

**WEST MIDLANDS FIRE AND RESCUE AUTHORITY**

**Standards Committee**

**6<sup>th</sup> June 2011**

1. **CASE SUMMARY**

Report of the Monitoring Officer.

RECOMMENDED

THAT Members note the contents of the report and the decision of the First-Tier Tribunal at Appendix 1 and consider any issues for the Authority.

2. **PURPOSE OF REPORT**

- 2.1 The purpose of the report is to bring to Members' attention a recently decided case which illustrates several aspects of the Code of Conduct for Members and contains useful analysis of the types of factors which determine whether there has been a breach of the Code.

3. **BACKGROUND**

- 3.1 From Spring 2008 the Standards Committee has had responsibility for much of the casework relating to the ethical standards framework.
- 3.2 As well as complying with legislation and guidance the Standards Committee will need to demonstrate learning from issues arising from local investigations and determinations. Further it would be advisable for Standards Committee to be kept informed of any particularly notable cases which are publicised by the Standards Board or the First-Tier Tribunal as they may also add to learning at the local level. It is important to note the type of cases where either there is found to be no breach or where it is determined that no action should be taken as well as cases where sanctions are imposed. Compliance with the law, decided cases, guidance and good practice will increase the effectiveness of the ethical framework within the Authority, minimise the risk of intervention from the Standards Board or the Courts.

- 3.3 The case at Appendix 1 refers to a Councillor at Bournemouth Borough Council and the close association he had with another person and whether this amounted to a personal or prejudicial interest at various meetings particularly in relation to property and planning matters.

#### 4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment is not required and has not been carried out.

#### 5. **LEGAL IMPLICATIONS**

- 5.1 By considering national cases of significance the Standards Committee will be better informed and placed to discharge duties in relation to local assessments, reviews, referrals, investigations and determinations. It is as important to note the type of cases where investigation and action is not considered appropriate as it is to look at the cases which contain serious breaches of the Code of Conduct.
- 5.2 If the Standards Committee and the authority do not learn from national cases of significance they may be perceived as having less than effective ethical governance arrangements and this may increase the risk of attention from the Standards Board who act as regulator.

#### 6. **FINANCIAL IMPLICATIONS**

- 6.1 There are no resource implications arising from this report.

**N SHARMA**  
**MONITORING OFFICER**



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(Local Government Standards in England)**

**CASE NO: LGS/2010/0533**

**ON APPLICATION FROM:**

Bournemouth Borough Council Standards Committee  
Application reference No: 11.09.24/1  
Dated: 8 November 2011

**APPLICANT:** Bournemouth Borough Council  
Standards Committee

**RESPONDENT:** Councillor John Beesley of  
Bournemouth Borough Council

**DATE OF HEARING:** 11 March 2011

**VENUE:** The Hallmark Hotel, Bournemouth

**DATE OF DECISION:** 15 March 2011

**BEFORE**

**Judge: Chris Hughes OBE  
Member: Richard Tyndall  
Member: Keith Stevens**

Attendances:

For the Applicant (SC):  
For the Respondent:

Miss Claire Lefort  
Mr James Goudie QC

**Subject matter:  
the**

**Reference about possible failure to follow  
Code of Conduct**

Cases:

**Gillies v Secretary of State for Work and  
Pensions [2006] 1WLR 781  
Porter v Magill [2002] 2AC 357**

## **DECISION OF THE FIRST-TIER TRIBUNAL**

The Respondent has not been found to have failed to follow the provisions of the Code of Conduct

### **REASONS FOR DECISION**

#### **1 Introduction**

The Tribunal has determined an application from a Standards Committee in relation to allegations that Councillor John Beesley had failed to comply with paragraphs 9 and 12 of Bournemouth Borough Council's Code of Conduct by failing to declare prejudicial interests and failing to withdraw himself from meetings when he has had personal interests.

1.1 The Respondent's response to the reference

1.1.1 The Respondent is the elected member for Westbourne and West Cliff Ward on Bournemouth Borough Council. He has been a councillor since 2000. He is Deputy Leader of the Council and the portfolio holder for Resources. He was Chairman of the Planning Board from August 2007 to July 2010.

1.1.2 In addition, the Respondent is a hotelier and hospitality industry consultant, based in Bournemouth and has been employed or in business there for the past 35 years.

1.1.3 The Respondent intends to show that the investigator is wrong in his concluding that he has breached the Code and brought the offices of Chairman of the Planning Board and that of a councillor into disrepute. He strenuously denies any wrong doing.

1.1.4 It is unclear whether the investigator is alleging that individual gifts or hospitality of over £25 have been received and not declared or whether the allegation refers to the cumulative effect of hospitality between friends over an extended period. If the former, then the allegation is without foundation as no such gifts or hospitality have been received. If the latter, then the correspondence between the Respondent and the investigator will resolve the issue, although this interpretation is contrary to the advice given to members by the officers of the Council.

1.1.5 The Respondent has made complete declarations of all interests and has acted on the advice requested and received from the officers of the Council in respect of all declarations of interest.

1.1.6 The Respondent has always declared personal or prejudicial interests when appropriate within the Code of Conduct, whether in respect of Mr Ramsden or any other individual or concern and in the case of

prejudicial interests has withdrawn from meetings, having declared that he would do so at the start of the meeting.

