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**REPORT TO:** STANDARDS HEARING SUB-COMMITTEE

**DATE:** 12 SEPTEMBER 2011

**REPORT OF THE:** COUNCIL SOLICITOR AND MONITORING OFFICER  
ANTHONY WINSHIP

**TITLE OF REPORT:** COMPLAINT AGAINST TOWN COUNCILLORS JASON  
FITZGERALD-SMITH, DAVID LLOYD-WILLIAMS, JANE  
FORD, ANNE HOPKINSON AND PAUL ANDREWS –  
MALTON TOWN COUNCIL

**WARDS AFFECTED:** NONE

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## **EXECUTIVE SUMMARY**

### **1.0 PURPOSE OF REPORT**

- 1.1 To provide advice to Members in relation to the conduct of the hearing of an investigation.

### **2.0 INTRODUCTION**

- 2.1 This complaint relates to an alleged breach of the Code of Conduct of the Malton Town Council by five Town Councillors, namely Jason Fitzgerald-Smith, David Lloyd-Williams, Jane Ford, Anne Hopkinson and Paul Andrews.
- 2.2 On 8 April 2011 the Monitoring Officer received a complaint from the then District Councillor Tony Hemesley alleging a breach of the Code of Conduct of Malton Town Council. On 15 April 2011 the complaint was considered by the Standards Initial Assessment Sub-Committee who determined that the matter merited investigation.
- 2.3 The Monitoring Officer appointed Mr Keith Stevens to investigate the complaint on 27 April 2011. The Investigator's report was published on 23 June 2011.
- 2.4 The outcome of the investigation was considered at a Standards Committee meeting on 14 July 2011.
- 2.5 At the preliminary hearing the Standards Committee listed the matter for full hearing.

2.6 The issues to be considered for determination at the hearing will be:-

- (a) Whether the actions of Town Councillors Jason Fitzgerald-Smith, David Lloyd-Williams, Jane Ford, Anne Hopkinson and Paul Andrews in this matter were covered by paragraph 8(1)(a)(ii)(cc) of the Members Code of Conduct.
- (b) Whether Town Councillors Jason Fitzgerald-Smith, David Lloyd-Williams, Jane Ford, Anne Hopkinson and Paul Andrews all should have registered an interest under paragraph 13 of the Members' Code of Conduct in relation to this matter.
- (c) Whether Town Councillors Jason Fitzgerald-Smith, David Lloyd-Williams, Jane Ford, Anne Hopkinson and Paul Andrews all should have made a declaration of a personal interest under paragraph 9 of the Members' Code of Conduct.

### 3.0 BACKGROUND AND ISSUES

3.1 The External Investigator's report and associated statements is appended to this report as **ANNEX 1**: The External Investigator concluded as follows:-

*"..... that the evidence in the report shows that the five respondents' actions were covered by paragraph 8(1)(a)(ii)(cc) of the Code of Conduct and that consequently there has been a failure to comply with paragraphs 9(1) and 13 (failure to register interests) of the Code."*

### 4.0 THE RELEVANT PROVISIONS OF THE MEMBERS' CODE OF CONDUCT

4.1 A copy of the Members' Code of Conduct is attached as **ANNEX 2**. The relevant provisions of the Members' Code of Conduct are as follows:-

#### **Personal Interest**

4.2 Paragraph 8 of the Code states:-

*"(1) You have a personal interest in any business of your authority where either –*

*(a) It relates to or is likely to affect –*

*(i) Any body of which you are a Member or in a position of general control or management and to which you are appointed or nominated by your authority;*

*(ii) Any body –*

*(aa) exercising functions of a public nature;*

*(bb) directed to charitable purposes; or*

*(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);*

*of which you are a member or in a position of general control or management."*

4.3 Paragraph 9 of the Code states:

- “(1) Subject to sub-paragraphs (2) to (7), 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.*
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.*
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.”*

