

STRICTLY PRIVATE AND CONFIDENTIAL

Case Reference: 2013/09

Members Code of Conduct Investigation

Investigation Report

Subject Member: Cllr Balvinder Bains

Date: 11.6.2013

Investigator appointed by Monitoring Officer:

**Mrs Amardip Healy (Solicitor)
Head of Legal Services
Slough Borough Council
St Martins Place
51 Bath Road
Slough SL1 3UF**

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1. Introduction

- 1.1 I have been appointed by the Council's Monitoring Officer, Kevin Gordon, Assistant Director, Professional Services, to investigate an alleged breach of the Council's Members Code of Conduct.
- 1.2 I am the Council's Head of Legal Services and a solicitor. I am also the Council's Deputy Monitoring Officer, although this report has not been produced by me in that capacity.
- 1.3 I confirm I have investigated this allegation both objectively and impartially.

2 Executive summary

- 2.1 The alleged breach concerns whether the Subject Member, Cllr Balvinder Bains failed to disclose pecuniary interest/s on his Notification of Disclosure Form dated 9.1.2013.
- 2.2 The outcome of my investigation is that the subject member did fail to disclose his pecuniary interests on his 2013 Notification Form, and as such did breach the interests' notification provisions imposed on members.

3 Cllr Balvinder Bains' official details

- 3.1 Cllr Bains was first elected to office in 2003. After a gap of 3 years he was re-elected in 2006 and has served as a member since then.
- 3.2 Prior to Full Council meeting, Cllr Bains served on the following committees: Admissions Forum, Agreed Syllabus Conference, Employment Appeals Sub Committee, Licensing Sub Committee, Neighbourhoods & Community Services Scrutiny Panel, Standing Advisory Council on Religious Education. He also serves on a number of outside bodies.
- 3.3 Cllr Bains has given a written undertaking to observe the Code of Conduct.
- 3.4 Cllr Bains has attended Member training sessions as required by the Council.

4 Legislative requirements on Interests

- 4.1 The Localism Act 2011 introduced a fundamental change to regulation of conduct of elected members. The old Standards Board regime was abolished and a new more locally based scheme was adopted. The legislation however set out certain minimal standards for all new local codes of conduct to comply with.
- 4.2 I believe it would be useful to set out the new requirements and how Slough has adopted them in this report, to enable a clear understanding of the issues raised by the allegation.

- 4.3 A local authority's code of conduct for members is required to contain appropriate provisions for registering and disclosing pecuniary interests and interests other than pecuniary interests. In relation to interests, the Localism Act has set up an entirely new process and procedures.¹
- 4.4 There is a requirement for monitoring officers to establish and maintain a register of members and co-opted members interests, make the register available for inspection and have the register on the Council's website.²
- 4.5 The Localism Act provided for regulations to set out what discloseable pecuniary interests would be. These Regulations were made and came into effect on the 1st July 2012.³
- 4.6 The Regulations specified the pecuniary interests that members are required to include in the register of interests maintained by an Authority. These include any:
- 4.6.1 Employment, office, trade, profession or vocation that the member carries on for profit or gain
 - 4.6.2 Contract between the member and the member's local authority under which goods or services are provided or works are to be executed and that has not been fully discharged.
 - 4.6.3 Beneficial interest in land that is within the authority's area
- 4.7 In short, a Councillor's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property).
- 4.8 Pecuniary interests become disclosable if they fall within a set nature of interests.
- 4.9 Namely a member has a **disclosable** pecuniary interest if he, his spouse or civil partner has a **pecuniary interest listed in the national rules**. Wider party interests are included to ensure that the public can have confidence that Councillors are putting the public interest first and not benefitting the financial affairs of themselves or their spouse, civil partner from which the Councillor could gain.
- 4.10 The register of disclosable pecuniary interests is published to ensure policies of transparency and accountability are complied with by allowing the public to have easy access to publically available information.

¹ Sc 28 of the Localism Act 2011

² Sc 29 of the Localism Act 2011

³ Relevant Authorities (Disclosable Pecuniary Interest) Regulations 2012 (SI 2012/1464)

- 4.11 The purpose behind having disclosable pecuniary interests registered is designed to stop participation in any discussion (business at a meeting) or to vote at such meeting, where such an interest exists.