- 1.1.7 The issue of whether the interests were personal or prejudicial and the interpretation of the Code by the Respondent and by council officers from whom he has sought advice goes right to the heart of the case against him. Alongside that, is whether the advice given by the council's officers was made in the light of a full understanding of the material facts, an issue which the Respondent dealt with in his submission to the investigator and in this response. The Respondent emphasises that he considers that his declarations in respect of Mr Ramsden were personal and he argues that they were not prejudicial. Whenever he has declared a prejudicial interest he has vacated the Chair of the Planning Board and left the room. If this interpretation of the Code is proven to be wrong, then that is another matter, but why would he make that judgement and put himself in such severe jeopardy? Clearly he would not and in any case there would be absolutely no point in doing so. The simple fact is that based on the advice received from officers and in the Respondent's personal judgement, he has always made declarations that he considers to be proportionate and acted on them accordingly. In all his time as a member of the Planning Board he has done his utmost to comply with the word and the spirit of the Code and he believes that he has done just that. Whilst Chairman of the Board he was meticulous in ensuring that he did not lead the members to their decisions and personally he rarely took part in debates, even on applications in his own ward, unless he felt that he had important planning grounds for doing so. In terms of summing up, he always did his utmost to be even-handed around the planning issues and always reminded members of their obligations in planning terms on the specifics of each individual application and the weight of the planning merits, arguments and history to be borne in mind in reaching a decision.
- 1.1.8 The first the Respondent knew of the complaint and the allegations being made against him was when the Bournemouth Daily Echo contacted him on 10 December 2009 seeking a response to the various issues. As he was unaware of the complaints at that stage, their reporter had to read to him the transcript of the complaints, which had been provided to the newspaper by the complainant. Soon after, he was made aware of the complaints by other members and council officers as apparently the complainant had copied the transcript to a number of individuals within Bournemouth Council. Later that same day, 10 December 2009, the Respondent received notification of the complaint made against him in a letter dated 9 December 2009 from the Council's Monitoring Officer. Although already in the public domain, no details were provided to him at that stage by the Monitoring Officer and she confirmed that would remain the case until the Council's Assessment Sub-Committee had considered the matter. Subsequently the Council's Monitoring Officer informed him on 11 December 2009 that she had been instructed by the Assessment Sub-Committee to arrange an investigation and to report back to the Council's Standards Committee.
- 1.1.9 The investigator first made contact with the Respondent on 1 February 2010. There was correspondence between him and the investigator, principally in February 2010 and early March 2010 and

subsequently he had two interviews with the investigator on 18 June 2010 and 16 July 2010. The first was attended by him alone and on the second occasion he was accompanied by his solicitor. There was some further correspondence between the investigator and the Respondent's solicitor in late August/early September 2010 to ensure that the details of declarations were properly understood by Mr Sullivan-Gould. No draft report was offered by the investigator and he delivered his final report to the Council on 20 October 2010.

- 1.1.10 There was detailed correspondence between the Respondent and the investigator in the course of his inquiry. There was also correspondence between the Respondent and the Council's Monitoring Officer about a number of issues around the conduct of the Assessment Sub-Committee meeting. There has also been correspondence and discussion about the behaviour of the complainant, both in relation to the inquiry and in respect of his subsequent conduct as a member of the Planning Board and in public at Planning Board meetings. There was also correspondence between the Respondent and the Council's Deputy Monitoring Officer about the absence of a draft final report from the investigator and the holding of the Standards (Consideration & Hearing) Sub-Committee in those circumstances.
- 1.1.11 From the outset the Respondent has been entirely clear in his own mind that he has done nothing wrong and has behaved properly and in conformity with the word and spirit of the Code of Conduct. As most people know, his reputation and integrity are extremely important to him and he would never do anything to place them in jeopardy. They are of supreme value to him, not only in public office, but also in the local community and in his business affairs and that is recognised by all who know him. They also have the most significant importance to him and to his family and friends who all know that they have been publicly earned by him over the past 35 years in Bournemouth. Frankly he does not recognise the person whose character and reputation the investigator has attempted to demolish in his report. The Respondent's character and beliefs, let alone his conscience, would simply never allow him to act improperly and he very strongly refutes all the allegations that have been made against him.
- 1.1.12 The Respondent has co-operated fully with the investigation which he had anticipated would be conducted professionally and would observe the rules of natural justice as a matter of course. He had anticipated that since the complaint was relatively straightforward and in part had been made before by the complainant, it could be investigated in a reasonable time and draw its conclusions within a matter of a few months at most. As an investigation to be conducted at arms length from the Council, the Respondent had expected it to be concerned only with the facts and the evidence properly substantiated and to be objective in its desire to discover the truth. As a result, his evidence to date has not dealt with any of the matters of uncorroborated speculation or factual inaccuracy that are contained in the report, nor what he perceives to be the political motivation behind the complaint, but only on the information and questions he was asked in the course of the investigation. Indeed the Respondent was totally unaware of much of the third party input until he received the final report and

have been given no opportunity to respond to the many false accusations and innuendo until now.

- 1.1.13 This is by far the most serious issue that the Respondent has ever faced in his life and has been the only preoccupation he has had over the past 14 months since the complaint was made in December 2009. Of course it is not the first time that the complainant had made a complaint against him and he has included that previous complaint within this current complaint. However, the previous complaint resulted in an agreed outcome between the complainant and the Monitoring Officer, although it also provided either of them the opportunity to take the complaint further at that time for consideration by the Standards Committee, if they felt that to be appropriate. Neither of them did so.
- 1.1.14 The complaint concerned the appropriateness of declarations made by the Respondent and his subsequent behaviour in his role as a councillor during the time he was Chairman of the Planning Board. There is no doubt in his mind that he has done his utmost to declare his interests fully and accurately. He has always sought the advice of the appropriate officers in respect of declarations of interests and this advice has been provided with their full knowledge of the circumstances in order that he could rely on the advice given. The Respondent makes this statement notwithstanding the contrary evidence given by the Monitoring Officer in her own witness statement and the evident reliance on her stated position by the investigator despite clear documentary evidence to the contrary. Whilst it is ultimately a matter for a member to make the final decision about the declaration of an interest, the advice provided by an appropriate officer is a service which all councillors rely on in the day to day conduct of the Council's business. This also applies to the interpretation of the Code of Conduct as councillors generally are not trained or experienced in the law and cannot be expected to obtain external legal advice on such matters. The Respondent's own view is that no Council could operate on a daily basis without that professional advice being readily available and provided as required to members.

