

FINAL REPORT

SBE complaint No' 2009/40

CONFIDENTIAL

1. Introduction

- 1.1 This report has been commissioned by North Lincolnshire Council's (the Council) Monitoring Officer following a decision by the Council's Assessment Sub-Committee of the 18 May 2009 that the complaint be investigated pursuant to section 57A (2) of the Local Government Act 2000, as amended.
- 1.2 The investigation was conducted pursuant to the above Act and Regulations issued thereunder.
- 1.3 This is the final report and will be sent to North Lincolnshire Council's Standards Committee for consideration.
- 1.4 In preparing this report my colleague, Mrs J Dodson, who has taken a shorthand minute of all interviews undertaken, has assisted me.

2. Nature of the Complaint

- 2.1 The complaint made by Mrs Simmons was that at meetings of East Halton Parish Council (the Parish Council) between May 2008 and September 2008 Councillor Gary Albert Beadle and Councillor Elizabeth Jane Reeve failed to declare relevant interests in discussions relating to the closure of Footpath 75 (the Footpath).
- 2.2 It was further alleged that both Councillors had failed to treat her with respect following incidents in October 2007 and December 2008.

3. Code of Conduct

- 3.1 I was informed by the Clerk to the Parish Council that the Parish Council had adopted the Model Code of Conduct (the Code) made under the Parish Councils (Model Code of Conduct) Order 2001, and subsequently the Model Code of Conduct made under the Local Authorities (Model Code of Conduct) Order 2007.
- 3.2 The Assessment Sub-Committee directed that I consider whether the following paragraphs of the Code of Conduct had been breached:

Paragraph 3 (1)

You must treat others with respect.

Paragraph 9 (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.

Paragraph 10 (1)

Subject to sub-paragraph (2), 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.

Paragraph 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.....

(c) you must not seek improperly to influence a decision about that business.

4. Methodology and interviews undertaken

4.1 All interviews were undertaken at Pittwood House. My colleague, Mrs J Dodson, who took a full shorthand minute, accompanied me at each interview. Such minutes were subsequently reduced into a written record of the interview, which was subsequently sent to each interviewee to check and sign as a true and accurate record of their interview with me. Each interviewee was afforded the opportunity to be accompanied at the interview.

4.2 I offered interviews to the following people:

Mrs S M Simmons, Complainant
Mrs L Underwood, Parish Clerk
Mrs A Greener, Local Authority Footpaths Officer, Environment Team, North Lincolnshire Council.
Councillor E J Reeve
Councillor G A Beadle

4.3 In addition to undertaking the aforementioned interviews I have also considered the Parish Council minutes of the 2 May 2008, 6 June 2008, 4 July 2008, 1 August 2008 and 5 September 2008. I have also considered Councillor Beadle's and Councillor Reeve's Register of Interests together with various

HM Land Registry documents and guidance issued by the Standards Board for England.

- 4.4 I also carried out a site visit to Footpath 75 and walked it such that I was able given its overgrown state.

5. The Evidence

Summarised below are what I consider to be the salient points arising from each interview.

