

PRIVATE AND CONFIDENTIAL

Case Reference: SRBC1 Councillor Marsh – Final Report

Report of an investigation under Section 59 of the Local Government Act 2000 by John Stone appointed by monitoring officer for South Ribble Borough Council into an allegation concerning Councillor Marsh.

DATE: 9 July 2009

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1 Executive summary

1.1 The first complaint alleges that on 17th March 2009 Cllr Marsh delivered copies of the Council's Forward newspaper in the Bamber Bridge West area and at the same time delivered a Conservative party political leaflet. Cllr Marsh was paid by the Council for delivering the Forward newspaper, which could suggest the Conservative council is paying its councillors to deliver Conservative political leaflets at taxpayer's expense.

1.2 *Comments about the second complaint omitted.*

Both allegations are made by Cllr Watts in a letter to the Monitoring Officer dated 18th March 2009.

1.3 In relation to the first complaint I have considered the following provisions of the Code of Conduct: -

- i) Para 5 You must not conduct yourself in a manner which may reasonably be regarded as bringing your office, or authority, into disrepute.
- ii) Pare 6(b) You must when using, or authorising the use by others of the resources of your authority (ii) ensure that such resources are not used improperly for political purposes [including party political purposes].

In relation to the second complaint I have considered the following provisions of the Code

- i) Omitted – only relevant to second complaint*
- ii) Omitted – only relevant to second complaint*

1.4 I conclude that there have been breaches of the Code on both occasions.

2 Cllr Marsh's official details

2.1 Cllr Marsh was elected to office on May 2006 for a term of four years.

2.2 Cllr Marsh currently serves on the following committees:

- 2.2.1 Vice Chair Eastern Area;
- 2.2.2 Planning;

and has also served in recent years on

- 2.2.3 Policy and Service Review Scrutiny Committee
- 2.2.4 Equality and Diversity

- 2.3 Cllr Marsh gave a written undertaking to observe the Code of Conduct on 21st October 2004.
- 2.4 Cllr Marsh has received the following training on the Code of Conduct:
 - 2.4.1 Ethics and Standards - Conduct in Local Government - 25 September 2007
 - 2.4.2 1 hour course - 3rd March 2009.

3 The relevant legislation and protocols

- 3.1 The council has adopted a Code of Conduct in which the following paragraph[s] is/are included:
 - Para 5 You must not conduct yourself in a manner which may reasonably be regarded as bringing your office, or authority, into disrepute.
 - Pare 6(b) You must when using, or authorising the use by others of the resources of your authority (II) ensure that such resources are not used improperly for political purposes [including party political purposes]
 - ***Omitted – relevant to second complaint***
 - ***Omitted –relevant to second complaint***

4 The evidence gathered

- 4.1 I have taken account of oral evidence from:
 - i. Cllr David Watts
 - ii. Martin O’Loughlin
 - iii. Darren Cranshaw
 - iv. Omitted-relevant to second complaint***
 - v. Omitted- relevant to second complaint***
 - vi. Omitted- relevant to second complaint***
 - vii. Omitted-relevant to second complaint***
- 4.2 I have also taken account of the following documentary evidence:
 - i. An email dated 17th March 2009 from M O’Loughlin
 - ii. Forward delivery instructions
 - iii. Leyland Guardian 25th March 2009
 - iv. Omitted – relevant to second complaint***

- v. **Omitted – relevant to second complaint**
- vi. **Omitted – relevant to second complaint**
- vii. **Omitted – relevant to second complaint**
- viii. **Omitted – relevant to second complaint**

4.3 Cllr Watts is the complainant in this case and is the deputy leader of the Labour group. He is unable to give direct evidence of the facts in this case, but has received information from others upon which the complaints are based.

Martin O’Loughlin is the Council’s Democratic Services Manager. Because of his frequent contacts with members he is often asked, where there is a problem with a member, to speak them on the council’s behalf.

Darren Cranshaw is the Council’s Community Engagement Manager and has responsibility for all aspects of the Forward paper.

The remainder of this para has been omitted due to it being relevant only to the second complaint

- 4.4 On 17th March 2009 Cllr Marsh delivered the Council’s Forward newspaper in the Bamber Bridge West area. At the same time he distributed a political leaflet for the Conservative party relating to the county council election. This occurred at around 11am when many people would be at work.
- 4.5 Whilst he delivered in excess of 1600 copies of the Forward newspaper he states that he delivered only 70-80 political leaflets. There is no evidence to contradict that figure. The Council pays 10p per copy delivered. Since this incident Council policy has changed and councillors are not allowed to deliver Forward.
- 4.6 He says that he appreciated he should not insert the leaflet inside the newspaper, but did not at the time consider it wrong to deliver the two together.
- 4.7 He did not accept that a taxpayer seeing him deliver the two items together would think that he was effectively being paid by the Council to deliver party political material.
- 4.8 I take a contrary view and find that any reasonable observer in full possession of the facts would come to just that conclusion. Whilst it may seem a waste of time to deliver the newspaper to 70 or 80 houses and then retrace one’s step with the leaflet, for the sake of propriety it is necessary to separate the two activities.
- 4.9 Cllr Marsh’s actions were reported to Cllr Watts, who in turn telephoned the Council. The matter was passed to Martin O’Loughlin who called Cllr Marsh.