#### Issues in dispute

- 1.1.15 There are a substantial number of issues and allegations contained in the final report and the papers that have been entered in the case by the investigator which the Respondent strongly disputes. He maintains that there are a number of issues contained in the report that are prejudicial and factually incorrect or inaccurate, uncorroborated or speculative and lacking in any evidence to support them. Furthermore it is difficult not to reach the conclusion that the late-gathered statements from third parties have been submitted in concert, perhaps under some influence from the complainant. There is extensive email correspondence between the complainant and the third party planning consultants entered with the report to confirm this position alone. These are the only statements that support the suggestion that the alleged public perception issues stemming from the complaint may have any substance. There is a high degree of political capital involved in this case and presumably substantial commercial advantage to be

gained by those who have submitted these uncorroborated statements.

- 1.1.16 It is the Respondent's opinion that the investigator's report lacks the professional rigour and thoroughness expected from an independent lawyer and assumes the role of 'Counsel for the Prosecution' rather than preparing and presenting a balanced and evidence based report which can be held up to scrutiny. Much of what is wrong with the report was summed up in Mr Sullivan-Gould's somewhat alarming opening remark to the Respondent at their meeting on 16 July when he said, *'There are a number of people who are out to get you, aren't there?'* The Respondent's solicitor has this documented. It would appear that the investigator has only sought the views of those who are most likely to take the opportunity to criticise the Respondent (or as he put it were 'out to get me') or who now have to protect themselves over the way they have dealt with the Code through the advice they have given to members. According to the investigator's report, there do not appear to have been any meetings or statements solicited by the investigator outside of the Council's Law & Governance officers, other than from third parties who may have a vested interest in retaliating for earlier planning decisions made by the Planning Board with which they do not agree. The investigator seems to accept that the contents of the supporting statements attached to the report add to the weight of the case against him, yet there is no independent evidence to support or corroborate the statements. This is patently unfair to the Respondent in that there is plenty to be gained by those who have made such statements. The three planning agents who have provided witness statements cannot be said to be impartial members of the public. They are direct competitors of Mr Ramsden and may well consider that they might gain a commercial advantage if their unsupported allegations were to stand. There is also plenty to be gained politically by the complainant, especially since the next local elections are only a few months away. In their literature, his party are already using the fact that an investigation is taking place, without mentioning that it is one of their own councillors who is the complainant. Of greater concern, given the association between the complainant and other planning agents evidenced through various emails in common circulation, is that it is very difficult to believe that the similarity and timing of the statements is simply coincidence. Indeed it was the complainant who first introduced two of the planning agents to the investigator in a letter dated 2 March 2010, having clearly discussed the matter with them previously. The quantity of emails between the complainant and various planning agents and their associates about this inquiry is unlikely to be restricted just to the papers attached to the investigator's report.
- 1.1.17 In addition, other Planning Board matters discussed between the complainant and planning agents generally has been a source of concern to the Respondent and some other members as well as officers for some time. An example of this concerned an email sent by the complainant to members of the Planning Board, critical of a decision made earlier the same day which he copied to the applicant's agent. On another occasions it was necessary to adjourn a Planning Board meeting in order that the Council's senior lawyer could discuss the complainant's inappropriate comments at the meeting which he withdrew and for which he offered an apology once the meeting



reconvened. Throughout the Respondent's time as Chairman of the Planning Board he was at pains to ensure that the complainant's behaviour both as a member of the Planning Board and in public at Planning Board meetings did not bring the reputation of the Local Planning Authority into disrepute. Whilst he fully accepts that it was his responsibility as Chairman to manage the complainant's behaviour at Planning Board meetings, the position became untenable, partly as a result of the length of the investigation, leading to his resignation from the Board in July 2010.

- 1.1.18 The Monitoring Officer's statement has been taken by the investigator at face value even though there is evidence which shows that she was given the fullest up to date details of the Respondent's relationship with Mr Ramsden. He can only speculate as to her motives in misleading the investigator in her statement, but it is clear that she has done so, and it is an omission on his part that he has not asked the Respondent whether he accepts that she is telling the truth or not.
- 1.1.19 The Monitoring Officer does not appear to keep a log of the advice given to members by the various officers in Law & Governance. For his own part, the Respondent now wishes that all the advice he sought and received had been recorded in writing, although this would be almost impossible in practice, particularly on occasions when such advice is required to be acted upon immediately. Nonetheless, the advice he received was clear, it was unequivocal and it was given to him based on the Code of Conduct. Every declaration he has made has been based on that advice. There now appears to be a dispute about what specific advice was given to him and in what circumstances, and as stated above, he can only speculate as to why that may be so. The Respondent is absolutely clear about the advice he has received, not least because it is the only advice in which he is directly interested, and he is also clear on what basis that advice was given by officers.
- 1.1.20 The correspondence attached to the investigator's report demonstrates that the investigator has been entirely inconsistent in his interpretation of this part of the Code. The Respondent has been very clear about his treatment of the declaration of gifts and hospitality in his role as a councillor and during the course of the investigation he received advice from the investigator which he immediately followed, even though the Respondent was not entirely convinced he was correct. This co-operation has now been used against the Respondent in his report to allege the exact opposite result of what he led the Respondent to believe was a reasonable declaration to make.
- 1.1.21 The issue of the complaint previously made by the complainant in 2007 was thoroughly investigated by the Monitoring Officer and is dealt with later in this witness statement in the section on declarations. Given the obvious importance she attached to the matter in December 2007/January 2008, the Monitoring Officer presumably did as her job title suggests and monitored the situation through the Senior Lawyer who attends each Planning Board meeting at her insistence. Despite the denial in her witness statement, there is clear evidence that she was accurately informed by the Respondent about the status of his friendship with Mr Ramsden, declared at the start of

