











Case no. SBE05811 
Member: Councillor Michael Mahy
Authority: Swanley Town Council
Date received: 07 May 2009    
Date completed: 03 Aug 2009

Allegation:

The member failed to treat others with respect, brought his office or authority into disrepute, failed to withdraw from a meeting in which he had a prejudicial interest and sought to improperly influence a decision.

Standards Board outcome:

The ethical standards officer found no evidence of any failure to comply with the Code of Conduct.

     The complainants, who are local authority members, alleged that in August 2007 Councillor Michael Mahy wrote and circulated a defamatory letter about a fellow councillor and unreasonably delayed settlement of a claim for defamation brought against him. The claim was eventually settled by the council's insurers. It was further alleged that Councillor Mahy withheld information from the council and the insurers about his letter and improperly influenced the council into paying the 10% policy excess.

The complainants also alleged that Councillor Mahy did not properly declare a prejudicial interest at the meeting at which the insurance payment was considered, and that he only withdrew from the meeting after the discussion about it had begun.

Councillor Mahy stated that he wrote his letter in good faith on behalf of a constituent, and copied it to four people who knew about the constituent's claim that a fellow councillor had treated him badly. When the councillor challenged Councillor Mahy about this letter in September 2007, Councillor Mahy apologised immediately in writing and accepted with hindsight that his comments had been inaccurate. He did not, however, accept that the letter was defamatory and the other councillor pursued him for damages and costs.

There was no court finding of defamation, and Councillor Mahy stated that he resisted the claim for damages but continued to offer to apologise for and retract his comments. In early 2008, he learned that the council had insurance cover for defamation claims against councillors, and put the matter in the council's hands. He said that he provided the insurers with copies of the relevant correspondence and that he did not seek to influence how the council settled the matter or whether it paid the 10% excess. In September 2008, he had attended a council meeting at which schedules of accounts were

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considered. Councillor Mahy said that when he became aware that the accounts referred to the settlement payments, he declared his interest and withdrew.

The ethical standards officer noted that Councillor Mahy's August 2007 letter commented negatively on a fellow councillor's alleged actions and character, describing him as "uncharitable and malevolent". The ethical standards officer considered that remarks about a person's character are capable of being disrespectful. However, in this case she did not consider that Councillor Mahy's conduct amounted to disrespect, although it was arguably unwise and discourteous. His comments on the other councillor's character were not extreme, his language was not abusive and he did not persist in making such comments after being challenged. Councillor Mahy also had the right to freedom of expression, which the Code of Conduct should not restrict disproportionately, and the object of his comments was a fellow councillor with a platform to reply.

The ethical standards officer considered that Councillor Mahy, when he was resisting demands for costs and damages, was acting in his private capacity until he involved the council. She also noted that she did not consider it disreputable for a councillor, even in his official capacity, to resist such a claim when there was no court judgement against him. Her view was that a reasonable member of the public would expect a councillor to apologise promptly if the councillor realised with hindsight that his comments had been ill-founded, and this is what Councillor Mahy had done.

The ethical standards officer saw evidence that the council and its insurers had been given relevant information about the circulation of Councillor Mahy's letter. She found no evidence that he had attempted to conceal the original circulation from the insurers negotiating the settlement.

Therefore the ethical standards officer did not consider Councillor Mahy had brought his office or authority into disrepute.

The ethical standards officer found no evidence that Councillor Mahy had tried to influence the council improperly to use its insurance to settle the claim or to pay the excess. Council officers had delegated authority to deal with the claim and had approved a settlement without reference to Councillor Mahy's views. The council could not have passed the 10% excess on to an individual councillor, as there was no existing council policy allowing it.

The ethical standards officer noted that the schedule of accounts presented in the September 2008 meeting referred to a payment already made and another that was about to be made in respect of the 10% excess. Councillors were not being asked to decide whether any payment should or should not be made on the insurance claim. In those circumstances there was no decision to be made at the meeting in which Councillor Mahy had an interest, and the point at which he declared one and withdrew was irrelevant.






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The ethical standards officer found no evidence that Councillor Mahy had breached the Code of Conduct.

