

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.

NB – All references to the first complaint have been omitted

DATE: 9 July 2009

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1 Executive summary

1.1 Omitted – relevant only to first complaint – already deal with by Standards Committee

1.2 The second complaint alleges that at a meeting of the Eastern Area committee on the 20th January 2009 Cllr Marsh declared a personal interest, when in fact he had a prejudicial interest, in an item relating to Gregson Lane Cricket club and their request for financial assistance for an event held on the 4th May 2009.

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 (Omitted – relevant only to first complaint)

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

- i) Para 6(a) You must not 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
- ii) Para 12(i) where you have a prejudicial interest in any business of your authority you must withdraw from the room or chamber where a meeting considering the business is being held

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:

- **Omitted – relevant only to first complaint**
- **Omitted – relevant only to first complaint**
- Para 6(a) You must not 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
- Para 12(i) where you have a prejudicial interest in any business of your authority you must withdraw from the room or chamber where a meeting considering the business is being held

4 The evidence gathered

4.1 I have taken account of oral evidence from:

- i. Cllr David Watts
- ii. **Omitted - relevant only to first complaint**
- iii. **Omitted - relevant only to first complaint**
- iv. Andy Houlker
- v. Cllr Tom Sharratt
- vi. Stuart Cross
- vii. Les Simpson

4.2 I have also taken account of the following documentary evidence:

- i. **Omitted– relevant only to first complaint**
- ii. **Omitted– relevant only to first complaint**
- iii. **Omitted– relevant only to first complaint**
- iv. Minutes of Eastern Area committee 20th January 2009
- v. Letter from Cllr Sharratt dated 9 April 2009
- vi. Letter from Cllr Sharratt dated 30 May 2009
- vii. Application for grant
- viii. Correspondence regarding cricket development plans

- 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.

Omitted– relevant only to first complaint

Omitted– relevant only to first complaint

Andy Houlker is the Senior Democratic Services manager who took the Minutes of the Eastern area committee on the 20th January 2009.

Cllr Sharratt is the councillor who was privy to the same confidential information as Cllr Marsh, but who declared a prejudicial, rather than simply a personal interest.

Stuart Cross was Gregson Lane’s club secretary and held the meeting in 2007, which later led Cllr Sharratt to declare a prejudicial interest. He describes the club’s development plans in his statement and accompanying documents.

Les Simpson was on the organising committee for the cricket event with Cllr Marsh.

- 4.4 **Omitted– relevant only to first complaint**

- 4.5 **Omitted– relevant only to first complaint**

- 4.6 **Omitted– relevant only to first complaint**

- 4.7 **Omitted– relevant only to first complaint**

- 4.8 **Omitted– relevant only to first complaint**

- 4.9 **Omitted– relevant only to first complaint**

- 4.10 **Omitted– relevant only to first complaint**

- 4.11 **Omitted– relevant only to first complaint**

- 4.12 On 20th January 2009 Cllrs Marsh, Watts and Sharratt attended an Eastern Area committee meeting, together with other members.

- 4.13 An application by Gregson Lane cricket club for financial assistance towards funding of a charity event was on the agenda. The club were asking for £400 towards the event which was to be held on 4th May 2009 at Hoghton cricket club

- 4.14 When the matter was first raised Cllr Sharratt immediately declared a prejudicial interest, stating that he was in possession of confidential information. He immediately left the room and took no part in the debate.
- 4.15 Cllr Marsh declared a personal but not prejudicial interest. He stated that he had been asked to umpire the said cricket match.
- 4.16 Cllr Marsh in fact is the club's registered umpire for this season and has umpired on occasions for the club in the past. I do not consider the failure to mention previous umpiring to be of great significance.
- 4.17 Cllr Marsh was asked by the club members to assist in the completion of the application for financial assistance by the club and was on an organising committee.
- 4.18 Cllr Sharratt says that he withdrew from the meeting because of information he received in a meeting with the cricket club secretary Stuart Cross. Cllr Marsh was also present at that meeting which took place in February 2007. Cllr Sharratt says that the information related to finances and development of the cricket club and was given to him in confidence. He felt unable to divulge that information to me during interview as he was told it in confidence. He is adamant that the information given had such a bearing on the application for financial assistance on the 4th May that it required him to declare a prejudicial interest and leave.
- 4.19 Cllr Marsh vaguely recollects the meeting when he was a relatively new councillor and was asked to accompany Cllr Sharratt. He recollects being told that the cricket club were considering buying a piece of land as a cricket pitch. At that stage he had not acted as an umpire for them and was not a member of the club. He does not recollect any further discussion and does not accept that any information given to him at that meeting had any bearing on the application on 4th May
- 4.20 I spoke to Stuart Cross to ascertain his recollection of the meeting. He was slightly reluctant to get involved, but did tell me that the meeting took place and that it solely related to the club's plan to move to another pitch. This would involve the Council purchasing and developing the new site, offsetting that by selling their current pitch for housing. He could not see how the matters discussed at that meeting affected the club's application to the Council in relation to the charity event.
- 4.21 Following this conversation, on 3 June I received a letter dated 30 May 2009 from Cllr Sharratt. He had been released from his promise of confidentiality. Essentially he confirmed what I had been told about the meeting by Cllr Marsh and Mr Cross.
- 4.22 I conclude that the information given to the councillors in February 2007 had no significant bearing on the application before the committee on

