

**Agenda Item No:** **Report No:**

**Report Title:** **Determination of Standards Committee complaint**  
**Ref: 08/03. Complaint by Mrs L Smart against Councillor Burnaby-Davies of Rodmell Parish Council**

**Report To:** **Standards Committee** **Date:** **30 October 2009**

**Ward(s) Affected:** **All**

**Report By:** **Deputy Monitoring Officer**

**Contact Officer(s):** **Mark Reynard**  
**telephone 01273 484119 mark.reynard@lewes.gov.uk**

---

**Purpose of Report:**

1. To determine whether there has been any breach of the Code of Conduct adopted by Rodmell Parish Council
2. In the event of finding there to be a breach to determine whether any sanction should be applied and if so to determine what form the sanction should take.

---

**Reasons for Report**

- 1 To comply with the law and statutory guidance issued by the Standards Board

**Information**

- 2 Please find attached at Appendix A a summary sheet setting out key details of this complaint, including a summary of the nature of the complaint together with a note of those matters which are in dispute.
  - 2.1 There are 2 matters in dispute in this case:
    - (i) whether a personal interest was declared either by Councillor Burnaby-Davies or by the Chair on her behalf at the meeting on 5 January 2009
    - (ii) whether Cllr Burnaby-Davies had a prejudicial interest .
  - 2.2 These are issues which must be determined by the Standards Committee today.
  - 2.3 On 4 August 2009 the Standards Committee considered a report by the Investigating Officer into a complaint made against Councillor Burnaby-Davies. The Investigating Officer's report and the papers which were

annexed to it are at Appendix B. That report concluded at paragraph 7.1:

- 2.4 "On the evidence available from this investigation it would seem that Councillor Burnaby-Davies failed to comply with Rodmell Parish Council's Code of Conduct in that she:
- (i) failed to disclose the existence and nature of a personal interest in business considered at a meeting of Rodmell Parish Council held on 5 January 2009.
  - (ii) failed to withdraw from the room or the chamber where meetings of Rodmell Parish Council were held on 17 November 2008 and 5 January 2009 despite having a prejudicial interest in the matter under consideration".
- 2.5 The Standards Committee determined that a hearing should take place.
- 2.6 Following this determination of the Standards Committee Councillor Burnaby-Davies was asked to provide information as to which aspects of the Investigator's Report were agreed/ not agreed.
- 2.7 Councillor Burnaby-Davies' response is attached as Appendix C.
- 2.8 Essentially, Councillor Burnaby-Davies disagrees with the Investigator's report on two matters: firstly, that anyone failed to declare that she had a personal interest at the meeting on 5 January 2009 and, secondly, that she had a prejudicial interest at the meetings on 17 December 2008 and 5 January 2009.
- 2.9 In paragraph 2.10 below I have set out a detailed account of the facts in dispute as distilled from the relevant paragraphs in the Investigating Officer's report (Appendix B) and Councillor Burnaby-Davies' response (Appendix C). I have then set out my own comments as to the extent of the issues in dispute to assist the Standards Committee in focusing on the relevant issues for determination.

**2.10 Details of Matters in Dispute:**

**Para 1.1 of the Investigating Officer's report states:**

"The complainant Ms Lindy Smart, alleges 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 alleges that the matter under discussion affected members of Councillor Burnaby-Davies's family. The complainant alleges that Councillor Burnaby-Davies participated in the discussion of this matter when she should not have done."

**Councillor Burnaby-Davies has responded as follows:**

"The Chairman announced at the beginning of the item on agenda I could not take part in discussion because of my relationship so I didn't think I also needed to declare"

**Deputy Monitoring Officer's Comments:**

Councillor Burnaby-Davies does not appear to dispute that she failed to disclose her interest but states that she didn't feel it was necessary as it had been made clear by the Chair. This accords with the Investigator's Report in relation to the meeting on 17 November 2008 but not in relation to the meeting on 5 January 2009.

**Para 1.3 of the Investigating Officer's Report states:**

"(The complaint received from Mrs Lindy Smart also claimed that Councillor Burnaby-Davies had failed to advise her family members to consult the Parish Council before erecting a fence across a public highway; it further suggested that Councillor Burnaby-Davies had condoned intimidating behaviour on the part of her brother against the complainant. The Assessment Sub-Committee did not consider that Councillor Burnaby-Davies could be held responsible for the behaviour of her relatives; nor did she have any duty to actively proffer advice to them. The Sub-Committee decided that these aspects of the complaint should not be investigated)."

**Councillor Burnaby-Davies has responded as follows:**

"I couldn't advise my nephew before he erected the fence as I didn't know he was going to do it.

I did not condone my brother's phone call as I knew nothing about it until 2 months later when Mrs Smart informed me of the call.

When Mrs Smart told me of the call I said I was sorry my brother upset her but I couldn't be responsible for what others say."

**Deputy Monitoring Officer's Comments:**

This is not relevant as this part of the complaint does not fall to be investigated and only appears in parenthesis within the Investigator's Report by way of background.

**Para 5.11 of the Investigating Officer's Report states that:**

"Councillor Burnaby-Davies did not declare any interest in the item and did not withdraw from the meeting."