a) **Mrs S M Simmons – interviewed on the 24th August 2009.**

- 5.1 Mrs Simmons said that she had been a resident of East Halton for over 50 years and as a child had regularly walked Footpath 75. In October 2007 she had become aware of a planning application concerning a property in the vicinity of the Footpath, which she believed if granted would obstruct part of the Footpath. She had accordingly contacted the Council's Environment Team to check this out and ask that work be undertaken to bring the Footpath into repair so that it could again be used, having fallen into an overgrown state for many years.
- 5.2 In due course she had taken exception to a letter received from the Parish Council in June 2008 stating that the Parish Council had been unanimous in its decision to request that the Footpath be closed essentially on the basis that it was no longer used and whilst officially designated posed a security risk to neighbouring properties. She believed that Councillors Beadle and Reeve were keen to seek closure of the Footpath.
- 5.3 Mrs Simmons maintained that at the various Parish Council meetings when the closure of the Footpath had been discussed, both Councillors Beadle and Reeve should have declared appropriate interests on account of them, or their relatives, having an interest in land adjacent to the Footpath. More specifically, Councillor Beadle owns boarding kennels that immediately abut the Footpath and Councillor Reeve's extended family own land that similarly abuts the Footpath.
- 5.4 Although Mrs Simmons had not attended any of the Parish Council meetings in question, she had obtained copies of the minutes following a Freedom of Information request and believed that appropriate declarations had not been made.
- 5.5 Turning to her contention that Councillors Beadle and Reeve had failed to treat her with respect, Mrs Simmons explained that this contention arose from incidents that took place in October 2007 and December 2008.
- 5.6 In October 2007, Mrs Simmons alleged that whilst walking her dog in the village she had approached Councillor Reeve to ask her what would happen to the Footpath should the planning application be granted (see paragraph 5.1). Mrs Simmons said that Councillor Reeve had responded "There never was and

never will be a footpath down there and anymore of this from you and I will get my husband to sort you out". Mrs Simmons said that she would contact the Council and then continued on her way. She did not believe that she had done anything to prompt this response. She clarified that there had been no witnesses to the incident.

- 5.7 On the 10th December 2008, Mrs Simmons said that whilst walking past Councillor Beadle's home on her way to the Post Office, Councillor Beadle was getting out of his car and on seeing her had walked out of his drive and yelled at her, "I hope you are satisfied you evil old fucking witch now you have your footpath opened". Mrs Simmons had responded along the lines, "That's nice language for a Parish Councillor to use" and then carried on walking to the Post Office.
- 5.8 Mrs Simmons believed that a gentleman who lived nearby might have witnessed the incident and she would ask whether he could corroborate her account. Again, Mrs Simmons did not believe that she had done anything to prompt this outburst. No independent corroboration was received.
- b) **Mrs Anita Greener, Footpaths Officer North Lincolnshire Council - interviewed on the 17th September 2009.**
- 5.9 Mrs Greener explained that she had first been contacted by Mrs Simmons in October 2007 requesting that the Footpath be re-opened. She explained that about 20 years ago the Parish Council had asked the then Humberside County Council to close the Footpath. The County Council had contacted the various landowners but for whatever reason had not taken the necessary procedural steps to close the Footpath. The Parish Council had mistakenly believed that the Footpath had been closed by the County Council all those years ago and had not realised that because it was still on the Definitive Map, it could only be closed by an extinguishment order from the Court.
- 5.10 Having been contacted by Mrs Simmons, Mrs Greener started measures to bring the Footpath into repair and had written to the Parish Council accordingly. The Parish Council had responded believing that the Footpath had already been closed and renewed its request that it be closed. Having carried out a series of land ownership searches at HM Land Registry, she then met with the various landowners and explained what legal process was required to enable the Footpath to be closed. In due course, she wrote to the various statutory organisations, two of which had objected to closure, which meant, the statutory grounds for closure could not be made out.
- 5.11 Mrs Greener said that over the last couple of years she had had several meetings with the landowners concerned, including Councillor Beadle, all of whom had been cooperative. Indeed whilst some had not liked the fact that the Footpath could not, at present, be closed, they had understood why. Indeed, she recalled that Councillor Beadle had accepted the situation.
- 5.12 From her land ownership searches, Mrs Greener had concluded that Councillor Beadle owned boarding kennels that abut the Footpath but that

Councillor Reeve did not appear to own any land that abuts the Footpath. Although she had had site meetings with the representatives of the Parish Council, she had not attended any formal meetings of the Parish Council to discuss the Footpath and consequently was unable to comment whether Councillors Beadle and Reeve had declared appropriate interests. Likewise, Mrs Greener had not witnessed the two incidents (paragraphs 5.6 & 5.7) and did not feel able to comment directly on these incidents.

c) Mrs L Underwood, Clerk to East Halton Parish Council – interviewed on the 22nd October 2009.

