

PRIVATE AND CONFIDENTIAL

EXTRACT FROM FINAL REPORT

Case Reference: WC 38/09

Report of an investigation under Section 57(A)(2)(a) of the Local Government Act 2000 as amended and Regulation 14 of the Standards Committee (England) Regulations 2008, by Marie Lindsay, appointed by the Monitoring Officer for Wiltshire Council into an allegation concerning Councillor Maurice Flanagan.

DATE: 15th June 2010

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Appendix A Schedule of evidence taken into account and list of unused material

1. Executive summary

- 1.1 On 15th October 2009 the Monitoring Officer of Wiltshire Council received a complaint from Mr Edward Whiting regarding the alleged conduct of Councillor Maurice Flanagan, a member of Dilton Marsh Parish Council.
- 1.2 In summary, the allegation is that Councillor Flanagan has:
- failed to comply with the statutory requirement to register his interests within 28 days of assuming office as a member of Dilton Marsh Parish Council

Remainder of paragraph removed

- 1.3 On 19th November 2009 the Assessment Sub-committee of Wiltshire Council's Standards Committee considered the complaint. In accordance with Section 57A(2) of the Local Government Act 2000, as amended, the Assessment Sub-committee of the Standards Committee decided to refer the complaint to the Monitoring Officer for investigation.
- 1.4 The Monitoring Officer delegated his investigatory powers to Marie Lindsay, Ethical Governance Officer, pursuant to section 82A of the Local Government Act 2000
- 1.5 The investigation was undertaken in accordance with the statutory framework for investigations and guidance issued by Standards for England. The Investigating Officer has found that Councillor Flanagan failed to complete his register of members' interests within 28 days of his appointment to office, thereby breaching paragraph 13 (1) of the Code of Conduct.

Remainder of paragraph removed.

- 1.6 Attached to this report is a schedule of evidence containing the documents referred to in it.

2 Councillor Flanagan's official details

- 2.1 Councillor Maurice Flanagan was co-opted to Dilton Marsh Parish Council on 16th October 2008. He had previously been a member of the parish council for a period of one term ending in approximately 1990.
- 2.2 Councillor Flanagan does not serve on any committees of Dilton Marsh Parish Council.
- 2.3 Councillor Flanagan gave a written undertaking to observe the Code of Conduct on 16th October 2008.

- 2.4 Councillor Flanagan has not received any formal training on the Code of Conduct. However, the Clerk to Dilton Marsh Parish Council has advised that, when a new Councillor is appointed, he personally explains the Code of Conduct to them in general terms and gives them copies of documents including Standards for England's 'The Code of Conduct Guide for Members' and the National Association of Local Councils 'The Good Councillor's Guide'. Additionally, the material on the Code of Conduct issued by Wiltshire Council in August 2009 has been distributed by the Clerk to members of the Parish Council.

3 The relevant legislation

- 3.1 Dilton Marsh Parish Council passed a resolution on 20th September 2007 to adopt the Model Code of Conduct, including paragraph 12(2), in which the following paragraphs are included:
- 13 - (1) *Subject to paragraph 14, you must, within 28 days of -*
 - a. *This Code being adopted by or applied to your authority; or*
 - b. *Your election or appointment to office (where that is later),*

Register in your authority's register of members' interests...details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a) by providing written notification to your authority's monitoring officer

Remainder of paragraph removed.

4 The evidence gathered

- 4.1 I have taken account of oral evidence from:
- The complainant, Mr Edward Whiting
 - The subject member, Councillor Maurice Flanagan
- 4.2 I have also taken account of the following documentary evidence:
- Email correspondence with the Clerk to Dilton Marsh Parish Council

Remainder of paragraph removed

5 The complaint

- 5.1 Mr Whiting's complaint is set out in his email of 12th October 2008 (Appendix A1.2, page 17) as follows:

'Mr Flanagan, a Parish Counsellor for Dilton Marsh failed to disclose his register of interest within the time required.

Therefore, he failed to disclose his interest in 69 The High St, Dilton Marsh.

Remainder of paragraph removed.

5.2 Paragraph removed

5.3 Paragraph removed

5.4 Paragraph removed

6. Summary of the material facts

6.1 Councillor Flanagan is a member of Dilton Marsh Parish Council and as a member of the Council is subject to the Code of Conduct.

6.2 Paragraph removed

6.3 Paragraph removed

6.4 Paragraph removed

6.5 Paragraph removed

6.6 Paragraph removed

6.7 Turning to Mr Whiting's complaint against Councillor Flanagan, the first element of his complaint is that Councillor Flanagan has failed to complete his register of members' interests within the required timescale.