4.4 Paragraph 13 states:

**Registration of Members' Interests**

13. (1) *Subject to paragraph 14, you must, within 28 days of –*  
*(a) this Code being adopted by or applied to your authority; or*  
*(b) your election or appointment to office (where that is later),*  
*Register in your authority's register of Members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's Monitoring Officer.*
- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's Monitoring Officer.*

**5.0 ISSUES**

5.1 The agreed facts appear to be as follows:-

- (a) Councillors Jason Fitzgerald-Smith, David Lloyd-Williams, Jane Ford, Anne Hopkinson and Paul Andrews are members of Malton Town Council.
- (b) District and Town Councillor Paul Andrews invited a select number of individuals to prepare a Neighbourhood Plan for Malton and Norton. This included Councillors Jason Fitzgerald-Smith, David Lloyd-Williams, Jane Ford, Anne Hopkinson.
- (c) Contributors to the Neighbourhood Plan included Councillors Jason Fitzgerald-Smith, David Lloyd-Williams, Jane Ford, Anne Hopkinson and Paul Andrews.



- (d) The Neighbourhood Plan was adopted by the Malton Town Council meeting on 30 March 2011 which resolved to allocate £6,500 to fund the public consultation process.
- (e) Councillors Jason Fitzgerald-Smith, David Lloyd-Williams, Jane Ford, Anne Hopkinson and Paul Andrews attended the Malton Town Council meeting on 30 March 2011.
- (f) Councillors Jason Fitzgerald-Smith, David Lloyd-Williams, Jane Ford, Anne Hopkinson and Paul Andrews did not declare a personal interest at the Town Council meeting when the Neighbourhood Plan was being considered.
- (g) Councillors Jason Fitzgerald-Smith, David Lloyd-Williams, Jane Ford, Anne Hopkinson and Paul Andrews had not previously disclosed their involvement in the "Neighbourhood Plan Group" in the register of Members' Interests.

5.2 The evidence in dispute appears to be:-

- (a) Whether the actions of Councillors Jason Fitzgerald-Smith, David Lloyd-Williams, Jane Ford, Anne Hopkinson and Paul Andrews who produced with others the draft Neighbourhood Plan were covered by paragraph 8(1)(a)(ii)(cc).

5.3 The following documents are attached to this report:-

- (a) Standards for England Guidance on Lobbying (**ANNEX 3**)
- (b) The decision of the Adjudication Panel for England Case Ref: APE 0355 (Newbury) (**ANNEX 4**)
- (c) Register of Members' Interest forms and declaration of acceptance of office forms for Councillors Jason Fitzgerald-Smith, David Lloyd-Williams, Jane Ford, Anne Hopkinson and Paul Andrews (**ANNEX 5**)
- (d) Blank current Register of Members' Interests form with supporting notes (**ANNEX 6**)
- (e) Copy of the Council's procedure for the conduct of Standards Sub-Committee Hearings (**ANNEX 7**)

## 6.0 CONDUCT OF HEARING

### 6.1 STAGE 1: PRELIMINARY ISSUE: SHOULD THE HEARING BE CONDUCTED IN PUBLIC?

Standards Board guidance indicates that hearings should ordinarily take place in public. However, where a party contends that a ground under Schedule 12 of the Local Government Act 1972 applies, the Committee may be requested by a party to exclude the public from the hearing. In the event that such a request is received the Committee are required to consider on the information presented whether the public interest in the hearing taking place in public is outweighed by a public interest that is put forward as requiring the matter to be heard in private.

**6.2 STAGE 2 AND STAGE 3: WHAT ARE THE FACTS IN ISSUE AND DO THEY REVEAL A BREACH OF THE CODE**

6.2.1 Members are required to first determine the facts, (Stage 2) then decide whether on the basis of those facts whether the Respondent Members failed to comply with the Code of Conduct in the manner referred to in the External Investigator's report (Stage 3).