5.13 Based on her minutes and recollections, Mrs Underwood concluded that Councillor Reeve had not declared any interest in the Footpath at the meetings she had attended when it had been discussed between May and September 2008. As such Councillor Reeve had not absented herself during any debates on the Footpath but at the same time Mrs Underwood could not recall Councillor Reeve speaking during any debates. Indeed, this was consistent with the fact that Councillor Reeve rarely spoke at any meetings.

5.14 Councillor Beadle had however declared a personal interest in the Footpath when it had been discussed at the various meetings between May and September 2008. He had not declared a prejudicial interest at such meetings having, apparently, taken advice from a ward Councillor to the effect that his interest was not prejudicial on account that he “was not gaining anything from it”. Accordingly, Councillor Beadle had not absented himself during debates on the Footpath, but also had not spoken or voted.

5.15 Mrs Underwood did recall Councillor Beadle giving updates on the discussions he had had with the Footpaths Officer outside of the Parish Council meetings.

5.16 Having not witnessed the two incidents (paragraphs 5.6 & 5.7), Mrs Underwood did not feel able to comment directly on the same.

5.17 For the sake of completeness, Mrs Underwood pointed out that the Parish Council had genuinely believed that the Footpath had been closed many years ago and that this belief had been reinforced by the overgrown state of the Footpath.

d) Councillor E J Reeve - interviewed on the 1st December 2009

5.18 Councillor Reeve confirmed that she was (and remains) a Parish Councillor over the period that concerns the complaint.

5.19 She explained that so far as the Footpath was concerned she along with other members of the Parish Council had mistakenly believed that it had been closed years ago. It was only through the representations made by Mrs Simmons that it had been brought to her attention that the Footpath was technically still open.

- 5.20 When it was put to her that Mrs Simmons believed that she should have declared an interest in the discussions that had taken place at the Parish Council regarding the Footpath's closure, on account of Councillor Reeve's extended family owning land adjacent to the Footpath, Councillor Reeve explained that neither her or her husband owned any such land. However, her brother-in law (on her husband's side) did own land (a field/paddock) that abutted the Footpath, but that practically the Footpath was obscured from this land by a huge boundary hedge.
- 5.21 Given that her brother-in-law owned this land and that a large boundary hedge obscured the Footpath, Councillor Reeve did not believe that this necessitated her declaring any interest in the Footpath when it came to be discussed at meetings of the Parish Council, which she had attended. That said, even though she had remained during debates on the Footpath, she had not spoken on it. Indeed, she said that she was accepting of the position of public footpaths in general and the right for them to be walked as there was one that abutted her own property.
- 5.22 It was noted from the minutes of the 5th September 2008 that Councillor Reeve had declared a personal interest in an application for the change of use of land, which belonged to her ex sister-in-law. In responding to a question why had she not adopted the same approach in relation to the Footpath, Councillor Reeve believed the position to be different as this application directly affected her ex sister-in-law's land and that the Footpath did not as it did not cross her brother-in-law's land.
- 5.23 When asked of the allegation made by Mrs Simmons regarding the incident in October 2007, Councillor Reeve categorically denied that "this or any other exchange of words had ever taken place" between her and Mrs Simmons.
- e) **Councillor G A Beadle – interviewed on the 20th January 2009**
- 5.24 Councillor Beadle confirmed that he had been a member of the Parish Council since 1982 and had recently been elected the Chair.
- 5.25 He explained that like the Clerk, Mrs Underwood and his fellow Councillor, Mrs Reeve, he had understood that the Footpath had been closed several years ago by Humberside County Council and it was only following representations by Mrs Simmons that it had come to his, and the Parish Council's, attention that it was technically still open.
- 5.26 Councillor Beadle said that he owned boarding kennels and a field that abutted the Footpath (neither of which incidentally were declared in his register of interests).
- 5.27 He said that since the issue of the status of the Footpath had arisen he had almost, unwittingly, assumed the role of main contact point between the Environment Team and the parishioners. This was because the Footpath had become so overgrown at either end that it was only possible for the

Environment Team, when carrying out works to reinstate it, to access it from his property. Also because he worked at his kennels, any officer wanting to visit, or discuss, the Footpath knew where to find him.

