

## Hearings – work through

### Case summary

You are the independent chair of the standards committee of Y District Council.

Following a complaint to the Standards Board for England by the leader of the council against Councillor Mills, the Standards Board referred the allegations to the council for investigation.

Councillor Mills is a district councillor of Y District Council and a parish councillor of X Parish Council.

It was alleged that Councillor Mills failed to declare an interest and to remove herself from the meeting of Y District Council on 24 January 2005, and also failed to declare an interest and used her position to improperly secure an advantage for another at the X Parish Council meeting on 19 April 2005.

You have received the monitoring officer's report, together with a large bundle of documents, in which the monitoring officer finds that Councillor Mills failed to comply with paragraphs 5(a), 9, and 12 of the parish council's Code of Conduct with respect to her conduct at the parish meeting, but did not fail to comply with the district council's Code of Conduct with respect to her conduct at the district council meeting.

The finding is under regulation 5(7)(d) and 5(7)(e) of the Relevant Authorities (Standards Committee) Regulations 2001 (as amended). This will be the council's first hearing of an investigation and report from the monitoring officer.

### Facts of the allegation investigated

1. Councillor Lennon and his wife, Ms Ali Shaw, recently bought a property in Plastow Road, located just off the High Street, which is the main commercial centre of Y District. The property is in Y District and X Parish.
2. a) Councillor Mills has been both a Y district councillor and an X parish councillor for many years and is also Ms Shaw's stepsister.  
b) On 24 January 2005, Councillor Mills was at a meeting of Y District Council when the parking policy affecting the Plastow Road area, among others, was considered. The policy proposed to restrict parking on the high street and introduce parking charges with the likely effect that people would seek to park away from the high street and on neighbouring streets such as Plastow Road.  
c) Councillor Mills recognised Ms Shaw's address on the plan of the affected area, but thought that she did not have an interest because she had never been particularly close to her stepsister. She had checked the Code of Conduct and stepsister was not one of the examples of 'relative'. She thought about getting advice, but decided not to as she thought that, as there was no financial gain to her stepsister, then there could be no interest, no matter what the relationship.

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3. a) Councillor Mills, who knew the area well, did not declare any interest and spoke at the district council meeting about the impact of the proposed type of parking restrictions generally and, in passing, supported officer and local residents' concerns about the effect on the surrounding streets.  
b) The parking proposals were fairly radical and had been the subject of comment and debate in the local press. Y District Council resolved not to introduce the parking proposals as proposed, and ordered a redesign which was to be consulted upon with the local parish councils before returning to the district council for consideration.
4. a) On 19 April 2005, at the X Parish Council meeting, the consultation on the revised parking proposals was considered.  
b) Councillor Mills met with the monitoring officer of the district council in the week prior to the parish council meeting to discuss issues such as how the local objectors and other interested parties were to be accommodated at the meeting. In addition she was advised that, although it was ultimately a matter for her, because her stepsister's property was directly affected, she should not attend or speak at the meeting.
5. a) Councillor Mills, unhappy with this advice, said that she did not attend the district council meeting as a councillor, but turned up as one of the objectors and addressed the meeting in forceful terms against the parking proposals.  
b) Councillor Milton, a colleague of Councillor Mills, told the investigator that Councillor Mills had told him that she had been outraged by the monitoring officer's advice, which she felt was preventing her from doing precisely what she had been elected to do, and had said that she would find a way not to follow it.  
c) In the event, the parish council narrowly rejected the proposals and advised the district council of their views.
6. On 23 June 2005, after considering the results of the consultation exercise, the district council resolved to adopt the parking proposals. Councillor Mills did not attend this meeting in any capacity.
7. The leader of the district council complained about Councillor Mills' conduct to the Standards Board who referred the matter for investigation back to the monitoring officer of Y District Council.
8. Due to his conflict of interest, the monitoring officer appointed another lawyer (the investigating officer) to investigate the matters and to prepare his report.
9. a) During the investigation, Councillor Mills stated that while she and her stepsister did grow up together as teenagers, they were never very close and had subsequently grown apart, only meeting at infrequent family occasions.  
b) She also stated that she could not accept that she could have had a personal and prejudicial interest at the parish meeting of the 19 April but not at the district meeting of the 24 January 2005.

## Questions

You are informed that:

- The large bundle of documents accompanying the report has only been sent to you, and not yet to any of your colleagues on the standards committee.
- Assuming that the standards committee accepts all the monitoring officer's findings, one issue to be decided is how the committee deals with the allegation where there is a finding of no breach. Is the committee which subsequently hears the case to be made aware of this allegation?
- Time is ticking on and it is unclear when the pre-hearing process, which is outlined in the Standards Board for England's guidance, should start.

- 1. What paperwork should be distributed?**
- 2. Who should receive a copy of the paperwork?**
- 3. What challenges, if any, could arise if only the report is distributed?**
- 4. Is the committee allowed to decide that all of the allegations should be heard, where the monitoring officer has found that there is no breach in relation to one of them?**
- 5. What advice needs to be given regarding the paperwork to be provided to the committee hearing the case, in relation to the monitoring officer finding that there has not been a breach in relation to one allegation?**

The standards committee meets to consider the monitoring officer's finding of no breach and decides to hear all of the allegations.

It is decided that the council will follow the Standards Board for England's recommended hearing procedure.

