

ROTHERHAM BOROUGH COUNCIL - REPORT TO MEMBERS

1. Meeting:	Standards Committee
2. Date:	8 th September 2011
3. Title:	Cllr Judith Dalton
4. Directorate:	Chief Executive's Directorate

5. Summary

Cllr Judith Dalton, who is a member of the Council and a member of Anston Parish Council, was the subject of a recent allegation of breach of Anston Parish Council's code of conduct. The allegation was that Cllr Dalton had failed to declare having a prejudicial interest in an item of business concerning the free use of the premises of Anston Parish Council Recreation Ground when, in its capacity as sole trustee of the recreation ground charitable trust, the parish council considered the item on 8th December 2010.

The application to use the recreation ground premises free of charge was made by Cllr Dalton's husband on behalf of the members of the Anston Free Folk Festival. The assessment panel that considered the complaint decided that no action should be taken for two reasons: firstly, there was insufficient evidence that Cllr Dalton had a prejudicial interest in the item; and secondly it was not clear that her husband's financial position would have been affected by the parish council's decision.

The complainant asked for the decision to be reviewed on a number of grounds, one of which was that both Cllr Dalton and her husband's financial interests would have been affected by the decision as they run a business selling folk music compact discs and promote music festivals. The review panel noted (i) that the parish council had refused to grant free use of the premises and therefore neither she nor her husband had benefited from the application; (ii) that she appeared not to have voted on the application; and that (iii) she had correctly declared on her register of interest form her partnership interest in her and her husband's business.

However, although Cllr Dalton had declared having a personal interest in an item on the agenda for the 8th December meeting, the review panel were troubled by the fact she had not specified the item of business to which the declaration related and concluded that, although it was difficult to say with certainty whether she had a prejudicial interest in that item, she would have been acting prudently by leaving the meeting whilst the item was being considered.

Consequently, the review panel directed that Cllr Dalton should undergo further training and directed the monitoring officer to write to Cllr Dalton to arrange further training on the code, specifically with regard to personal of prejudicial interests.

Copies of the assessment and review panel decision notices and the monitoring officer's letter of 21st June are attached as Appendix A to this report.

Following receipt of the review panel's decision notice and the monitoring officer's letter, Cllr Dalton wrote to him. A copy of her letter, sent by e-mail on 11th August, is attached as Appendix B. In her letter, Cllr Dalton makes the following points –

- The complainant had specifically asked her when the item was being discussed whether she and her husband would be taking a stall at the Aston Free Folk Festival and she had replied that they would not be taking a stall.
- For this reason she did not believe that there would be a financial benefit to her or her husband and therefore did not consider it necessary to declare having a prejudicial interest in the item.

In her recent letter, however, Cllr Dalton goes further by pointing out that the application for free use of the premises by Anston Free Folk Festival was referred to the parish council for a decision and that she neither chaired, spoke nor voted at that meeting.

Cllr Dalton asks the Committee to reconsider its decision in light of this information, as she feels strongly that her good intentions have led to her reputation being called into question and that she should have the opportunity to refute the allegation.

The monitoring officer has spoken to the clerk to the parish council who confirmed that it is normal practice for the parish council when sitting as sole trustee to refer applications to use the recreation ground trust premises or facilities free of charge to the parish council for consideration of a grant in cash or in kind. Any grant that is awarded then counts as income to the charity.

The review panel's decision to direct the monitoring officer to carry out certain actions is irrevocable and can only be challenged by way of judicial review.

The assessment and review panels' decision are currently in the Standards Committee's pages of the website. Members may therefore wish to consider whether these decisions should be removed from the website in light of the new information.

6. Recommendations

IT IS RECOMMENDED that the Committee –

1. notes this report and directs the monitoring officer to advise Cllr Judith Dalton that the decision of the 26th May 2011 review panel is final; and

2. considers whether in light of the new information the decisions of the assessment and review panels of 24th February and 26th May 2011 should be removed from the Standards Committee's pages of the website.

7. Proposals and details

Please see paragraph 5.

8. Finance

No financial implications.

9 Risks and Uncertainties

None

10 Policy and Performance Agenda Implications

None

11 Background Papers and Consultation

Documents attached as appendices to this report.