each relevant Planning Board meeting. She must have considered the public perception issues and concluded that having followed her advice his declarations were properly made and that he had fully complied with the Code. Equally, given the routine way in which the Respondent has always checked with officers as to the specific declarations that would be appropriate whenever there might have been a material change in the circumstances of a planning application it is hard to imagine what else he could reasonably have been expected to do with regard to declarations.

1.1.22 The detailed and precise evidence the Respondent submitted in writing to the investigator has largely been ignored, particularly where it demonstrates that he has done his utmost to ensure that he has complied with the Code at all times in his role as a councillor. In a balanced and objective investigation, the Respondent had anticipated that his stated position would be given some weight, but it is barely mentioned. However, uncorroborated speculation and factually inaccurate statements appear to have been given weight without evidence to support them, nor has any attempt been made by the investigator to satisfy himself that the statements made are truthful and stand up to scrutiny.

1.1.23 It seems incredible that the investigator has concluded his inquiry without interviewing Mr Ramsden. Nor has he interviewed any of the Planning Officers or Planning Board members who would have been able to provide evidence to ensure a balanced report, particularly in respect of the manner in which the Respondent chaired Planning Board meetings. The investigator has however seen fit to interview and take at face value other planning agents' statements, evidently without making any attempt to corroborate them. From reading the statements and the emails between these planning agents and the complainant, there is little love lost between them and Mr Ramsden and assume that they have their own motives for making these unfounded allegations.

1.2 The Standard Committee's representations following the response to the Application:

1.2.1 The Respondent makes several submissions in respect of the investigation process, which the Standards Committee considers should be addressed in its response so as to assist the Tribunal in the consideration of this matter.

1.2.2 It is submitted that the issues for determination in this case are:

1.2.2.1 whether the Respondent had a personal interest in the consideration by the Planning Board of planning applications which involved Mr Ramsden, Planning Solutions or Planning Solutions CTP as agent for the applicant;

1.2.2.2 if so, whether the Respondent declared both the existence and nature of his personal interests at the meeting in accordance with paragraph 9 of the Code of Conduct;

1.2.2.3 whether the Respondent's personal interests, if any, were prejudicial;

- 1.2.2.4 if so, whether the Respondent failed to withdraw from the meeting due to the existence of the prejudicial interest contrary to paragraph 12 of the Code of Conduct.
- 1.2.3 It is considered that many of the submissions made by the Respondent do not address the above issues for determination, but instead criticise the process of investigation and the investigator, criticise the motives of the complainant and officers, and criticise the evidence provided by the Monitoring Officer during the investigation. It is recognised that the Tribunal may wish to comment upon these points raised by the Respondent. However, the Standards Committee seeks to provide the Tribunal with its response to the criticisms, where relevant, to assist the Tribunal in its consideration and ensure that there is not unnecessary delay to the proceedings at the hearing.

#### Criticisms concerning the investigation and the investigator

Issue of the draft report:

- 1.2.4 The Respondent states that a draft report was not sent to him to enable him to comment before the investigation was completed. During its consideration of the investigator's final report, the Standards Consideration Sub-Committee had regard to this and the Respondent's letter of 2 November 2010, making representations on this point. The Sub-Committee noted:
- 1.2.4.1 the national guidance on investigations provides that the investigator has discretion as to whether to produce a draft report or not;
  - 1.2.4.2 the local guidance on investigations states on page 3 that it is to be applied having regard to any national guidance issued by the Standards Board for England
  - 1.2.4.3 there is no legal requirement in the Regulations for a draft report to be produced;
  - 1.2.4.4 were the local guidance on investigations to be followed it would mean that in every case a full copy of a draft report would have to be sent to all complainants and the subject member for comment. This could potentially conflict with privacy issues and issues of what may be potentially exempt information;
  - 1.2.4.5 that the procedure to be followed at the pre-hearing stage enabled the subject member to make representations and set out fully any disagreement with the evidence and conclusions drawn in the final report.
- 1.2.5 The Sub-Committee did not consider that proceeding to consider the report and deciding whether the case should be heard by the Standards Committee or the First-tier Tribunal (Local Government Standards in England) would prejudice the Respondent's ability to respond to the allegation and would not prejudice his ability to make submissions on the investigator's report before the hearing or Tribunal.

- 1.2.6 It is also submitted that during the course of the investigation, the investigator had significant correspondence with the Respondent and his Solicitors and gave him ample opportunity to respond to the allegation and ensure that his submissions on the allegation were clearly recorded.
- 1.2.7 It is not considered that the Respondent has been put at a disadvantage in not having received the draft report and has the opportunity to fully present his case to the Tribunal.

#### Delay

- 1.2.8 Whilst the investigation took several months to complete, it is not considered that this has caused the Respondent any prejudice or disadvantaged his position. It is also considered that the length of the investigation is not unreasonable taking into account the amount of correspondence between the investigator and the Respondent during the investigation.
- 1.2.9 It is also submitted that the Standards Consideration Sub-Committee met as soon as reasonably practicable and without delay to consider the investigator's report to ensure that the matter was dealt with expeditiously.