The Council's Code of Conduct for Members

Route to adoption

- 4.12 The Council adopted a Code of Conduct on the 26th June 2012.⁴ The Code sets out the Rules of Conduct, the Complaints Process and the Investigation and Determination of Complaints. However, the Interests Section of the Code was not included as it was felt that the Government may yet make further amendments to the legislation and regulations on the definition of pecuniary interests.
- 4.13 However, no further changes were made. On the 19th February 2013 the Council amended its Code of Conduct with the addition of further changes and the insertion of an Interests Section in the Code.⁵
- 4.14 Further changes to the Code were proposed at the 16th May 2013 Council meeting.⁶ These have been adopted.

Requirements of the Code of Conduct

- 4.15 The Council's Code of Conduct requires members to act in conformity with the Principles of Public Life (para 1.4 and 1.5). The Principles are set out at para 1.6 of the Code.
- 4.16 There are 7 principles: Selflessness, Integrity, Objectivity, Accountability, Openness, Honest, Leadership
- 4.17 These principles form the core driver for conduct for those in public office when acting on Council business or acting as a representative of the Council. The Code makes it clear that the principles will be taken into account when considering the investigation and determination of breaches of the Rules of Conduct and further that any breach of any of the 7 Principles will be seen as a breach of the Rules of Conduct.
- 4.18 Section 3 of revised Rules of Conduct sets out the requirements on "Interests". The provisions make it clear that Members "shall fulfil conscientiously the requirements in respect of registration and declaration of interests" (para 3.2 of the Code). However, these provisions were not

⁴ Councillor's Code of Conduct
<http://www.slough.gov.uk/moderngov/ieListDocuments.aspx?CId=168&MId=4611&Ver=4>

⁵ <http://www.slough.gov.uk/moderngov/ieListDocuments.aspx?CId=168&MId=4697&Ver=4>

⁶ <http://www.slough.gov.uk/moderngov/ieListDocuments.aspx?CId=168&MId=4870&Ver=4>

included in the Code until February 2013, when the first round of amendments were made to the adopted Code (adopted in June 2012).

- 4.19 The amended Code provides at paras 3.4 to para 3.7 the requirements in relation to registering and declaring interests. They require notification to the Monitoring Officer “of any discloseable pecuniary interests (DPI) as defined by regulations made by the Secretary of State. Appendix 3 to the Code sets out a Guidance Note on DPIs.
- 4.20 Although the “Interests” section of the Code was not adopted until after Members completed and returned their notification forms, the requirements of the Localism Act and the Regulations had come into effect from the 1st July 2012.
- 4.21 On the 26th November, the Deputy Borough Secretary wrote to all elected and Co-opted Members of the Council bringing to their attention the changes introduced by the Localism Act to the Standards regime. In particular, attention was drawn to the changes to the members’ interests’ obligations. The letter included a copy of the Code of Conduct as it stood in June 2012, a copy of the new declarations form, and a copy of the a guide produced for councillors entitled “Openness & Transparent on Interests” dated August 2012.
- 4.22 Irrespective of the Council’s Code of Conduct not having the “Interests” Section at the time the Subject Member completed his form, the registration of personal interests was expected to be guided by the duties contained within the 7 Principles, this was both known and drawn to members’ attention when the new forms were dispatched for completion in November 2012. Members are required to give the Monitoring Officer any information he requests in order to keep the Register up to date and any other information which a member considers should be entered in the register.
- 4.23 If a member has disclosable pecuniary interests which is not shown in the Register and it relates to any business on which a Councillor is acting, a member must, within 28 days of becoming aware of this, inform the Council’s Monitoring Officer and have the interest added to the Register.

The effect of failure to disclose a Disclosable Pecuniary Interest

- 4.24 A criminal sanction has now been introduced where a Local Authority Member fails to disclose, without reasonable cause, a disclosable pecuniary interest. The section empowers a Magistrates’ Court, upon conviction to impose a fine of up to level 5, make an order disqualifying the individual from being a member of a relevant authority for up to five years.⁷
- 4.25 It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of the authority where that business involves a disclosable pecuniary interest.