12 Contact

Richard Waller, Legal Manager, Legal & Electoral Services

Telephone: (01709) 8254456

E-mail: richard.waller@rotherham.gov.uk

APPENDIX A

ASSESSMENT PANEL DECISION

ROTHERHAM BOROUGH COUNCIL

STANDARDS COMMITTEE (ASSESSMENT PANEL)

CODE OF CONDUCT FOR MEMBERS – DECISION NOTICE: NO FURTHER ACTION

Parties receiving this Decision Notice should take care when acting on this information, as the matter could be the subject of a review and the Review Panel of the Standards Committee may come to a different view on the complaint. In addition, some information in this Decision Notice may be confidential for the purposes of these proceedings and must not be released without first discussing the same with the Monitoring Officer, Mr. T. C. Mumford, Assistant Chief Executive (Legal and Democratic Services), Rotherham Borough Council.

Complaint

At a meeting of the Rotherham Standards Committee Assessment Panel held on 24th February, 2011, the Panel considered allegations from Councillor Stuart Thornton of Anston Parish Council against Councillor Judy Dalton also of Anston Parish Council.

The allegations related to the conduct of Councillor Dalton at a meeting of the charity known as Anston Parish Council Recreation Ground held on 8th December, 2010.

The specific allegation was that, at the Charity meeting, Councillor Dalton failed to declare a prejudicial interest in a discussion regarding free use of the Charity's buildings relating to a request from her husband on behalf of Anston Free Folk Festival, even when it was pointed out that the request for free use had come from her husband.

Decision

In accordance with Section 57A(2) of the Local Government Act 2000, as amended, the Assessment Panel decided that no action should be taken on the allegations.

Reasons for decision

The reasoning for the conclusion was that whilst the Panel accepted that the Code of Conduct was applicable regarding involvement at the Charity

meeting, there was insufficient evidence to conclude that Councillor Dalton had a prejudicial interest. Such an interest could only exist if the item of business was capable of affecting the financial position of Councillor Dalton's husband and it was not clear that it would do so. The Panel accepted that Councillor Dalton had a personal interest in the matter but noted that she had declared a personal interest at the start of the meeting in a forthcoming item, albeit had not been specific about which particular item it was.

The Panel advised that the Clerk should, in the minutes, indicate the nature of any interest declared.

Right of Review

At the written request of the complainant, the Standards Committee can review and change a decision not to refer an allegation for investigation or other action. A differently constituted Panel from that involved in the original assessment decision will undertake the Review.

We must receive the complainant's written request within 30 days from the date of this Decision Notice, explaining in detail on what grounds the decision should be reviewed.

If we receive a request for a review, we will deal with it within a maximum of three months of receipt. We will write to all the parties mentioned above, notifying them of the outcome of the Review.

Additional Help

If you need additional support in relation to this or future contact with us, please let the Monitoring Officer know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Disability Discrimination Act 2000.

Signed
(Monitoring Officer)

Date : 11th March 2011

Tim Mumford,
Assistant Chief Executive,
(Legal and Democratic Services),
Rotherham Borough Council.

Tel: 01709 823500
Email: tim.mumford@rotherham.gov.uk

REVIEW PANEL DECISION

ROTHERHAM BOROUGH COUNCIL

STANDARDS COMMITTEE (REVIEW PANEL)

CODE OF CONDUCT FOR MEMBERS – DECISION NOTICE: REFERRAL TO MONITORING OFFICER FOR ACTION OTHER THAN INVESTIGATION

Parties receiving this Decision Notice should take care when acting on this information, as some information in this Decision Notice may be confidential for the purposes of these proceedings and must not be released without first discussing the same with the Monitoring Officer, Mr. T. C. Mumford, Assistant Chief Executive (Legal and Democratic Services), Rotherham Borough Council.

Complaint

At a meeting of the Rotherham Standards Committee Review Panel held on 26th May, 2011, members considered allegations from Councillor Stuart Thornton of Anston Parish Council against Councillor Judy Dalton also of Anston Parish Council.

The allegations related to the conduct of Councillor Dalton at a meeting of the charity known as Anston Parish Council Recreation Ground held on 8th December, 2010.

The specific allegation was that, at the Charity meeting, Councillor Dalton failed to declare a prejudicial interest in a discussion regarding free use of the Charity's buildings relating to a request from her husband on behalf of Anston Free Folk Festival, even when it was pointed out that the request for free use had come from her husband.