#### Interpretation concerning gifts and hospitality

- 1.2.10 The Standards Committee notes the investigator's interpretation of the Code of Conduct and also notes that it conflicts with the Council's advice to members about when gifts and hospitality need to be registered and declared. The Council's advice to members follows the interpretation provided by the Standards for England in its Case Review.
- 1.2.11 The Standards Committee does not intend to make further submissions as to the investigator's interpretation and will rely upon the Council's advice and the statutory guidance provided by the Standards for England and assist the Tribunal where necessary and possible. The Tribunal will of course reach its own view as to whether a member is required by the wording of the Code of Conduct to register gifts and hospitality received from friends whether or not it is connected to their position as a councillor.

#### Criticism of the Monitoring Officer, officers and the complainant

- 1.2.12 It is not considered that the motives of the complainant in making the complaint are relevant in determining whether the Respondent failed to comply with the Code of Conduct. The investigation and the hearing are both independent of the complainant thus ensuring that any improper motives in the making of the complaint do not influence the outcome or determination of whether the Respondent has failed to comply with the Code of Conduct.
- 1.2.13 It is not accepted that there is anything improper in the evidence provided by the Monitoring Officer or the behaviour of officers. The Respondent appears to have placed a high level of reliance on officers' advice in relation to interests. Whilst it is accepted that officers' advice

is important and that it was appropriate for the Respondent to seek such advice, it is considered that there remained the obligation for the Respondent to be responsible for his own interests by having regard to the advice and making his own decisions, based on his detailed knowledge of his relationship with Mr Ramsden and taking account of the advice provided.

## **2 Procedural Issues**

- 2.1 Judge Laverick directed on 20 February 2011 that the Tribunal would consider, as a preliminary issue, whether the relationship between the Respondent and Mr Ramsden was such as to require the Respondent to consider himself as having a prejudicial interest in planning applications brought before the Planning Board in which Mr Ramsden was involved. The Tribunal heard oral evidence from the Respondent and heard submissions from Counsel for the parties on this point.
- 2.2 In the light of the determination by the Tribunal that the relationship was not of a nature to require the declaration of a prejudicial interest the Applicant did not pursue any other matters raised by the investigator's report.

## **3 Findings**

The Tribunal has found the following material facts:

### The Respondent's official details

- 3.1 The Respondent was elected to office on 5 May 2007 for a term of four years. He was first elected to Bournemouth Borough Council in a by-election in May 2000 and has served continuously since then.
- 3.2 The Respondent has been a member of the Council's Planning Board since joining the Council and, between August 2007 and June 2010, was Chair of the Council's Planning Board. The Respondent has been Deputy Leader of the Council since May 2007 and he is the member of the Cabinet with responsibility for the Council's resources.
- 3.3 The Respondent gave a written undertaking to observe the Council's Code of Conduct on 4 May 2007.
- 3.4 The Respondent has received training on the Code of Conduct.

### Relevant legislation and protocols

- 3.5 Part III of the Local Government Act 2000 established a new ethical framework for local government. It included the introduction of statutory codes of conduct, with the requirement that every council adopts a code covering the conduct of elected members and the creation of a Standards Committee for each authority.
- 3.6 Section 49 of the Act provided that "General Principles" which are to govern the conduct of elected and co-opted members of relevant authorities could be specified. The Relevant Authorities (General Principles) Order was passed in 2001 (SI 2001/1401)
- 3.7 Section 51 of the Act provided that each Council would adopt a Code of Conduct to include the mandatory provisions of a Model Code of Conduct. The

first applicable Model Code of Conduct was specified in The Local Authorities Model Code of Conduct (England) Order 2001 (SI 2001/3575). The Local Authorities (Model Code of Conduct) Order 2007 (SI 2007/1159) came into force in May 2007 revoking and replacing the earlier Order.

- 3.8 Section 52 of the Act requires councillors to give a written undertaking to their Council that they will, in performing their functions, observe the authority's Code of Conduct. Failure to give such an undertaking means that a person will cease to be a councillor.
- 3.9 Bournemouth Borough Council is a "relevant authority" for the purposes of the above legislation.
- 3.10 The Council adopted its first Code of Conduct in 2002.
- 3.11 In June 2007, the Council adopted a revised Code of Conduct in which the following paragraphs of the 2007 Model Code are included:

*8. -(1) You have a personal interest in any business of your authority where either-*

*(a) it relates to or is likely to affect-*

*(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;*

*(ii) any body-*

*(aa) exercising functions of a public nature;*

*(bb) directed to charitable purposes; or*

*(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;*

*(iii) any employment or business carried on by you;*

*(iv) any person or body who employs or has appointed you;*

*(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;*

*(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);*

*(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph(vi);*

*(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of*

at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of-

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is-

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

9. - (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

10. - (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business-

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of.-

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of,



*such pay;*

*(iv) an allowance, payment or indemnity given to members;*

*(v) any ceremonial honour given to members; and*

*(vi) setting council tax or a precept under the Local Government Finance Act 1992.*

*12. - (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority-*

*(a) you must withdraw from the room or chamber where a meeting considering the business is being held-*

*(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;*

*(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting; unless you have obtained a dispensation from your authority's standards committee;*

*(b) you must not exercise executive functions in relation to that business; and*

*(c) you must not seek improperly to influence a decision about that business.*

*(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.*

3.12 In summary, the applicable parts of the Revised Code of Conduct provide that a Bournemouth councillor will have a personal interest in any business before the Council where either:

(a) it relates to or is likely to affect the interests of a person from whom they have received gifts or hospitality worth more than £25, or

(b) the decision might reasonably be regarded as affecting the well-being or financial position of a close associate, an employer of such a close associate or a firm in which they are a partner or company of which they are a director.