6.8 Mr Whiting confirms that he first became aware that Councillor Flanagan had not completed his register of members' interests when he contacted Wiltshire Council in early October 2009 to find out if Councillor Flanagan had declared an interest in 69 The High Street, Dilton Marsh. These enquiries were made prior to Mr Whiting submitting his formal complaint against Councillor Flanagan.

6.9 Mr Whiting spoke to Henry Powell, Democratic Services Officer, who advised him that Councillor Flanagan's register of members' interest form had not been received at Wiltshire Council. Mr Powell made enquiries with the Clerk to Dilton Marsh Parish Council who confirmed that he did not have a copy of Councillor Flanagan's register of interests. The Clerk advised Mr Powell that he understood from Councillor Flanagan that he had posted his register of interests form direct to Wiltshire Council the previous day.

- 6.10 Upon receipt of the complaint by Mr Whiting on 15 October 2009, further enquiries were made with the Clerk to Dilton Marsh Parish Council about Councillor Flanagan's register of members' interests. On 4 November the Clerk confirmed his understanding that Councillor Flanagan's register of interests form had been sent direct by Councillor Flanagan to Wiltshire Council, although he did not indicate when he thought this had been sent (see Appendix A3.6, page 57).
- 6.11 Councillor Flanagan admits that he failed to complete and return the register of members' interests form within 28 days of his appointment to office. He confirms that upon his appointment on 16th October 2008 he completed his declaration of acceptance of office form straight away and was given the register of members' interests form to take away and complete. He did not understand the significance of returning the form within 28 days and it was not until he was reminded by the Clerk that he returned it direct to West Wiltshire District Council. He returned the form in March/April 2009 and on it he declared an interest in 69 The High Street, Dilton Marsh. He confirms that he sent it direct to West Wiltshire District Council rather than the Clerk because he realised that 'time was of the essence' and he cannot remember the Clerk implying that it must be returned to him. Councillor Flanagan states that he had no reason to believe that the form had not been received.
- 6.12 With regard to the comments of the Clerk in October 2009 stating that he understood that Councillor Flanagan had posted his form direct to Wiltshire Council the previous day, Councillor Flanagan confirms that this must be a misunderstanding on behalf of the Clerk. He has only completed one register of members' interests form and this was sent to West Wiltshire District Council in March or April 2009.
- 6.13 All forms held previously by West Wiltshire District Council were transferred to Wiltshire Council on 1 April 2009. Councillor Flanagan's form was not amongst the records transferred.
- 6.14 Enquiries with the Clerk to Dilton Marsh Parish Council show that the Clerk does not hold the register of members' interests forms for a total of three out of the 13 members of the Parish Council. He confirmed by email on 29 November 2009 that he gave all newly elected or co-opted councillors clear instructions to complete the form and return it to him within 28 days in line with guidance issued by West Wiltshire District Council which stated that: *'the forms should be returned to the Clerk who will check that every question has been answered and then send the form to the Monitoring Officer at West Wiltshire District Council'*. The Clerk confirms that he mistakenly held onto the forms in his possession instead of forwarding them on to West Wiltshire District Council, although he also states that West Wiltshire District Council never asked for the missing forms (see Appendix A3.7, page 58 and Appendix A3.9, page 61).

- 6.15 On 26 November 2009, as part of a county-wide initiative, Wiltshire Council wrote to the Clerk to obtain a complete and up to date set of the register of members interests forms for all members of Dilton Marsh Parish Council. At the time of writing this report Councillor Flanagan's register of interests form has not been received by Wiltshire Council.
- 6.16 With regard to disclosing an interest in 69 The High Street, Dilton Marsh, Councillor Flanagan states that he did include the property on the register of members' interests form that he completed in March/April 2009. However, as already stated, this form was never received by West Wiltshire District Council or its successor, Wiltshire Council.
- 6.17 Paragraph removed
- 6.18 Paragraph removed
- 6.19 Paragraph removed
- 6.20 Paragraph removed
- 6.21 Paragraph removed
- 6.22 Paragraph removed
- 6.23 Paragraph removed
- 6.24 Paragraph removed
- 6.25 Paragraph removed
- 6.26 Paragraph removed
- 6.27 Paragraph removed

7 Councillor Flanagan's additional submissions

- 7.1 In response to the draft report issued on 15th February 2010, Councillor Flanagan has made the following submissions:

'I thank you for your early completion of the draft report. I am happy in the main and agree with your conclusions and hope that this now quickly resolves the matter. It interestingly did raise the issue that late submission of members' interests was not just restricted to myself. The only point that may need alteration is the date I served previously on the Parish Council was about 1990.'

Remainder of paragraph removed.