In requesting the review, Councillor Thornton:-

- queried the allegations that were considered by the Assessment Panel and cited Councillor Dalton's own interests not just those of her husband in the Company that sold products, promoted and organised folk festivals
- indicated that Councillor Dalton failed to leave the room when the vote was taken on the decision to grant or not to grant her husband free use of the hall
- indicated that Councillor Dalton continued chairing meetings that discussed other related issues such as the financial cost of the hall hire, cost of the free use of the parish workforce, free use of the parish vehicle
- indicated that Councillor Dalton was in a position of 'management' both as a parish councillor and as a member of the Company she co-owned with her husband and clearly had a prejudicial interest

Decision

In accordance with Section 57A(2) of the Local Government Act 2000, as amended, the Review Panel decided to refer the allegation to the Monitoring Officer for action other than an investigation.

The Panel directed the Monitoring Officer to write to Councillor Dalton expressing the Panel's concerns at the declarations of interest made at this meeting and advising her strongly to undertake further training specifically with regard to personal and prejudicial interests.

Reasons for Decision

The Panel accepted that the Code of Conduct was engaged in that, as the Parish Council was the sole trustee of the Charity, the business of the Charity was a function of the Council and Councillor Dalton must have been acting in her official capacity as a Councillor.

In reaching its decision the Panel was mindful of the fact that the outcome of the free use application was a refusal and that there was no benefit to Councillor Dalton, her husband or their business. The Panel accepted that Councillor Dalton appeared not to have voted on the matter. The Panel was also mindful that Councillor Dalton had rightly declared, on her register of interest form, her partnership in the business.

However, the Panel did have concerns at the vague nature of the interest declared by Councillor Dalton and also acknowledged that any interest existed irrespective of the outcome of the free use application.

Whilst promotion of the festival itself could not be deemed to be a prejudicial interest and it was difficult to say with certainty that a prejudicial interest existed, (i.e. Councillor Dalton, her husband or their business would have gained financially by the granting of free use of the hall) the Panel felt it would have been wise for Councillor Dalton, as a partner in the business, to have vacated the meeting during consideration of the free use application.

The Panel therefore concluded that the best course of action was for Councillor Dalton to rectify her apparent lack of understanding regarding declaring interests by undergoing further training. An investigation and resultant cost to the public purse would not be in the public interest.

What Happens Now

The Monitoring Officer will write to Councillor Dalton expressing the Panel's concerns at the declarations of interest made at this meeting and advising her strongly to undertake further training specifically with regard to personal and prejudicial interests.

Additional Help

If you need additional support in relation to this or future contact with us, please let the Monitoring Officer know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Disability Discrimination Act 2000.

Signed

Date: 21st June 2011

Monitoring Officer,
T. C. Mumford,
Assistant Chief Executive,
(Legal and Democratic Services),
Rotherham Borough Council.

**LETTER FROM MONITORING OFFICER TO CLLR JUDITH DALTON
21ST JUNE 2011**

Dear Councillor Dalton,

I refer to previous correspondence concerning the allegation made against you by Councillor Stuart Thornton, that you were in breach of the Code of Conduct adopted by Anston Parish Council.

I have previously informed you that the complaint was considered by an Assessment Panel of the Standards Committee, who determined that no action should be taken. I also advised you that Councillor Thornton had requested a review of that decision.

The Review Panel met on 26th May 2011 and a copy notice of their decision is enclosed. You will see that the Review Panel came to a different conclusion from the Assessment Panel. Whilst they did not feel that the matter ought to be investigated, they were concerned that, on the information available to them, you should perhaps have declared a prejudicial interest in the matter in question. They, therefore, instructed me to write to you on the issue, and formally advise you to undergo further training on declaration of personal and prejudicial interests at the first opportunity.

I should emphasise that no finding has been made that you were in breach of the Code. Such a finding could only have been made following an investigation and hearing before the Standards Committee, and the Panel did not consider that this matter should be investigated. I should also make it clear that the Panel reached their decision based upon the version of events put forward by Councillor Thornton in his original allegation and subsequent request for a review. It may well be that if the matter had been investigated and you had been interviewed, the findings of fact would have differed from the account put forward by Councillor Thornton. What Assessment and Review Panels have to do is to determine the appropriate action on the

assumption that what the person making the allegation says is correct, unless parts of that can be disproved by evidence such as minutes of meetings, which can readily be obtained without embarking upon an investigation.

