

FINAL REPORT

LOCAL INVESTIGATION CONCERNING

COUNCILLOR PETER SIMMONS, A

MEMBER OF SHEPWAY DISTRICT COUNCIL.

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APPENDICES

- (a) Investigation report prepared by the Head of Audit Partnership into Members Expenses Claims – 09.10.15.
- (b) Report to the Audit and Standards Committee dated 16.11.15. entitled Investigation into Members’ Expense Claims
- (c) Agreed Notes of Interview- Councillor Peter Simmons, the Subject Member.

1. INTRODUCTION

1.1 This matter was referred to me by the Monitoring Officer for Shepway District Council who appointed me as Investigating Officer. I am the former head of Legal Services for Swale Borough Council and before my retirement from full-time work had been in Local Government service for 35 years. I accordingly have considerable experience of Monitoring Officer / Standards Issues and in the last five years or so have been appointed as Investigating Officer in 33 similar Standards Investigations.

1.2 At the start of the investigation the Monitoring Officer supplied me with a copy of the report to the Audit and Standards Committee of 16th November 2015 entitled “Investigation into Members Expense Claims”, together a copy of the more detailed Shepway District Council Investigation Report into Members Expense Claims compiled by the Head of Audit Partnership, and various background papers. The case is fairly unusual for a Standards Investigation being a direct referral via the Monitoring Officer from the Audit and Standards Committee.

2. METHODOLOGY

2.1 In addition to considering the information specified above a face-to-face interview was carried with the Subject Member resulting in an agreed note of interview and also with Tim Madden, Corporate Director Organisational Change, who was at the time of the complaint Section 151 Officer and therefore responsible for corporate financial probity. Telephone interviews were also carried out with former Councillor Tillson, the Head of Audit Partnership, Christine Parker, who prepared the detailed investigation report, the current leader of the Council, Councillor D Monk and former Councillor and leader Robert Bliss.

2.2 The notes of interview referred to above are attached to the report and were used together with all the written material and the information gained from the four telephone interviews to assist in completing the final report and reaching a conclusion. All the appended material should be read in conjunction with the report.

3. SUMMARY OF ALLEGATIONS AND RELEVANT PARTS OF THE CODE OF CONDUCT.

3.1 Full details of the actions of the Subject Member are contained in the investigation report into Members Expense Claims prepared by the head of Audit Partnership and later reported to the Audit and Standards Committee on 16th November 2015. The findings of the report are, subject to the explanation contained within his statement, accepted by the Subject Member. The purpose of this investigation is to ascertain whether or not there has been a breach of any of the provisions of the Code of Conduct for Members.

3.2 I have examined the Code of Conduct for Members adopted by the District Council for Shepway at its meeting on 11th July 2012 (minute 44.2 refers) and have identified paragraphs 3(1), 3(2)(f) and 3(2)(g) as potentially relevant in relation to the alleged conduct. Those paragraphs of the Code read as follows:

- 3(1) You must when using or authorising the use by others of the resources of the Authority;
 - (a) act in accordance with the Authority's reasonable requirements; and
 - (b) ensure that such resources are not used improperly for political purposes (including party political purposes).

- 3(2) You must not
 - (f) conduct yourself in a manner which could reasonably be regarded as bringing your office or Authority into disrepute;

 - (g) use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

4. THE LEGAL POSITION.

4.1 The current standards regime was created under the provisions of the Localism Act 2011 and is contained within the provisions of the District Council of Shepway – Code of Conduct for Members as adopted by Shepway District Council. The previous Standards regime had the benefit of guidance drafted by the previous Standards Board for England in May 2007, some of which may assist in reaching a decision in the current case.

4.2 Paragraph 3(1) deals with the use of the Authority's resources and the former guidance provided that "where your Authority provides you with resources (e.g. telephone, computer and other IT facilities, transport or support from Council employees), you must only use these resources or employees for carrying out your local Authority business and any other activity which your Authority has authorised you to use them for". The guidance goes on to say that "you must be familiar with the rules applying to the use of these resources made by your Authority. Failure to comply with your Authority's rules is likely to amount to a breach of the Code of Conduct".

4.3 Paragraph 3(2)(f) which deals with the disrepute issue is more widely drafted than under the previous Code, but the former guidance made the salient point with regard to questions of disrepute making it clear that "as a Member, your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public". It went on to state that "you should be aware that your actions.....might have an adverse impact on your office or Authority".

4.4 In general terms disrepute can be defined as lack of good reputation or respectability. In the context of the Code of Conduct, a Member's behaviour in office

would bring that Member's office into disrepute if the conduct could reasonably be regarded as reducing the public's confidence in that Member being able to fulfil their role.

4.5 Similarly with regard to paragraph 3(2)(g) of the current Code the guidance contained advise regarding using your position as a Member improperly. The guidance stated that "you must not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else. It went on to say you should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss e.g. your behaviour would be improper if you sought to further your own private interests through your position as a Member."

4.6 Outside of this guidance it is clear that each case must be decided on its merits and after considering all the circumstances.