20 January 2009. The information related to long term development of the club, which was at best on the back burner in January 2009. A one off charity match was not affected by that knowledge, which by then was in any event in the public domain.

- 4.23 Whilst I would not criticise Cllr Sharratt if he felt more comfortable withdrawing from the meeting, I do not feel that 2007 meeting necessitated Cllr Marsh declaring a prejudicial interest in January 2009.
- 4.24 I was telephoned by a Les Simpson whilst writing this draft report. Rather than set up a formal interview and delay the report I had an informal conversation. His main concern was how my investigation would affect the charity match and I reassured him that the match itself was not my concern. I have therefore submitted my notes of this conversation rather than a formal statement. If at draft report stage anyone takes objection to this, I can take a formal statement from Mr Simpson and a number of people he named who will confirm what he says.
- 4.25 He confirmed that Cllr Marsh was part of a four man organising committee for the event and was party to the preparation of the application.
- 4.26 In interview Cllr Marsh initially accepted he had been part of the organising committee and had advised on the application, but later downplayed his own involvement.
- 4.27 On balance I find that Cllr Marsh was involved in the application to a significant degree, albeit the application itself is just a one page letter.
- 4.28 At the meeting Cllr Marsh declared a personal interest, saying that he had been asked to stand as umpire in the charitable match. He did not mention that he had previously umpired for the club. Of more significance he did not declare his role in the organising committee or the preparation of the application.
- 4.29 Cllr Marsh took no part in the debate on the 20 January, but he did not leave the room during the debate.
- 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. He had training on declaring interests, sadly after 20 January
- 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 Omitted– relevant only to first complaint

5.2 Omitted– relevant only to first complaint

5.3 Omitted– relevant only to first complaint

5.4 On 20th January 2009 Cllrs Marsh, Watts and Sharratt attended an Eastern Area committee meeting together with other members.

5.5 An application by Gregson Lane cricket club for financial assistance towards funding of a charity event was on the agenda. The club were asking for £400 towards the event which was to be held on 4th May 2009 at Hoghton cricket club.

5.6 When the matter was first raised Cllr Sharratt immediately declared a prejudicial interest, stating that he was in possession of confidential information. He immediately left the room and took no part in the debate.

5.7 Cllr Marsh declared only a personal interest. He stated that he had been asked to umpire the said cricket match. Cllr Marsh in fact is the club's registered umpire for this season and has umpired on occasions for the club in the past.

5.8 Cllr Marsh was asked by the club members to assist in the completion of the application for financial assistance by the club and gave some advice. He was a member of the organising committee. He did not declare this at the meeting on 20 January.

5.9 The application was granted with payment limited to £200.

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

6.1 Omitted– relevant only to first complaint

6.2 Omitted– relevant only to first complaint

6.3 Using position improperly to secure an advantage for another:

- 6.3.1 A tribunal has decided that the chair of a band had a personal and prejudicial interest at a council meeting where a grant application for the band was considered. He acted improperly by remaining in the meeting.
- 6.3.2 Presence at a meeting can constitute an attempt to influence the meeting.
- 6.3.3 Whilst Cllr Marsh made much of the fact that the ultimate beneficiary of the grant was the charity, the committee actually conferred the benefit on the cricket club.
- 6.3.4 Whilst Cllr Marsh's involvement with the cricket club was not as strong as being chair, as a member of the organising committee of this event he had a sufficiently close connection.
- 6.3.5 I therefore conclude that Cllr Marsh did use his position as a member improperly to secure an advantage for the cricket club.