On this basis, the Panel had a number of concerns. Firstly, it appeared from the allegation that although you had declared some sort of interest in the item, you were not explicit as to what your interest actually was. It would have been better if you had expressly stated that the interest arose because the letter requesting free use of the hall was from your husband, even though this might have been fairly evident to people in the room. The Code does require you to say both that you have a personal interest and the nature of the interest.

The second issue was whether you should have treated the interest as being not only personal, but also prejudicial, in which case you should have withdrawn from the meeting for that item. The test for a prejudicial interest is whether a member of the public with knowledge of the relevant facts would reasonably regard the interest as so significant that it is likely to prejudice your judgment of the public interest. The Panel did have some concerns about how a reasonable member of the public would have regarded your chairing of a meeting, which was considering an application for free use of the premises signed by your husband. Regardless of how this might have appeared however, this could not of itself have made the interest prejudicial. This could only be the case if the interest and affect your financial position, or that of that some person with whom you had a close association, such as your husband. The Assessment Panel which first considered this matter, did not believe that the issue necessarily would affect you or your husband financially. The proposed festival would be an event for the public benefit of the parish and it was not clear that you or your husband would necessarily be out of pocket if the request for free use were not granted.

The Review Panel, however, had more regard to Councillor Thornton's arguments concerning the music business which you and your husband run and which is declared in your register of interests. The Panel felt that a reasonable member of the public might conclude that if free use of the premises for the folk festival were to be granted, then there might potentially be an opportunity for you and your husband to promote your business interests by using the festival as an outlet. Obviously, the Panel could not be certain of this, as they did not know the full detail of how your business operated and an investigation might have shown the concern to be groundless. Nevertheless, on the information available, the Panel thought that a reasonable person might have regarded the interest as so significant as likely to prejudice your judgment.

The Panel, therefore, concluded that you should undergo further training on the Code of Conduct and specifically with regard to personal and prejudicial interests. You have, of course, attended the training I provided by way of induction for all new Members of the Borough Council since the events which gave rise to the present allegation. I do not know when we will next be providing training on the Code of Conduct and, of course, major changes are

likely to occur within the next six months or so, as and when the Localism Bill is enacted. I will notify you of any other training of which I become I aware. Alternatively, I or Richard Waller, who will be succeeding me as Monitoring Officer, would be happy to meet with you to discuss the issues.

I hope this is helpful. Please do not hesitate to contact me if you wish to discuss any point further.

Yours sincerely,

Assistant Chief Executive
(Legal and Democratic Services)

APPENDIX B

Dear Mr Mumford,
Ref TCM/MF/82

Thank you for your letter of the 21st June, with an explanation of the decision of the Standards Board, that I should undertake further training on the Code of Conduct.

I wish the committee to have further information that was not presented to them by the complainant, which I believe makes a difference as to why I registered only a personal interest.

Anston Free folk festival ran for a number of years from 1990 to 2000. The event was a free festival, supported by the parish council and its workforce to put on a community event, which enabled the people of Anston to participate in acoustic music. The event also contributed to the tourism strategy, attracting people from all over Yorkshire and beyond, with more than 1000 attendees.

The request was made to the Parish council and charity on that basis. Mr Thornton specifically asked at the time of the discussion and I specifically replied that the CD business would not be taking a stall at the festival. Therefore I did not believe at that time that there was any financial benefit to myself or my husband in the request and therefore no requirement to express a prejudicial interest.

The Free folk festival does not have any income as it does not make any charges for admission, nor does it pay any of the performers or stewards or organisers. The whole event is based on goodwill.

The issue of my chairing meetings is misleading. It is the case that I chaired the charity meeting, where the request came to, but that meeting referred the request to the Parish council meeting for a decision, which I did not chair, did not speak at, and did not vote at.

I hope that the committee will take this information, which I was not able to give previously, into account, and reconsider their decision. I feel strongly that my intentions of enabling a community event have led to my reputation being called into question, and published in a public arena and that I should have opportunity to refute this allegation.

Yours sincerely,
Judy Dalton