6.2.2 To address the facts in dispute evidence will taken.

6.2.3 Members of the Committee are entitled to manage the hearing so as to ensure that the evidence that they hear is restricted to that which is relevant to the issues that are in issue at the hearing. Accordingly the Committee may refuse to hear evidence from a witness if they are satisfied that the witness is unlikely to give evidence which will be of assistance to them in determining whether there has been a failure to comply with the Code of Conduct.

**6.3 External Investigator's Case**

6.3.1 The External Investigator will first present his report.

6.3.2 The Respondent Councillors will then be asked if there are any matters that he or she takes issue with or considers needs clarifying. The Committee Chairman or the adviser to the Committee will put questions to the External Investigator to clarify points raised.

6.3.3 The External Investigator may call witnesses to address any points in dispute or any issues that require clarification. The witnesses called will be those witnesses identified at the preliminary hearing as required to present oral evidence. Following the evidence of each witness the Respondent Members will be asked if there are any matters with which he or she takes issue or considers need clarifying. The Committee Chairman or the adviser to the Committee will put questions to the External Investigator to clarify points raised.

6.3.4 In addition any member of the Standards Committee may address questions to the External Investigator or to any witness.

**6.4 The Respondent Councillor's Response**

6.4.1 The Chairman shall then invite the Respondent Councillor to present his response to the External Investigator's report and to call witnesses to address any points in issue.

6.4.2 Following the evidence of the Respondent Councillor, the External Investigator will be asked if any matter has been raised with which he takes issue or considers needs clarifying. The Committee Chairman or the adviser to the Committee will put questions to the Councillor to clarify point raised.

6.4.3 The Respondent Councillor may then call witnesses to address any points of difference. Following the evidence of each witness the External Investigator will be asked if there are any matters with which he takes issue or he considers needs clarifying. The Committee Chairman or the adviser to the Committee on their behalf will put questions to the Respondent Councillor and witnesses he calls to clarify



points raised.

- 6.4.4 In addition any member of the Standards Committee may address questions to the Respondent Councillor or to any witness.

## **6.5 Summing Up**

- 6.5.1 At the conclusion of the evidence, the Chairman shall ask members of the Standards Committee whether they are satisfied that they have received sufficient evidence to come to a considered conclusion on the matter.
- 6.5.2 The Committee may permit the External Investigator and the Respondent Councillor to briefly comment upon any new issues that have arisen from the evidence.
- 6.5.3 The Committee will then retire to determine the facts (Stage 2) and whether on those facts there has been a breach of the code (Stage 3).
- 6.5.4 At the conclusion of their deliberations the Committee will return and the Chairman of the Committee will read out the Committee's findings upon the evidence presented to them (Stage 2) and the Committee's determination upon whether their findings on the facts give rise to a breach of the Code of Conduct (Stage 3).
- 6.5.5 The Chairman may decide to undertake Stage 2 and 3 separately or together.

## **6.6 STAGE 4: DETERMINATION OF THE APPROPRIATE SANCTION**

- 6.6.1 If the Committee conclude that the code has been breached by the Respondent Councillor, the Committee will ask for the External Investigator's advice in respect of any breach found. The Chairman will then ask the Respondent Councillor to respond to the External Investigator's advice.
- 6.6.2 The Committee will then retire again to consider the appropriate sanction to impose in respect of any breach. The Standards Committee may consider whether to make any recommendations to the authority with a view to promoting high standards of conduct among Councillors.
- 6.6.3 Following their deliberations the Committee will return and the Chair of the Committee will read out the decisions of the Committee.

## **7.0 IMPLICATIONS**

### **7.1 Legal Implications**

A hearing of the Standards Committee is required to consider the External Investigator's report.

### **7.2 Financial Implications**

There are no new financial implications arising from this report.

- 7.3 I have considered whether staffing implications, planning implications, crime and disorder implications, health and safety implications, environmental implications arise from this report and am satisfied that there is no identified implication that will arise

from this decision.

**Anthony Winship  
Council Solicitor and Monitoring Officer**

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**Background Papers:**  
None

**Background Papers are available for inspection at:**  
Not applicable