies’ nephew’s financial position was affected, albeit marginally. It determined that a member of the public with knowledge of the relevant facts would reasonably regard Councillor Burnaby-Davies’ interest as one which was so significant that it was likely to prejudice her judgement of the public interest.
- Councillor Burnaby-Davies had a prejudicial interest. The consequence of this was that she should have withdrawn from the meeting room on 17 November 2008 and 5 January 2009.
- Councillor Burnaby-Davies’ failure to do so meant that she had breached Rodmell Parish Council’s Code of Conduct (paragraph 12) at the meeting held on 17 November 2008 and at the meeting held on 5 January 2009.

Sanction:

No sanction was imposed.

The Sub-Committee was heartened to note that Rodmell Parish Council had quickly amended its meeting procedures as a direct result of this incident and that current and new members of Rodmell Parish Council would receive ongoing training on these matters.

It noted that Councillor Burnaby-Davies had attended training on the issue of interests following this incident.

The Sub-Committee noted that Councillor Burnaby-Davies had co-operated fully with the Investigating Officer and taken a full part in the Hearing process.

She was more fully aware of the procedures to be followed in cases where she had an interest as a consequence of the Hearing process.

Right to Appeal:

The Chair advised Councillor Burnaby-Davies that she had the right to appeal against the finding of the Sub-Committee that there had been a breach of the Code of Conduct.

Date

Signed

Mr G Eysenck, Chair of the Standards Sub-Committee held on
30 October 2009