4.10 In mitigation it appears that once he was contacted by Martin O'Loughlin he accepted the mistake he had made and gave an undertaking not to repeat his actions. He had by then delivered all the leaflets.

4.11 It appears that even if Cllr Marsh did not fully appreciate what he was doing was wrong, he saw the possibility for conflict and chose not to properly explore it. He accepts it would have been wrong to put the leaflet inside the paper. This seems to be an artificial distinction.

Paras 4.12 to 4.29 have been omitted as being only relevant to the second complaint

4.30 Cllr Marsh told me that he has not had formal training on all aspects Of the Code of Conduct. He accepts that this is probably due to his Membership of the Idle Toad Party at the relevant time and their Attitude to such training. *The remainder of para deleted as being relevant to the second complaint*

4.31 I subsequently found that he had training in 2007 (see 2.4.1)

4.32 Para 1(3) of the Code states that it is the member's responsibility to comply with the Code.

5 Summary of the material facts

5.1 On 17 March 2009 Cllr Marsh delivered the council paper with political leaflets.

5.2 The paper and leaflets were in separate places but were pushed through the letterbox together.

5.3 When he was challenged by an official he had delivered all the leaflets, but undertook not to do it in future.

The remainder of para 5 has been omitted as it is only relevant to the second complaint.

6 Reasoning as to whether there have been failures to comply with the Code of Conduct

6.1 Bringing office or authority into disrepute:

6.1.1 Cllr Marsh clearly recognised the potential problem in delivering both items together. He admitted that ideally he would have inserted the leaflet in the paper before leaving home, but knew that was wrong. I do

not accept that having one in a Council bag and the other in a pocket sufficiently distinguishes his actions.

6.1.2 The test is objective, not what Cllr Marsh thought. I conclude that a member of the public who observed his actions would consider he was furthering his party's interests whilst being paid by the Council.

6.1.3 Cllr Marsh therefore brought both his office and the authority into disrepute.

6.2 Improper use of resources:

6.2.1 The authority was effectively paying Cllr Marsh to walk around the estate delivering Forward. To deliver party political leaflets at the same time constitutes a misuse of resources.

6.2.2 I conclude he did misuse the authority's resources for a political purpose.

6.3 Omitted – relevant only to the second complaint

6.4 Omitted – relevant only to the second complaint

6.5 In respect of each alleged breach, I have used the balance of probabilities test, ie is it more likely than not that a breach occurred.

7 Finding

7.1 Bringing office or authority into disrepute:

7.1.1 I conclude that Cllr Marsh did bring both his office and authority into disrepute by delivering Forward and a Conservative leaflet together.

7.1.2 The breach is potentially serious as it could undermine Cllr Marsh's standing and more importantly bring into question the Council's impartiality.

7.1.3 In mitigation, at most Cllr Marsh delivered 80 leaflets and at a time when many people would be out and unaware that the items had been delivered together. He stopped when it was drawn to his attention and has shown contrition.

7.2 Improper use of resources:

7.2.1 I conclude that delivering a political leaflet whilst being paid by the Council constitutes a breach of the Code.

- 7.2.2 Again, the breach is potentially serious as it could undermine Cllr Marsh's standing and bring into question the Council's impartiality.
- 7.2.3 However Cllr Marsh delivered at most 80 leaflets at the same time as the paper, which equates to a maximum £8 paid by the Council.
- 7.2.4 It is a maxim of criminal law that a single action should not normally lead to more than one charge. I would suggest the same should apply to Code breaches. In view of this and the minor amount of resources involved, I would not consider it necessary to pursue this breach. The seriousness of Cllr Marsh's conduct is better reflected in a finding that he breached Para 5.

7.3 Omitted – no relevance to this complaint

7.4 Omitted – no relevance to this complaint

7.5 General

- 7.5.1 It is my view that these breaches have occurred through ignorance rather than being a deliberate flouting of the rules.
- 7.5.2 However ignorance of the law is no defence. Again that may be due to naivety and the influence of more experienced politicians.
- 7.5.3 In my view if Cllr Marsh accepted he had breached Para 5 and Para **(deleted – relevant to second complaint)** that would be sufficient and meet the merits of the case.
- 7.5.4 I prefer not to recommend penalties at this stage as it appears to me presumptuous before the Standards Committee has found a breach or breaches.
- 7.5.5 However my preliminary view, particularly if Cllr Marsh continues to show contrition by formally admitting the breaches, is that these are at the lower end of the scale.
- 7.5.6 He has cooperated fully with my enquiry, putting me in touch with additional witnesses and was generally frank in interview.