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

8.1 Councillor Flanagan is accused of failing to comply with the following paragraphs of the Code of Conduct:

- 13 - (1) *Subject to paragraph 14, you must, within 28 days of -*
 - a. *This Code being adopted by or applied to your authority; or*
 - c. *Your election or appointment to office (where that is later),*

Register in your authority's register of members' interests...details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a) by providing written notification to your authority's monitoring officer

Remainder of paragraph removed

8.2 Firstly, I will address the allegation that Councillor Flanagan has failed to submit his register of members' interests within 28 days of the Code of Conduct being adopted by Dilton Marsh Parish Council, or his appointment to office where that is later.

8.3 Dilton Marsh Parish Council adopted the Code of Conduct on 20th September 2007 and Councillor Flanagan was co-opted onto the Parish Council on 16th October 2008. Councillor Flanagan admits that he did not submit his register of interests form until March or April 2009 after being reminded to do so by the Clerk.

8.4 There has been some degree of confusion by the Clerk to Dilton Marsh Parish Council about the procedure for submitting or retaining the forms. However, Councillor Flanagan completed his declaration of acceptance of office on 16th October 2008 and by doing so signed an undertaking to observe the Code of Conduct. The Code of Conduct places the onus on the member to submit their register of interests' form within 28 days of taking office and, by his own admission, Councillor Flanagan did not do this until March or April 2009, some four months later. At the time of writing this report Councillor Flanagan's register of interests form has not been received by Wiltshire Council.

8.5 Turning to the allegation that Councillor Flanagan has failed to declare an interest in no.69 The High Street, there is no doubt that this property is required to be declared by Councillor Flanagan in his register of members' interests. Councillor Flanagan owns a share of the property and his name is on the title deeds.

8.6 By not submitting his register of members' interests until March or April 2009, Councillor Flanagan also failed to register an interest in no.69 The High Street within 28 days of his acceptance of office.

8.7 Paragraph removed

8.8 Paragraph removed

8.9 Paragraph removed

8.10 Paragraph removed

8.11 Paragraph removed

9 Finding

9.1 The finding of the Investigating Officer is that Councillor Flanagan has breached paragraph 13(1) of the Code of Conduct by failing to register his members' interests within 28 days of his appointment to office.

9.2 Paragraph removed

9.3 Paragraph removed

Appendix A

Schedule of evidence taken into account

Case No: WC 38/09

Core documents

Doc No	Description	Pages
A1.1	Email detailing Mr Whiting's initial contact with Wiltshire Council regarding Councillor Flanagan's register of members' interests, 6 October 2009	16
A1.2	Removed	17-21
A.1.3	Complaint form submitted by Mr Whiting, 12 October 2009	22-25
A1.4	Removed	26-27
A1.5	Removed	28-29
A1.6	Removed	30-32
A1.7	Code of Conduct adopted by Dilton Marsh Parish Council on 20 September 2007	33-37
A1.8	Declaration of Acceptance of Office of Councillor Flanagan dated 16 October 2008	38

Notes of telephone conversations, letters, and interviews with witnesses

Doc No	Description	Pages
A2.1	Record of interview with Mr Whiting, 16 December 2009	39-41
A2.2	Letter from Councillor Flanagan in response to the allegations, 4 January 2010	42-43
A2.3	Record of interview with Councillor Flanagan, 14 January 2010	44-45
A2.4	File note detailing points of clarification during a telephone call to Councillor Flanagan, 8 February 2010	46

Minutes of meetings and other documentary evidence

Doc No	Description	Pages
A3.1	Removed	47
A3.2	Report to Standards (Assessment) Sub-Committee, 19 November 2009	48-49

A3.3	Decision notice of Assessment Sub-Committee, 19 November 2009	50-51
A3.4	Letter from Monitoring Officer appointing Investigating Officer, 7 December 2009	52-53
A3.5	Investigation Plan, 8 December 2009	54-56
A3.6	Email from the Clerk to Dilton Marsh Parish Council regarding register of interests forms and adoption of Code of Conduct, 4 November 2009	57
A3.7	Letter from the Clerk enclosing those register of members' interest forms and declaration of acceptance of office forms currently held by him, 10 November 2009	58-59
A3.8	Letter to the Clerk regarding the completed forms, 26 November 2009	60
A3.9	Email from the Clerk concerning the procedures for obtaining register of members' interests forms, 29 November 2009	61
A3.10	Removed	62
A3.11	Removed	63
A3.12	Removed	64
A3.13	Email from the Clerk confirming Code of Conduct training provided to members of the Parish Council, 25 January 2010	65

Councillor Flanagan's comments on draft report

Doc No	Description	Pages
	None to date	

List of unused materials

None