Relevant paragraphs of the Code of Conduct

The allegations in this case relate to paragraphs 3(1), 5, 9 and 12 of the Code of Conduct

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Case no. SBE05815 and 05816 
Member: Councillor David Coates and Councillor Kathleen Coates
Authority: Swanley Town Council
Date received: 06 May 2009    
Date completed: 03 Aug 2009

Allegation:

The members failed to treat others with respect, brought their office or authority into disrepute, failed to declare a personal interest and failed to withdraw from a meeting in which they had a prejudicial interest.

Standards Board outcome:

The ethical standards officer found that the members did not fail to comply with the Code of Conduct.

     The complainant, a councillor, alleged that Swanley Town councillors David and Kathleen Coates had failed to declare personal and prejudicial interests and withdraw from council meetings in September 2008, December 2008 and January 2009. The complainant alleged that the interest arose because the well-being or financial position of David and Kathleen Coates' daughter was affected by the business under consideration, or because their political party's financial position was affected. The business being considered included the council's schedule of accounts, a motion of no confidence in the town mayor and the approval of minutes. The complainant also alleged that Councillor David Coates failed to treat other councillors with respect when he chaired the December 2008 meeting, by limiting a full and open discussion of an officer report, and that Councillor Kathleen Coates acted disreputably by leaving the December meeting during a debate and then returning to vote on the motion.

Both councillors denied that they had any interest in the relevant agenda items. They agreed that their daughter was a friend of the then mayor, but stated that she had no financial relationship with him, so could not have been affected by any council business that could have a direct or indirect impact on the mayor's own finances. Councillor David Coates and Councillor Kathleen Coates both denied that their political party's financial position could have been affected by the business under consideration.

Councillor David Coates said that he had chaired the meeting fairly. He had limited repeated return questions, but had not treated anyone disrespectfully. Councillor Kathleen Coates stated that she had needed to leave the December meeting for a few minutes during a debate on a motion. As she knew the contents of the motion and intended to vote with her party on it, she did not consider that her conduct in returning and voting was improper.

The ethical standards officer concluded that Councillors David and Kathleen Coates' daughter was a 'close associate' of the mayor, as defined by the Code of Conduct, as their friendship was not disputed. However, there was no evidence of any financial relationship. The ethical standards officer concluded in a linked case that the mayor himself did not have a prejudicial interest in the council's schedule of account, which contained details of insurance payments already paid or authorised under delegated authority. The ethical standards officer concluded that in any event, discussion on the schedule of accounts and the debate on a motion of no confidence could not have affected the well-being of the councillors' daughter to a greater extent than other council tax payers. The ethical standards officer found no evidence that that councillors' political party could have had any financial liability regarding the insurance payments referred to in the schedule of accounts, and concluded that Councillors David and Kathleen Coates did not fail to declare personal and prejudicial interests and would not have needed to withdraw from the meetings.

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The ethical standards officer noted that there had been heated debate at the December meeting, requiring firm chairing. She found no evidence that Councillor David Coates had treated others with disrespect.

The ethical standards officer noted that the motion during which Councillor Kathleen Coates left the meeting before returning to vote in December 2008 was a political motion and did not involve any consideration of a planning or regulatory matter. In these circumstances, there was no evidence that Councillor Kathleen Coates had brought her office or authority into disrepute by voting after her short absence.

With regards to the complainant's allegation that the councillors had a personal and prejudicial interest in the approval of minutes in January 2009, the ethical standards officer does not consider that any interest could arise for a councillor when they are approving minutes, as the approval does not involve any further consideration of the original council business set out in them.

The ethical standards officer found no evidence that Councillor David Coates and Councillor Kathleen Coates had failed to comply with the Code of Conduct.



Relevant paragraphs of the Code of Conduct

The allegations in this case relate to paragraphs 3(1), 5, 9 and 12 of the Code of Conduct.

Paragraph 3(1) states that a member must "treat others with respect".

Paragraph 5 states that "a member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute".

Paragraph 9 states that "a member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent".

Paragraph 12 states that a member with a prejudicial interest in any matter must "withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting" and that he must "not seek improperly to influence a decision about that matter".