6.4 Prejudicial interest

- 6.4.1 Cllr Marsh accepts that he had a personal interest in the application in that he was to take a part in the event for which the grant was sought.
- 6.4.2 I do not believe that either the 2007 meeting or Cllr Marsh's umpiring gave him a prejudicial interest.
- 6.4.3 I find that he failed to declare the full extent of his involvement in the application, in that he was part of the organising committee.
- 6.4.4 I find that a member of the public knowing that he was party to the application would consider that so significant that it was likely to prejudice his judgement.
- 6.4.5 Although it is accepted he took no active part in the debate there is an absolute requirement to withdraw from the meeting.
- 6.4.6 I also rely on the Tribunal decision referred to in 7.3.1.
- 6.4.7 I therefore find Cllr Marsh in breach of Para 12(i)

7.5 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 Omitted– relevant only to first complaint

7.2 **Omitted– relevant only to first complaint**

7.3 Using position improperly to secure an advantage for another:

- 7.3.1 I find that by failing to make a full declaration of his interest, failing to declare a prejudicial interest and failing to leave the room Cllr Marsh did use his position improperly to secure an advantage for another.
- 7.3.2 I would make the same comment as at 8.2.4. Cllr Marsh did one thing wrong and should not in fairness be found to be in breach twice.
- 7.3.3 I do not think Cllr Marsh had any intention to wrongly obtain money. I think he was blinded by the charitable aspect of the application and failed to examine his conduct closely enough.
- 7.3.4 I think his wrongdoing is better reflected by paragraph 12(i).

7.4 Prejudicial interest

- 7.4.1 Clearly, as he accepted, Cllr Marsh had a personal interest in the application.
- 7.4.2 However I find that he also had a prejudicial interest and was obliged to leave the meeting as Cllr Sharratt had done (albeit for a wholly different reason).
- 7.4.3 Case law makes it clear that taking no active part in the meeting, even withdrawing to the public gallery, is not sufficient. Mere presence may influence the meeting.
- 7.4.4 I believe that this is again a case of Cllr Marsh failing to think the matter through fully. In his own mind this was a charity event and there was no personal benefit to him. However it should have been obvious that he should not remain in the room when an application he was party to was being considered.

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 **omitted– relevant only to first complaint** and Para 12(i) 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	Omitted	
4	Omitted	
5	Andy Houlker	
6	Cllr Tom Sharratt	
7	Stuart Cross	
8	Les Simpson	

Documentary evidence

Doc No	Description	Pages
1	Omitted	
2	Omitted	
3	Omitted	
4	Minutes of Eastern Area committee 20 th January 2009	
5	Letter from Cllr Sharratt dated 9 April 2009	
6	Letter from Cllr Sharratt dated 30 May 2009	
7	Application for grant	
8	Correspondence regarding cricket development plans	

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.

Omitted paras – relevant to first complaint

I was present at the Eastern Area committee on the 20th January, together with Cllrs Marsh and Sharratt. When we reached item 48 on the agenda, Cllr Sharratt immediately declared a prejudicial interest as he was in receipt of confidential information. He promptly left the room and took no part in the debate. Cllr Marsh declared a non-prejudicial personal interest as he had been asked to umpire a cricket match as part of the event for which the cricket club were asking for financial assistance. I do not recall him taking any part in the debate, but he certainly remained in the room throughout.

I subsequently found that Cllr Marsh also knew the confidential information that Cllr Sharratt felt disqualified him from the meeting. I am aware that the information is of a financial nature, but I am not aware of the details. It appears to me that if Cllr Sharratt should have left, so should Cllr Marsh.

Signed as a correct record.....

Dated.....

Two Omitted statements – relevant to first complaint only

ANDY HOULKER

I am Senior Democratic Services officer and in that role was present at the meeting of the Eastern Area committee held on the 20th January 2009.

Also present at that meeting were Cllrs Sharratt, Marsh and Watts. Minute No. 47 indicates that an urgent item of business relating to Gregson Lane cricket club's application for financial assistance had been accepted after the papers had been sent out. However members of the committee would have been made aware that the Chairman had authorised the consideration of that item of business.