3.13 Bournemouth councillors are required to disclose their personal interest in such business when they attend meetings where that business is considered.

3.14 Where that personal interest relates to the determining of any approval, consent, licence, permission or registration in relation to the councillor or any person or body described in paragraph 8 of the Code and is one that which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the councillor's judgment

of the public interest then the councillor must withdraw from the meeting room where the business is being considered.

- 3.15 Councillors are required to consider not only their own interests in relation to matters that come before the Council for decision but also to take account of the interests of their connections. They are only required to take account of interests of which they are aware or ought reasonably to be aware (see paragraph 9(4) of the Code of Conduct but they must follow any "chain of interests" to its conclusion to decide whether they are deemed to have an interest which affects their connections. Paragraph 8 of the Code defines those interests which need to be considered.
- 3.16 Applicants for planning permission would have a personal interest in the decision-making on their application under paragraph 8(1)(b) of the Code of Conduct as the Planning Board's decision in respect of that application will affect their well-being or financial position to a greater extent than the majority of other council taxpayers, ratepayers or inhabitants in the electoral ward concerned.
- 3.17 Where applicants employ or appoint consultants or agents to represent them in respect of their application, those consultants or agents will also have personal interests in the decision-making under paragraph 8(1)(a) of the Code of Conduct since the Planning Board's decision in respect of that application will relate to or affect any person or body who has employed or appointed them (sub-paragraph (iv)) or may relate or be likely to affect their employment or business (sub-paragraph (iii)).
- 3.18 Were they councillors, the applicants and agents would be required by the Code of Conduct to declare their interests and withdraw from the decision-making in order to demonstrate that it is the public interest alone that applies to such decisions. The Code does not of course apply to anyone except councillors but the interests of members of the families of councillors and the interests of close associates of councillors can be declarable by councillors.
- 3.19 Applicants for planning permission and their consultants or agents may be "relevant persons" under paragraph 8(1)(b), as defined in paragraph 8(2) in relation to a councillor. Where that applies, their personal interests become the councillor's own declarable interest where the councillor has (amongst other things) received gifts or hospitality from the applicant or their agent or has a close association with the applicant or their agent. In those circumstances the councillor must declare a personal interest in the matter and must withdraw from the decision-making when the interest is prejudicial to the consideration of the public interest.
- 3.20 In relation to disrepute, the Council's Revised Code provides:

*5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*

### Summary of facts

#### Close Association between the Respondent and Mr Ramsden

- 3.21 The Respondent admits that he became godfather to Archie Ramsden in 2005; he was invited to take that role by the child's mother, Harriet Ramsden

whom he regards as a "close friend". Harriet Ramsden is the wife of Tony Ramsden (also known as Anthony Ramsden-Geary).

- 3.22 Mr Ramsden was a councillor at Bournemouth Borough Council between 1999 and 2003. The Respondent became a fellow councillor of Mr Ramsden in 2000. The Respondent declares that he has been a friend of Mr Ramsden since the latter's resignation as a councillor.
- 3.23 The Respondent admits that he attended the marriage of Tony and Harriet Ramsden in October 2001.
- 3.24 Between October 2001 and September 2003, the Respondent admitted that he had held a Directorship in and was Company Secretary to Williamson & Treadgold Ltd. Mr Ramsden was also a Director of that Company at that time.
- 3.25 The Respondent admits that he attends family gatherings with the Ramsdens and has received hospitality from them. The Respondent has now registered the receipt of gifts and hospitality from the Ramsdens as an interest under paragraph 13 of the Council's Code of Conduct.

3.25.1 The Respondent says:

It is important that the facts around this issue are properly understood given that they appear to be playing a central part in the case against the Respondent. In brief, the Respondent has never received individual gifts or hospitality in excess of £25 from the Ramsden family and have dealt with the issue of the cumulative effect of hospitality between friends over an extended period by taking the advice of the investigator, both to rectify 'a very insubstantial mistake' and to 'close a possible avenue of attack by critics' as he described it in his letter to the Respondent of 4 March 2010. However, in agreeing to do this the Respondent had not anticipated that he would then turn it around and use it as evidence against him, especially as he does not agree that his interpretation of the cumulative effect of hospitality is correct, particularly when used at times other than in his role as a councillor. The Respondent is confident that his view is supported by the advice provided to members by the Council's officers since the introduction of the Code.

On the rare occasions in the past when he has joined the Ramsden family for meals (other than private family occasions when the Respondent's contribution has usually exceeded the value of the hospitality provided) and when he has not actually been paying the entire cost of the meal himself, he has requested a separate bill from the establishment for his share and paid that to the establishment himself with the express intention of being completely outside of the scope of any accusation of receiving hospitality. He has applied this principal to meals with other friends and associates unless the relationship is that of consultant/client or when he is present in a capacity that is completely separate from any activity in which he is involved as a councillor, such as hospitality with members of his own family.

- 3.26 The Respondent has declared that there have been no significant differences in his relationship with Mr Ramsden over the period since 2007 to date.

3.26.1 The Respondent says that his relationship with Mr Ramsden and his family needs to be considered in the context that was agreed with the Monitoring Officer in January 2008 when it was termed a 'close association'. The degree of friendship appears to have been developed by the investigator to a level that has never existed. Like most friendships that are no more than just that, there would be times when there was more interaction than usual and many periods when there would be little if any communication at all. At most, they have never met socially more than he would with any of a number of friends and it would be unusual for that to be more frequently than once a quarter at most. It necessarily follows that the Respondent has never regarded any social time with the Ramsden family or any other friends as being connected with his role as a councillor, nor has he ever discussed Council related business with Mr or Mrs Ramsden during a social visit either at their home or elsewhere.