5. EVIDENCE.

5.1 As stated earlier the findings of the Head of Audit's Report into Members Expense Claims are, subject to some points of mitigation contained within the agreed notes of interview, accepted by the Subject Member. The said report is very clear and comprehensive but did not venture into the political arena regarding former Councillor Tillson's allegation that "it was most likely the Leader and his predecessor who authorised him to use taxis". The report merely concluded that "there is no clear audit trail regarding who authorised Councillor Tillson to travel by taxi". I have now had the opportunity of speaking to both the current Leader and the former Leader by telephone and can confirm that neither has a clear recollection concerning the allegation and cannot recall one way or the other whether a decision was made on the subject. It is therefore submitted that it is unlikely that a definitive answer regarding the granting of permission or otherwise can ever be reached.

5.2 In considering whether any of the paragraphs of the Code specified above have been breached it is my view that a critical question is whether or not the Subject Member showed any intention to deceive by his actions. This is of particular significance in relation to paragraphs 3(2)(f) dealing with 'disrepute' and 3(2)(g) which related to using your position as a Member to 'improperly' gain an advantage. Both the terms 'disrepute' and 'improperly' indicate something more than genuine mistake or error and to my mind require the extra element of the intention to deceive particularly in cases involving allegations of financial impropriety.

5.3 In his notes of interview the Subject Member makes the point at paragraph 3 that in relation to the 5p per mile extra payment for taking a fellow Councillor as a passenger he was at the time ignorant of the fact that by ticking the shared vehicle column on the claim form an extra 5p per mile would be paid.

5.4 He goes on to explain that the calculation for the mileage element on the claim form is made by council officers in the Treasurers Department and not by the claiming Member. Each payment to him consisted of a portion of the Members

allowance, the ICT apportioned payment together with any payment for mileage and any additional expenses such as conference expenses and meal allowances etc. Hence he explains that even though on some occasions he ticked the shared vehicle box on the claim form he never noticed any slight increase in payment.

5.5 It is clear that the Subject Member should have been fully conversant with the rules relating to the shared vehicle payment particularly given his background as a bookkeeper and former chairman of the Audit and Standards Committee. It is, however, submitted that having checked the process with the head of Audit Partnership his explanation is entirely consistent with a genuine mistake. The calculation of the claim is carried out by council staff and in particular no mention of the 5p shared vehicle allowance appears on the face of the claim form.

5.6 Similarly the Subject Member makes the point that all the errors in the claim process are mistakes on his part as each one of them could easily be uncovered by an audit investigation and were not concealed in any way. From reading the report it is clear that the Subject Member was inconsistent in the way he completed his claim forms and did not make a double claim for shared vehicle allowance on every occasion that he could have done so. The Audit report makes it clear in the first bullet point of the conclusions that “the claims submitted by the two Councillors are clear and transparent”. Indeed the Subject Member gave detailed information regarding the private taxi arrangement to former Councillor Tillson each month and he for his part submitted the entire document as part of his claim. Also the two parties to the private taxi arrangement did not discuss the matter of claiming expenses and the Subject Member was under the impression that former Councillor Tillson did not claim. Such action to my mind would not indicate an intention to deceive but would militate in favour of a genuine mistake.

5.7 Again the Audit report makes it clear in section 5 that the system of checking Councillors claims had been relaxed in the period of time leading up to the current case and had resulted in only spot checks being made. These spot checks did not detect the issue with regard to the Subject Member’s claim forms and hence the size of the amount over claimed had increased with the passage of time. It is submitted that had the claim forms of the Subject Member and former Councillor Tillson been subject to the more robust regime now in place any error may have been picked up at an earlier stage and possibly dealt with more expeditiously.

5.8 Similarly, although it does not appear to be have been intended the Subject Member’s claim as originally paid, contained elements of double payment for the same journeys i.e. payment by former Councillor Tillson under the ‘private’ arrangement and payment by the Council under the provisions of the Members Allowance Scheme for some of the same journeys. The scheme does not specifically state that double claiming should not take place, but to my mind such a principle is implied within the rules and generally adhered to by other claimants. Also the amount demanded and repaid by the Subject Member i.e. £210.15 has been calculated on the basis that for those journeys where the private taxi arrangement was in place and payment made by former Councillor Tillson to the Subject Member, a repayment of the Council’s travel allowance has been made by the Subject Member.

5.9 When analysing the paragraphs of the Code of Conduct that could potentially have been breached, it is my view that paragraph 3(1)(b) does not come into play as it is clear from the facts of the case that the Subject Member's claims did not in any way involve the improper use of resources for political purpose. With regard to paragraph 3(1)(b), however, the former Standards Board guidance states that you must be familiar with the rules applying to the use of resources and failure to comply with those rules is "likely to amount to a breach of the Code of Conduct". It is my view that such an approach would be correct in this case particularly in the view of the subject Member's background specified in paragraph 5.5 above.

5.10 With regard to paragraphs 3(2)(f) and 3(2)(g) of the Code of Conduct it is my view that there has been a technical breach due to the fact that for the reasons specified above the over claiming of expenses, although due to genuine mistakes on the part of the Subject Member, would inevitably have led to at least a perception of disrepute or of an attempt to secure a financial advantage in the eyes of the public.

6. CONCLUSION.

6.1 Having considered all the information provided and obtained by interview and for the reasons specified in the evidence section I conclude that there is evidence of a breach of paragraph 3(1)(a), 3(2)(f) and 3(2)(g) of the Code of Conduct for Members adopted by the Shepway District Council.

6.2 In considering any penalty it is submitted that the following factors of mitigation ought to be borne in mind:

- The Subject Member has apologised unreservedly for his actions which appear to be due to genuine mistakes.
- The entire amount of over claimed allowances in the sum of £210.15 has been repaid promptly.

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