When item 48, the request for financial assistance, was mentioned Cllr Sharratt immediately declared a prejudicial interest, saying he was in receipt of confidential information. He thereupon left the room whilst the item was being discussed. Cllr Marsh declared a non prejudicial interest saying that he had been asked to umpire a cricket match as part of the event under discussion. He remained in the meeting throughout the discussion on this topic, but both from memory and from my notes I can say that he took no part in the debate itself.

The committee decided to award £200 of the £400 requested to the cricket club and I am aware that it was paid as I processed the payment order.

Sometime after the meeting, possibly a week or so later, Cllr Sharratt asked me what interest Cllr Marsh had declared. I told him that he had declared a non-prejudicial interest and had not left the meeting. Cllr Sharratt informed me that Cllr Marsh was privy to the same confidential information as himself. We then discussed that information and found that it appeared to relate to the general development plans and finances of the club rather than the specific event on the 4th May. Cllr Sharratt had not sought advice as to the nature of his interest beforehand, but may not have not been obliged to withdraw from the meeting had he done so.

Cllr Marsh declared his interest was that the cricket club had asked him to stand as umpire in the community event. I am aware that he does carry out umpiring duties as he has declared unavailability on certain evenings because of this.

I have not discussed with Cllr Marsh the question of what information he was privy to from the club

Signed as a correct record.....

Dated.....

TOM SHARRATT

I am a South Ribble B.C. Councillor and have been for over twenty years. I have been on the Eastern Area committee since its creation several years ago.

On the 20th January 2009 I attended an Eastern Area committee meeting. Both Cllrs Watts and Marsh were present at that meeting.

When we reached the item minuted at 48, a request for financial assistance by Gregson Lane Cricket club, I immediately declared a prejudicial interest as I was in receipt of confidential information. I left the room and took no part in the debate on that item. The secretary of the cricket club had given me confidential information in January 2007. This related to financial and developmental plans for the club. In my view it clearly gave rise to a prejudicial interest in the item under debate. Cllr Marsh was also present at that meeting and was privy to exactly the same information as myself. This information was given to me in confidence and I am not prepared to breach that confidence by giving details.

About a week after this meeting I discussed the matter with Andy Houliker, the Senior Democratic Services officer who had been present at the meeting. I confirmed with him that Cllr Marsh had remained in the meeting throughout the discussion on the cricket club. I later saw the minutes of the meeting, which state that Cllr Marsh declared a personal interest as he had been asked to umpire a cricket match as part of the event on 4th May for which the cricket club was seeking financial assistance.

It does not appear to me that this adequately reflects his involvement with the cricket club, as he was not simply invited to act as an umpire at a charity match on this one occasion, but regularly umpires for the cricket club over a period of many years and is closely associated with it.

Further he was part of a working party established to formulate the application to the committee for financial assistance. He attended meetings and was partly responsible for drawing up that application. He did not disclose at the meeting his close involvement in the preparation of the application and was effectively sitting in judgment on his own application.

I believe that the confidential information which both Cllr Marsh and I had necessitated the declaring of a prejudicial interest and absence from the room during any debate on the matter. I also believe that Cllr Marsh's close involvement with the cricket club and in particular with the application that was being debated also precluded his remaining in the meeting.

Omitted paragraph – relevant to first complaint

Signed as a correct record.

Dated.

[Stuart Cross] – The Statement of Stuart Cross is attached to the Committee report as Appendix 12

Notes of telephone conversation with Les Simpson on 3 June 2009.

Mr Simpson explained that my investigation had been discussed in the village pub as a result of questions by a local councillor. He had spoken to Cllr Marsh and was concerned that the enquiry may reflect badly on the charitable event.

I assured him that I was not investigating the bona fides of the event, nor essentially the application. Whilst I could not go into any detail it was purely relating to Cllr Marsh's conduct.

He informed me that Cllr Marsh had been one of a four man organising committee who had been involved in the running of the charitable event. He was involved in the preparation of the application for assistance that was submitted to the Council. The others were Paul Abbot & Greg Gorrall.

I did not question Mr Simpson; all the information was volunteered. I found him to be an open and honest witness with no axe to grind, just a genuine concern that no detriment would be caused to the charitable event.