- 5.28 In response to the allegation that he had failed to declare appropriate interests at the Parish Council meetings when the Footpath was discussed, Councillor Beadle maintained that he had declared a personal interest at each of the meetings (although the minutes of the 4th July 2008 only refer to an 'interest' being declared, I have no reason to doubt that this was referring to a personal interest).
- 5.29 Consistent with his declaration of a personal interest at each meeting, Councillor Beadle had not absented himself from any discussions on the Footpath, and had only spoken to update members as to the progress of any discussions he had had with the Environment Team. Indeed, he could only remember the Parish Council taking two decisions on the issue of the Footpath viz. to seek its closure and he had not voted on either.
- 5.30 After I explained to Councillor Beadle the definition of personal and prejudicial interests under the Code, Councillor Beadle explained that he had sought advice from a ward Councillor in making the declaration that he had.
- 5.31 Turning to the allegation that he had failed to treat Mrs Simmons with respect by being verbally abusive towards her on the 10th December 2008, Councillor Beadle categorically denied that this incident had taken place and added that he had never actually spoken to Mrs Simmons.

6. Findings in relation to the complaint made by Mrs Simmons

- 6.1 I have considered very carefully the respective accounts given by all the interviewees and the minutes of the various meetings.
- 6.2 I have purposely refrained from commenting in any depth on some of the apparent ill feeling that the attempted closure of this Footpath appears to have engendered. As is often the case, complaints of this nature are often preceded by 'a history' between the various parties, and this complaint has been no different. I have, however, attempted to restrict my recount of the various interviews to those facts that I consider directly relevant to the issues under scrutiny.
- 6.3 I am satisfied that both Councillor Reeve and Councillor Beadle were, pursuant to Paragraph 2 of the Code, conducting the business of their authority when Footpath 75 was being discussed at meetings of the Parish Council and as such were obliged to comply with the Code in so doing.

Declaration of Interests - Councillor Reeve

- 6.4 By her own admission and for the reasons she candidly gave, Councillor Reeve did not declare any interest in the Footpath when it was considered by

the Parish Council at the meetings that she attended on the 2 May 2008, 6 June 2008, 1 August 2008 and 5 September 2008.

- 6.5 From the facts outlined to me, I consider that Councillor Reeve should have declared both a personal and prejudicial interest on account of her brother-in-law's ownership of land that abuts the Footpath.
- 6.6 Paragraph 8 of the Code of Conduct which is paraphrased in Guidance issued by the Standards Board for England (May 2007) defines a personal interest arising where:

“you (a member) have a personal interest in a matter if that matter affects the well-being or financial position of you, members of your family, or people with whom you have a close association, more than it would affect the majority of people in the ward or electoral division affected by the decision, or in the authority's area or constituency.”

“Member of family” is further defined in the Guidance as:

“A member of your family should be given a very wide meaning. It includes a partner... a parent, a parent in law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, *a brother or sister of your partner*.....

Breach

- 6.7 I am satisfied that on account of her brother-in-law owning land that abuts the Footpath, Councillor Reeve did have a personal interest in the Footpath as it could be argued that any action by the Parish Council to close it could materially enhance the value of his land given that it would not be constrained by a Footpath but also because closure of a footpath in such circumstances means, in essence, that ownership of the land on which the footpath is located reverts to the owners of the land that abuts it. In failing to declare a personal interest at the meetings of the 2 May 2008, 6 June 2008, 1 August 2008 and 5 September 2008 that she attended and at which the Footpath was discussed, I find that Councillor Reeve breached paragraph 9 (1) of the Code.