Appendix A

Schedule of evidence taken into account

Case No: SRBC/1

Core documents

Doc No	Description	Pages
1	Allegation letter	1
2	Cllr David Watts	
3	Martin O'Loughlin	
4	Darren Cranshaw	
5	<i>Omitted – relevant to second complaint</i>	
6	<i>Omitted – relevant to second complaint</i>	
7	<i>Omitted – relevant to second complaint</i>	
8	<i>Omitted- relevant to second complaint</i>	

Documentary evidence

Doc No	Description	Pages
1	An email dated 17 th March 2009 from M O'Loughlin	
2	Forward delivery instructions	
3	Leyland Guardian 25 th March 2009	
4	<i>Omitted- relevant to second complaint</i>	
5	<i>Omitted-relevant to second complaint</i>	
6	<i>Omitted-relevant to second complaint</i>	
7	<i>Omitted-relevant to second complaint</i>	
8	<i>Omitted-relevant to second complaint</i>	

List of unused materials

Investigator's notes of interviews

Correspondence

[Allegation letter]

DAVID WATTS

I am a South Ribble B.C. Councillor and Deputy Leader of the Labour Group. On the 17th March I became aware that the Council's Forward newspaper had been delivered with a Conservative Party political leaflet. I therefore contacted the Council to speak to the editor who was unavailable. I spoke to Martin O'Loughlin who promised to investigate and get back to me, which he did later. It transpired that it was Cllr Marsh who had been delivering the paper and leaflets.

I was at the Eastern Area committee meeting that same evening with Cllr Marsh. His attitude was that he had done this wrong, but 'so what'. I did not think that his attitude was appropriate and I thought it was more serious than he seemed to think. I therefore made a formal complaint the following day.

The Leyland Guardian later contacted me in relation to this matter and an article appeared in the paper on 25th March. Again Cllr Marsh appears to trivialise the incident, which I regard as serious and one that reflects badly on the good name of the Council.

The remainder of the statement has been omitted due to it not being relevant to this complaint

Signed as a correct record.....

Dated.....

MARTIN O'LOUGHLIN

I am the Council's Democratic Services manager. I am responsible, amongst other things, for servicing the needs of the members and I have considerable dealings with councillors in my role. As a result of that it is common when it is necessary to speak to a councillor that I, or one of my colleagues, is asked to do it.

On the 17th March Tony Stirland from the Policy department related to me a complaint that he had received about Cllr Marsh. He was said to be delivering copies of the Council's Forward newspaper and at the same time delivering a Conservative party political leaflet. I therefore rang Cllr Marsh at around 11.30am to discuss the matter. He admitted that he had been delivering both the newspaper and the leaflet. He stressed that they were kept in separate bags and the leaflet was not put inside the paper when delivered. He assured me that he would not do this in the future and had in fact run out of the Conservative party literature. I pointed out to him that as he was being paid to deliver the Council newspaper he was using Council resources to deliver a political leaflet, which was not allowed.

Having spoken to Cllr Marsh I emailed a number of colleagues with details of my conversation to appraise them of the situation. I also spoke to Cllr Watts who I was aware was one of the Cllrs who had made a complaint to advise him of my conversation with Cllr Marsh.

The impression I got was that Cllr Marsh had not fully thought through the implications of delivering the two leaflets together rather than that he had deliberately acted in this manner.

Signed as a correct record.....

Dated.....

...

DARREN CRANSHAW

I am the Council's Policy and Community Engagement manager.

One of my duties is to take responsibility for the Council's Forward magazine. This is a quarterly magazine distributed to every household in the Borough, approximately 48,000 homes.

We have found that the most efficient way of delivering this paper is through staff and other Council volunteers. The opportunity to distribute is advertised internally.

Cllr Marsh offered to distribute the Spring issue. This was by no means the first time that he had been involved in delivering the paper. The average round is 1,500 and we pay 10pence per copy.

There is a one sheet instruction leaflet which is given to all distributors when they collect the papers for delivery. This did not at the time specifically prohibit the delivering of other material with Forward. We have amended the instructions in time for the next magazine copy to specifically prohibit the delivery of other items with Forward unless expressly agreed by the Council. However I would expect a councillor to appreciate that it was inappropriate to deliver party political literature with a Council publication when being paid by the Council.

The paper has been going since 1992. I am not aware of any other complaints in relation to the delivery of the paper of a similar nature to this. I would expect in my position that I would have been made aware of any such incident.

On the 17th March I was made aware by my colleague Martin O'Loughlin that Cllr Marsh had delivered Conservative literature at the same time as Forward. He was speaking to Cllr Marsh about it and I have therefore never discussed the matter with him.

Signed as a correct record.....

Dated.....

All other statements excluded – not relevant to the complaint at hand