⁷ Sc34 Localism Act 2011

5 The evidence

- 5.1 I have taken account of oral evidence from the subject member, Cllr Bains, and Ben Taylor, who is employed within Democratic Services as a Labour Group Political Officer. I have not interviewed the Complainant as the complaint is a factual matter of what is included in a public register.
- 5.2 I have also taken account of documentary evidence, namely:
- 5.2.1 Notification by member of a relevant authority of disclosable pecuniary interests dated 9.1.2013
 - 5.2.2 Register of Members Interests Notice of Financial and other interests dated 9.5.2006
 - 5.2.3 Letter dated 26.11.2012 from the Deputy Borough Secretary to all Elected and Co-opted Members entitled "Declaration of Interests"
 - 5.2.4 DCLG leaflet dated August 2012 entitled "Openness and transparency on personal interests. A guide for councillors"
 - 5.2.5 I have also asked for review on what matters Cllr Bains has spoken on at any Committee of the Council since November 2012 to date.

6 Summary of the material facts

- 6.1 The Subject Member has accepted the 2013 Notification Form, as a form he completed, signed and submitted.
- 6.2 The Subject Member has accepted that the 2013 Notification is materially inaccurate in relation to both his employment and membership of a Trade Union.
- 6.3 The Subject Member has confirmed he is not aware of any other inaccuracy in relation to his disclosable pecuniary interests.

7 Subject Members submissions

- 7.1 The Subject Member was asked that up to January 2013 what paid positions did or had he held. This covered both main employments and any membership that required payment for activities.
- 7.2 He confirmed that he had been with his current employer for around 23 years as a member of the security staff. It was a full time job. He was a member of a trade union and paid them a subscription. Although he was a shop steward,

he was not paid for such by the Union. He could claim expenses, but had not done so for some time.

- 7.3 The Subject Member was presented with his 2006 Notification Form. He confirmed it was his form and the information contained therein was accurate.
- 7.4 The Subject Member was then presented with his 2013 Notification Form. He was asked to read Box 1 on the form. On reading it, he confirmed that the information contained in the box was inaccurate.
- 7.5 The Subject Member explained that he must have read the 2013 form wrongly and had made a mistake. He confirmed he still worked for the same employer and that he was still member of a trade union. However, he was no longer a member of the Sikh Trust, referred to in his 2006 Form. He reiterated it was a genuine mistake, he confirmed that he had always worked for his current employer.
- 7.6 He confirmed that he did not receive any payment from his Trade Union, but that his employer, funded trade union time. He said that it is likely that he completed the form at the Council offices, possibly in a rush, and suggests that had he taken it home, as he had done in previous years, he would have read it with greater care. He confirmed that he did not seek any assistance with the completion of the form from officers. This was confirmed by Ben Taylor.

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

- 8.1 The Subject Member accepted that he had failed to complete the 2013 notification accurately in relation to his discloseable pecuniary interests, by:

- 8.1.1 not declaring his employment at BAA,
- 8.1.2 by not declaring his allowances/payments by BAA towards his trade union activities,
- 8.1.3 by not declaring his trade union membership and
- 8.1.4 by not declaring his Labour party membership.

9 Comments on Draft Report

- 9.1 The Councillor's Code of Conduct sets out the procedure for the investigation and determination of complaints. Part 3 of the Code sets out the procedures and processes. Para 6.5 of the Code sets out the process to be followed at the end of an investigation.
- 9.2 Para 6.5 provides as follows:
"At the end of his/her investigation, the Investigating office will produce a draft report. This draft will be sent in confidence to the Complainant and the Subject Member, to give them an opportunity to identify any matter in that draft report which is either factually incorrect or which may require further consideration. Having received and taken into account any comments on the

Draft Report, the Investigating Officer will send the Final Report to the Monitoring Officer”

- 9.3 Para 6.6 sets out the actions the Monitoring Officer will take following the submission of the Report.
- 9.4 Para 6.18 makes it clear that there is no right of appeal against a decision of the Monitoring Officer or of the Standards Determination Sub Committee.
- 9.5 Appendix 9 to the Code sets out the Complaint Flowchart.
- 9.6 Both the Subject Member and the Complainant were sent the draft report in line with para 6.5 of the Code.
- 9.7 The Complainant replied with an email addressed to me, but which was copied into a number of other parties.
- 9.8 The Complainant has not challenged the factual matters covered by the report. He has however raised an additional complaint:

“..He (*the Subject Member*) has declared he owns 3 houses in Slough on the Bath Road he also own other residential properties as well so we are told. He has not declared an interest relating to an income from these!”
- 9.9 Although this allegation was not part of the original complaint, I have added it to the other allegations and investigated it.