3.27 It is considered that a reasonable person knowing these facts will conclude that the Respondent has a close association with Mr Ramsden and his family.

3.27.1 The Respondent says that the term 'close association' was the one agreed with the Monitoring Officer and the complainant in January 2008 and in the context of the relationship that existed, the Respondent agreed it to be correct. He subsequently declared a personal interest whenever appropriate based on that wording, although there were a couple of exceptions when the actual wording used by the Democratic Services Officers varied when recorded in the minutes, although that did not alter either the intent or the interpretation of the declaration itself.

#### Meetings of the Planning Board

3.28 It is understood that Mr Ramsden set up a planning consultancy business (Planning Solutions, then Planning Solutions CTP Ltd) in Bournemouth during 2005. Since then the business has represented its clients' interests in relation to decisions to be made by the Borough Council's Planning Board. On occasion, Mr Ramsden has made personal representations on behalf of clients to the Planning Board. Appendix 3 of the report shows the occasions since August 2007 when applicants for planning permission were represented by Mr Ramsden and/or Planning Solutions CTP Ltd.

3.28.1 The Respondent agrees, however a more comprehensive table of the record of Planning Board meetings is now being produced by the Deputy Monitoring Officer of the Council which includes data omitted from Appendix 3 of the investigator's report. This new table includes data on the Planning Officer's recommendation on each occasion and in accordance with the investigator's own submission in his report, this internal audit should assist the Tribunal in resolving whether any perceptions of wrong-doing by the Council, any councillor, Mr Ramsden, Planning Solutions or Planning Solutions CTP Ltd have any substance.

3.29 The Respondent has been a member of the Council's Planning Board since 2000 and was Chair of the Board from August 2007 to June 2010.

3.29.1 The Respondent agrees, except that he was not on planning from 2002 to 2003.

### Interests of Mr Ramsden

- 3.30 Mr Ramsden has practised as a planning consultant in the Bournemouth area since 2005. This business operated firstly as an unincorporated firm under the trading name of Planning Solutions and then carried on by a new company, Planning Solutions CTP Ltd. Ramsden has been a director or employee of the company throughout the period 2007 to 2010.
- 3.31 Mr Ramsden has marketed his planning consultancy on the basis of his associations with the Council and undertakes work on a "no win - no fee" basis for applicants for planning permission. Planning Solutions CTP Ltd advertises its track record of achieving planning permission in Bournemouth where other consultants have previously failed to do so.
- 3.32 Mr Ramsden would have a personal interest under paragraph 8(1)(a) of the Council's Code of Conduct in respect of any business before the Planning Board of the Council where it relates to or is likely to affect: "any employment or business carried on" by him (paragraph 8(1)(a)(iii) and/or "any person or body who has employed or appointed" him (paragraph 8(1)(a)(iv)).
- 3.33 Mr Ramsden would also have a personal interest under paragraph 8(1)(b) of the Council's Code of Conduct in respect of any business before the Planning Board of the Council where a decision in relation to that business might reasonably be regarded as affecting his well-being or financial position to a greater extent than the majority of the other council tax payers, ratepayers or inhabitants of the electoral ward affected by the decision.
- 3.34 Decisions of the Planning Board will affect the applicants who have employed or appointed Mr Ramsden, Planning Solutions and/or Planning Solutions CTP Ltd as their planning consultant. Where that employment or appointment is based upon a "no win - no fee" or other success related reward arrangement then decisions of the Planning Board will affect the well-being or financial position of the planning consultant involved. Decisions of the Planning Board will also have an effect on the reputation of the planning consultancy involved.
- 3.35 It is considered that a reasonable person knowing all the circumstances would conclude; firstly, that Mr Ramsden would have an interest under the Council's Code of Conduct whenever he or his planning consultancy practice represents an applicant for planning permission before the Planning Board of the Council and, secondly, that the well-being of Mr Ramsden and his planning consultancy will be affected by decisions of the Planning Board.
- 3.35.1 The Respondent is unable to comment as he has no knowledge of the management or operation of Planning Solutions or any other businesses associated with Mr Ramsden.

### Personal Interests of the Respondent

- 3.36 The Respondent will have a Personal Interest under Paragraph 8(1)(a)(viii) of the Council's Code of Conduct in respect of any business before the Planning Board where it relates to or affects the interests of a person from whom he has received a gift or hospitality with an estimated value of £25.
- 3.36.1 The Respondent agrees in general terms but not in the context of the investigator's interpretation of this particular case.

- 3.37 The Respondent will also have a personal interest under paragraph 8(1)(b) of the Council's Code of Conduct where a decision in relation to business before the Planning Board might reasonably be regarded as affecting the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.
- 3.38 The definition of a relevant person is as follows: "In sub-paragraph (1)(b), a relevant person is-
- (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;".
- Note: It is considered that the words "such persons" in paragraph (b) refers to the persons described in paragraph (a) above.
- 3.39 It is considered that a reasonable person knowing all the circumstances would conclude that the Respondent will have a personal interest under the Code whenever business comes before the Planning Board;
- 3.39.1 Where Mr Ramsden appears to represent the interests of a client, since he is a person with whom the Respondent has a close association, and/or
  - 3.39.2 Where Planning Solutions or Planning Solutions CTP Ltd were agents for an applicant or other person concerned with that business, since Ramsden, a close associate of the Respondent, is an employee or director of that business, and/or
  - 3.39.3 Where an applicant for planning permission has employed or appointed Mr Ramsden, a close associate of the Respondent, to be their representative before the Planning Board.
- 3.40 It is considered that decisions of the Planning Board in respect of those items of business would reasonably be regarded as affecting the well-being or financial position of Mr Ramsden and/or Planning Solutions or Planning Solutions CTP Ltd.
- 3.40.1 The Respondent says that this statement by the investigator neither adds to, nor takes away, from the facts surrounding the case.