**Councillor Burnaby-Davies has responded as follows:**

"The Chairman again stated I would not be taking part in the discussion so I didn't realise I had to repeat it."

**Deputy Monitoring Officer's Comments that:**

"This paragraph relates to the second meeting ie the meeting held on 5 January 2009. Councillor Burnaby-Davies does not dispute the fact that she failed to declare her interest but states that the Chairman declared for her. The fact of the Chairman declaring her interest at this meeting is not within the Investigator's Report."

**Para 6.12 of the Investigating Officer's report states that:**

"An item on the agenda of the meeting of 17 November 2009 and the agenda of the meeting of 5 January 2009 related to a footpath to the rear of "The Forge" and, in particular, to a fence which had been erected across that footpath by the occupier of The Forge, Steven Dean. Minutes of those meetings, including minutes of the "open meeting" held on 17 November 2008 show the erection of the fence to have caused local controversy, with some people objecting to the fence and with discussion focusing on a proposal to install a gate in the fence."

**Councillor Burnaby-Davies responded as follows:**

"I don't agree I had a prejudicial interest as my nephew did all the work himself so it did not cost him anything".

**Deputy Monitoring Officer's Comments:**

Councillor Burnaby-Davies does not agree that she had a prejudicial interest. This is contrary to the finding in the Investigating Officer's Report."

**Para 6.24 of the Investigating Officer's Report states that**

"At the meeting held on 5 January 2009 Councillor Burnaby-Davies did not disclose the existence and nature of her interest."

**Councillor Burnaby-Davies responded as follows:**

"See reply to 5.11"

**Deputy Monitoring Officer's Comments:**

Councillor Burnaby-Davies does not dispute that she failed to disclose the interest but states that the Chair declared for her which is contrary to the Investigator's Report."

**Para 7.1 (ii) of the Investigating Officer's Report states that:**

"On the evidence available from this investigation it would seem that Councillor Burnaby-Davies failed to comply with Rodmell Parish Council's Code of Conduct in that she:

(ii) failed to withdraw from the room or chamber where meetings of Rodmell Parish Council were held on 17 November 2008 and 5 January 2009 despite having a prejudicial interest in the matter under consideration."

**Councillor Burnaby-Davies responded as follows:**

"I do not see how I had prejudicial interest as there were no costs or financial gain to my family."

**Deputy Monitoring Officer's Comments:**

"The subject member does not dispute that she failed declare or leave the room but denies that the interest she had was prejudicial."

## **2.11 Role of the Standards Committee**

The Standards Committee must determine whether Councillor Burnaby-Davies has failed to abide by Rodmell Parish Council's Code of Conduct. In order to do this it must determine:

- (i) whether there was a failure to declare a personal interest at the meeting on 5 January 2009
- (ii) whether Councillor Burnaby-Davies had a prejudicial interest in the matter under consideration at the meeting held on 17 November 2008 and 5 January 2009.

2.12 In the event that the Committee determines there to have been a breach it needs to decide whether any sanction should be applied. It is not obliged to impose a sanction.

2.13 Where the Committee determines that a sanction should be applied the following sanctions, either alone or in combination, are ones which the Committee may feel are appropriate in this case:

- 2.13.1 censure.
- 2.13.2 partial suspension or suspension for a period not exceeding six months.
- 2.13.3 that the councillor undertakes training.
- 2.13.4 partial suspension or suspension for a period not exceeding six months or until such time as the councillor has undertaken training.

2.14 When deciding on a sanction, the Standards Committee should ensure that it is reasonable and proportionate to the councillor's behaviour. Before deciding what sanction to issue the Standards Committee should consider the following questions, along with any other relevant circumstances:

- 2.14.1 what was not councillor's intention?
- 2.14.2 Did they know that they were failing to follow the Code of Conduct?
- 2.14.3 Has there been a breach of trust?
- 2.14.4 What was the result of failing to follow the Code of Conduct?
- 2.14.5 How serious was the incident?
- 2.14.6 Does the councillor accept she was at fault?
- 2.14.7 Has the councillor previously been warned or reprimanded for similar misconduct?
- 2.14.8 Is the councillor likely to do the same thing again?
- 2.14.9 Was it an honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct?

2.15 Finally, I have enclosed at Appendix D a form of procedure which I recommend the Standards Committee to follow to assist the smooth running of the Hearing.

**3 Financial Appraisal**

There are no financial implications arising as a result of this report.

**4 Environmental Implications**

I have completed the Environmental Implications Questionnaire and there are no significant effects as a result of these recommendations.

**5 Risk Management Implications**

I have completed the Risk Management questionnaire and this Report does not require a risk assessment because the changes/issues covered by this Report are not significant in terms of risk.

**6 Background Papers**

None.

**7 Appendices**

- A** A summary sheet setting of the details of this complaint, including a summary of the nature of the complaint together with a note of those matters which are in dispute
- B** Investigating Officer's Report and accompanying papers
- C** Councillor Burnaby-Davies' response to the Investigating Officer's Report.
- D** Suggested procedure for Hearing.