- 6. Who should be advising you as the chair?**
- 7. Would you consider that a member of the council's legal team should present the monitoring officer's report?**
- 8. Would you consider that a member of the council's legal team should advise the standards committee?**
- 9. Could there be challenges to any of these decisions?**

There are ten members of the standards committee (four elected members, four independent members and two parish representatives). The leader of Y District Council does not believe that elected members should be in the majority on the committee to hear cases.

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**10. Does the committee need to have parish members on it to hear the case?**

**11. What other options are available to standards committees for hearings?**

**12. Can the committee sanction the member with respect to both her councils?**

Both of the parish representatives on the committee are members of X Parish Council and as Councillor Mills has been a colleague of one and an adversary of the other for a number of years, they ask the monitoring officer for advice as to whether they have any interests.

Also, one of the independent members of the committee informs you that he may have a problem. He tells you that he is a member of the same local Masonic lodge as Councillor Mills' husband, who has been a member there for a number of years.

**13. What issues are raised by the positions of the parish members and the independent member?**

**14. How does this affect the membership and make-up of the committee?**

Councillor Mills writes to the council saying that she has refused to take any part in the pre-hearing procedure, except to say that she disagrees with the entire report. Despite numerous requests, she refuses to elaborate on which facts she disputes.

In view of this, the committee's legal adviser has suggested that the standards committee may decide that it is incumbent on the investigating officer to prove the case set out in the monitoring officer's report. This will mean he will be required to call all eight of his witnesses.

The case is listed for the penultimate day of the three-month period, and in the week before the hearing, Councillor Mills writes to say that she wants to bring six witnesses to give evidence. However, she refuses to say what they will be giving evidence about, save that some will be about her character and some on the facts.

Councillor Mills says that in order to properly prepare her case and her witnesses, she needs a lot more time and thinks that the hearing should not be held for a further three months, when all of her witnesses will be available and she could properly defend herself. She also confirms that she wants all of the monitoring officer's witnesses to be made available so that she can cross-examine.

The committee's legal adviser contacts you to discuss these latest developments.

- 15. Are there any circumstances in which the three-month time limit can be extended?**
- 16. What is the likely response from the Standards Board for England to any request for an extension?**
- 17. What should the council's position be in response to Councillor Mills?**
- 18. How would you respond to the legal adviser's suggestion about the investigating officer's witnesses?**
- 19. How would you deal with Councillor Mills' requests regarding the witnesses?**

Later, Councillor Mills says that she wants to question the investigating officer at the hearing because she is very unhappy with the report, and thinks that he needs to answer his critics.

- 20. How would you deal with Councillor Mills' request to question the investigating officer?**

In advance of the hearing, you wonder how much information should be available to the public and decide not to release any of it, apart from the agenda setting out the date, time, place and title of the matter to be decided. Councillor Mills has written to say that she wants it all to be dealt with in private, as she doesn't want it to be in the press. You are aware that a reporter from the local paper has already indicated that he is going to attend the meeting and wants a copy of the relevant papers.

- 21. How would you deal with Councillor Mills' request to have the hearing in private?**
- 22. What information should be made available to the public:**
  - a) in advance of the hearing?**
  - b) during the hearing?**
  - c) after the hearing?**
- 23. How will you deal with the reporter before, during and after the hearing?**

On the morning of the hearing, Councillor Mills approaches you and says that she has brought a further three witnesses to give evidence.

- 24. How do you respond to this late request for witnesses?**

The committee decides to hear witnesses, but the committee's legal adviser requests that the witnesses remain outside the room until they have given their evidence. Councillor Mills objects to this.

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**25. What advice would you get from the legal adviser on this objection?**

The complainant (the leader of the council) had indicated that she wanted to attend the hearing and make a statement. She turns up on the day and says to you and the legal adviser that she wants to speak and ask questions of both the investigator and Councillor Mills.

**26. How do you respond to the complainant's request?**

The hearing is held in public and, during the hearing, the proceedings become rowdy and fraught. Members of the public in the audience continually interrupt the proceedings expressing dissatisfaction with the comments being made by the investigator. They begin to heckle almost continuously, which the committee finds distracting. You stop the investigator speaking, and then ask the members of the public to be quiet. One of them answers back and says that the investigator does not know what he is saying, and would like to ask him a few questions. One of your members on the committee seems persuaded by this and publicly asks if this is possible.

**27. What advice would you expect from the legal adviser?**

The committee decide that Councillor Mills failed to comply with paragraphs 5(a), 9 and 12 of the parish council's Code of Conduct with respect to the parish council meeting, and paragraph 9 of the district council's Code of Conduct with respect to the district council meeting.

They decide to suspend Councillor Mills for three months and require her to undertake formal training with the monitoring officer on the two Codes of Conduct, with emphasis on personal and prejudicial interests. Councillor Mills gets up and says she is outraged, and will appeal.

The written decision of the standards committee is issued a week later, which sets out the decision and adopts, word for word, the reasoning in the monitoring officer's report.

The next day, Councillor Mills calls the monitoring officer and says that the members of the committee have got it in for her, and that is why they made the decision. She says that she will appeal, and that until the appeal is sorted, she will continue to act as a councillor.

The clerk of X Parish Council has also contacted you and the monitoring officer, complaining that Councillor Mills has turned up to meetings and demanded to speak, as it is her right to do so as a councillor.

**28. What advice should be given to Councillor Mills and the clerk?**

**29. Are there any problems with the written decision?**