

Sent: Tuesday, December 01, 2009 2:43 PM
Subject: RE: Code of Conduct

APPENDIX 5

I refer to the email and attachment of 20 November 2009.

My view is that the event which took place before the 7.00 pm Parish Council meeting was not a meeting of the Council, but an informal opportunity for parish councillors to receive a presentation to which the press and public were invited.

On this basis, the provisions of the code of conduct about declaring personal interests did not apply, because disclosure of such interests is only required at a meeting of the relevant council (paragraph 9(1) of the Code). A "meeting" is clearly defined to be a formal or official meeting of the Council, or its committees, sub-committees etc (paragraph 1(4) of the Code).

However, paragraph 6(a) of the Code would apply to the 6.30 pm event. That paragraph indicates that a member must not use, or attempt to use their position as a member improperly to confer on or secure for themselves, or any other person, an advantage or disadvantage.

If a member uses or attempts to use their position in this way, they would fail to comply with paragraph 12 (1)(c) of the Code (a member must not seek improperly to influence a decision about that business).

Neither of these provisions of the Code has to be linked to a formal meeting of the Authority in the same way as the provisions about declarations of interest.

What is improper influence in this context?

A member making representations, answering questions or giving evidence about a matter in which that member does not have a prejudicial interest, would not be seeking improperly to influence a decision about the matter. He would be entitled to speak about the matter.

Nor would it be improper influence, even if the member did have a prejudicial interest in the matter, provided the public were given the same opportunity to make representations, answer questions or give evidence.

However, in this particular case, the wording of the public notice suggests that although the press and public were invited to attend the presentation, the opportunity to speak was limited to the ten minute break during the later formal Council meeting.

The key, therefore, is whether parish councillors who were also members of the [REDACTED]

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[REDACTED], had a prejudicial interest in the subject matter of the presentation at 6.30 pm.

Councillors who are members of [REDACTED], or in a position of general control or management of it, would have had a personal interest in the presentation if any of it related to or was likely to affect [REDACTED] (paragraph 8 (1)(a)(i) or (ii)).

Assuming this was so, such interests could only be prejudicial under paragraph 10 of the Code if the relevant business (the subject matter of the presentation) affected either the Members' or [REDACTED] financial position, or if it related to the determining of any approval in relation to [REDACTED].

"Affect" in a financial sense, means directly or indirectly, favourably or unfavourably, substantially or marginally.

It is unclear from the correspondence if [REDACTED] will be affected financially by the success or otherwise of the relevant grant application. If they won't be affected, and if (which appears to be the case) the subject matter does not concern any approval relating to [REDACTED], then the relevant councillors cannot have had a prejudicial interest.

Even if I am wrong about this, the councillors' interests would still only have been prejudicial where they were ones which a member of the public, with knowledge of the relevant facts, would reasonably have regarded as so significant that they were likely to prejudice the councillors' judgement of the public interest (paragraph 10(1)).

The judgement about this would be influenced by factors such as the importance of the subject matter (the grant application) to [REDACTED]. What effect will the success of the application have on [REDACTED] and its aims and objectives?

Again, it is difficult from the correspondence to come to a view on this point. Clearly, as indicated, it is debatable whether the councillors' interests would be viewed as so significant that they would be likely to harm or impair the councillors' ability to judge the public interest.

I appreciate that this response does not provide a definitive answer, but I hope that it assists the relevant councillors to come to an informed view of their own. Please let me know, however, if further consideration of the particular circumstances would be helpful.

David Bond