Second Complaint

- 9.10 The Subject Member’s Notification Form dated 9.1.2013, is the form against which the complaint of non disclosure of pecuniary interests has been made. My report addresses the breaches that have been accepted. The new issue that has been raised is whether the Notification Form failed to declare any beneficial interests in land which is within the area of the Authority.
- 9.11 Having checked the Subject Member’s 2013 Notification form there is a declaration made in the Land box. The declaration relates to three properties that within the Borough, in which the Subject Member has a beneficial interest.
- 9.12 Much of the new allegations are conjecture, the comment being made “so we are told”, no evidence has been provided to support other properties with a beneficial interest, not being declared as required by the Notification requirements.
- 9.13 The contents of the Notification Form which lead the Complainant to make the Complaint are known to the Complainant.
- 9.14 I have conducted a further interview with the Subject Member, who has confirmed that the only properties he has within the Borough are those as

listed on his 2013 Notification form. He confirmed that he does have any interest in any properties in Bath Road in Slough. He confirmed he owns premises outside the Borough. He sought advice from the Council as to the need to declare and was advised that he did not need. The advice is correct in that Members are only required to declare properties within the Borough boundary. This is because of the potential for conflict of interests.

- 9.15 In terms of the reference to income, there is no requirement for income from rental property to be disclosed on the Notification Form. The Guidance Notes to the Disclosable Pecuniary Interests – Definition & Guidance Note, advises at the Land Section – “You should include any land and buildings in the area of the Borough in which you or your spouse/partner have a beneficial interest. You should give the address or a brief description to identify it...You should also include any property from which you receive rent, or of which you are a mortgagee”.
- 9.16 This makes it clear what should be declared. The Subject Member has whole time employment. There is no evidence to suggest that is running a trade by owning or renting out houses.
- 9.17 My finding on the second new complaint is that the Subject Member has made the required declaration and as such the second new complaint is not upheld.

10 Finding

- 10.1 The duty to complete a Notification Form accurately rests with a Member. The duty rests with Members to ensure they notify the Monitoring Officer of all relevant interests.
- 10.2 The system of notification requires the public to place its trust in the Register.
- 10.3 The complaints that have been made can be summarised as follows:
- 10.3.1 Failed to declare employment
 - 10.3.2 Failed to declare Trade Union member
 - 10.3.3 Failed to declare properties in which beneficial interest held
- 10.4 The issue of what breach has occurred turns on what is meant by disclosable pecuniary interests.
- 10.5 The advice to Councillors from dclg provides:
- “What are pecuniary interests?
A person’s pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are

associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property).⁸

- 10.6 I have found that the subject member, Cllr Balvinder Bains did fail to disclose some of his discloseable pecuniary interests on his Notification Form for 2013. This relates to his employment. Any allowances paid for any trade union activities were provided by his employer and not another body, therefore it is arguable whether there is a requirement for a separate disclosure.
- 10.7 The form does not require declaration of his trade union membership. Being a trade union member is not a discloseable pecuniary interest as it is not carried out for profit or gain.
- 10.8 In the present case, the explanation for not completing the form fully has been a lack of due diligence when reading the form. I would suggest that such a lack of care around the completion of this document is of concern. The system is designed to ensure trust and confidence by being open and transparent.
- 10.9 I believe it is important to note that there is no evidence to suggest that the non disclosure of the Subject Member's interests has in any way compromised his position since November 2012 to date on any Committee where he was present.
- 10.10 The Subject Member did accept the allegation straight away and he offered to complete a new form straight away. Which I understand he has done.
- 10.11 Having reviewed the declaration of Members interests, it does appear that the recent changes have created some confusion. As such I would recommend a review of training needs, the forms and guidance.

⁸ **Openness and transparency on personal interests: guidance for councillors**
[Department for Communities and Local Government](#)

Appendix

1. Schedule of evidence taken into account
 1. Council's Code of Conduct as at June 2012
 2. Extracts of Localism Act 2011
 3. Extract of relevant 2012 Regulations
 4. Complaints from Cllr Strutton
 5. Cllr Bains Notification Form 2006
 6. Cllr Bains Notification Form 2013
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