Breach

- 6.8 I am also satisfied that in such circumstances Councillor Reeve ought to have declared a prejudicial interest and withdrawn from the meetings whilst the Footpath was being discussed as I consider that a member of the public knowing the relevant facts would reasonably think her personal interest so significant that it likely to prejudice her judgement of the public interest. In failing to withdraw from the meetings of the 2 May 2008, 6 June 2008, 1 August 2008 and 5 September 2008 that she attended and at which the Footpath was discussed, I find that Councillor Reeve breached paragraph 12 1 (a) of the Code.

- 6.9 I am satisfied that although not withdrawing from the meetings referred to in paragraphs 6.7 and 6.8, Councillor Reeve did not speak on the discussions regarding the Footpath and as such did not breach paragraph 12 1 (c) of the Code.
- 6.10 Although I have found that Councillor Reeve breached the Code, I can find no evidence to suggest that she did so with any improper motive in mind.

Declaration of Interests - Councillor Beadle

- 6.11 The minutes record that Councillor Beadle did declare a personal interest in the discussions that took place regarding the Footpath at the meetings of the Parish Council of the 2 May 2008, 6 June 2008, 4 July 2008, 1 August 2008 and 5 September 2008.

Breach

- 6.12 On the same basis that I have determined Councillor Reeve should have declared a prejudicial interest in such matters and withdrawn from the meetings whilst the Footpath was being discussed, I also find that Councillor Beadle should have done so as well. Indeed, Councillor Beadle's interest was more proximate than Councillor Reeve's given that he owns land that abuts the Footpath. In failing to declare a prejudicial interest and withdraw from the meetings of the Parish Council of the 2 May 2008, 6 June 2008, 4 July 2008, 1 August 2008 and 5 September 2008, I find that Councillor Beadle breached paragraph 12 1 (a) of the Code. That said, I do acknowledge that Councillor Beadle had thought he was acting correctly in not declaring a prejudicial interest on account of the advice given by a ward Councillor.
- 6.13 On balance, I do not find that Councillor Beadle breached paragraph 12.1 (c) of the Code. I pay particular regard to the comments of Mrs Underwood, Clerk to the Parish Council, who was clear that Councillor Beadle although not absenting himself from the meetings whilst the Footpath was being discussed, had not, nevertheless, "voted or spoken". Any discussions that Councillor Beadle did have were by way of updates to the Parish Council following discussions he had outside of the Parish Council with officers of the Environment Team.

Incident in October 2007 – Councillor Reeve

- 6.14 In the absence of any independent corroboration of Mrs Simmons' account and allied to the fact that Councillor Reeve vehemently denied that any such exchange had taken place, I am presented with a situation of 'the word of one against another'. In such circumstances, I am unable to determine whether such an incident did take place and as such do not find that Councillor Reeve failed to treat Mrs Simmons with respect on account of the same. As such I do not find that Councillor Reeve breached paragraph 3 (1) of the Code.

Incident in December 2008 – Councillor Beadle

6.15 Likewise, in the absence of any independent corroboration of Mrs Simmons' account and Councillor Beadle's categorical denial of this incident taking place or him ever actually having spoken to Mrs Simmons, I am unable to determine whether such an incident took place and as such do not find that Councillor Beadle failed to treat Mrs Simmons with respect on account of the same. As such I do not find that Councillor Beadle breached paragraph 3 (1) of the Code.

Conclusion

- 7.0 On account of the reasons stated, I find that Councillor Reeve breached paragraphs 9 (1) and 12 1 (a) of the Code. I do not find that she breached paragraphs 3 (1) or 12 1 (c) of the Code.
- 7.1 On account of the reasons stated, I find that Councillor Beadle breached paragraph 12 1 (a) of the Code. I do not find that he breached paragraphs 3 (1), 9 (1) or 12 1 (c) of the Code.

Will Bell
Chief Solicitor
Investigating Officer
March 2010