#### Declarations of Personal Interest by the Respondent

- 3.41 Paragraph 9 of the Council's Code of Conduct requires:

*"where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent."*

- 3.41.1 The Respondent says he has done so and on the basis of the agreement with the Council's Monitoring Officer, the complainant, his Group Leader and his own.

3.42 Appendix C of the report sets out the declarations made by the Respondent in respect of matters where Mr Ramsden and/or Planning Solutions and/or Planning Solutions CTP Ltd were planning consultants in relation to an application before the Planning Board of Bournemouth Council. Appendix JB2 of the report sets out the Respondent's explanations of his various declarations.

3.42.1 The Respondent says that a full explanation of these declarations has been submitted by the Respondent, as stated, at Appendix JB2 of the report.

3.43 The Respondent and other councillors on the Planning Board have made declarations of a personal interest when Mr Ramsden has appeared at meetings on the basis of their previous relationships with him as fellow councillors. However, in the case of the Respondent, it is considered that he ought to have also made declarations of a personal interest when Mr Ramsden appeared before the Planning Board on the basis that:

(a) he has received hospitality from the Ramsden family and

(b) he has a close association with Mr Ramsden and his family.

3.43.1 (a) The Respondent does not agree for the reasons detailed elsewhere in this witness statement and on the basis of advice received from Council officers.

(b) The Respondent does not agree as 3.41.1 above.

3.44 It is also considered that the Respondent ought to have made a declaration of a personal interest whenever Planning Solutions or Planning Solutions CTP Ltd was involved in a matter before the Planning Board on the basis of Mr Ramsden's involvement with that business.

3.44.1 The Respondent does not agree as 3.43.1 (a) above. The only occasion when Planning Solutions or Planning Solutions CTP Ltd were the agents for an application that was determined by the Planning Board and neither Mr Ramsden nor someone else appeared as a representative of the company was the application for the Poole Road Medical Centre dealt with at 3.51.9.1 below and in Appendix JB2 of the investigator's report.

3.45 It is further considered that the Respondent ought to have made a declaration of a personal interest whenever he was aware that an applicant for planning permission had appointed or employed his close associate, Mr Ramsden, as their representative before the Planning Board.

3.45.1 Not agreed as 3.41.1 and 3.44.1 above.

#### Prejudicial Interests

3.46 Under paragraph 10 of the Council's Code of Conduct, where the business before a meeting of the Council relates to the determining of any approval, consent, licence, permission or registration, a councillor with a personal interest also has a prejudicial interest where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice that councillor's judgment of the public interest.

- 3.47 The Standards Board for England (now Standards for England) issued guidance in May 2007 as to what would constitute a Prejudicial Interest. An example is given at page 24:

"Example: you would have a prejudicial interest in a planning application proposal if a member of your family lives next to the proposed site. This is because your family member would be likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward affected by the decision (or authority, if your authority does not have wards) and this gives you a personal interest in the issue. The existence of the close family tie means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. It does not matter whether it actually would or not."

- 3.48 The Adjudication Panel for England (now the First-tier Tribunal Local Government Standards in England) has had occasion to consider whether Councillors have had a prejudicial interest in planning applications-

3.48.1 In APE 0390 the panel resolved an Appeal, finding that a councillor whose architectural practice had done work for (and was owed money by) an applicant for planning permission ought to have declared a personal and prejudicial interest at the planning committee meeting.

3.48.2 In APE 0396 the panel resolved an Appeal, finding that a councillor who was the managing director of a company had a clear prejudicial interest at a Town Council meeting that was considering a planning application in relation to a site that shared an access way with his company and over which there had been previous disputes between the applicant and the company.

3.48.3 In APE 0398 the panel considered that a councillor had prejudicial interests in a planning application where he was employed by a company owned by the applicants, was an advisor to the applicants and was a friend of a son-in-law and business representative of the applicants.

3.48.4 In APE 0446 the panel resolved that a councillor had a personal and prejudicial interest where she appeared at a Planning Committee meeting to represent the interests of her friend who was the applicant for planning permission because the Council's decision on the application would affect the financial position and well being of a friend.

3.48.5 In APE 0447 the First-tier Tribunal accepted that a Leader of a Council had a friendship with a fellow councillor that went beyond their common membership of the Council and therefore at a Planning Committee meeting and informal meetings with officers about a planning application made by that other councillor he should have declared a personal and prejudicial interest in the matter.

- 3.49 It is considered that the existence of a close association between the Respondent and Mr Ramsden means that a reasonable member of the public might think that it would prejudice his view of the public interest when



considering a planning application in respect of which Mr Ramsden and/or Planning Solutions or Planning Solutions CTP Ltd are involved as an agent for an applicant.

3.49.1 The Respondent does not agree for reasons set out in the Respondent's witness statement.

The Respondent's Failure to make Full Declarations or Withdraw:

3.50 Paragraph 8(1)(a) Interest - Gifts or Hospitality from Mr Ramsden

3.50.1 The issue of the declaration of gifts and hospitality is dealt with in some detail at 3.25 above and as set out on pages 6/7 and elsewhere in the Respondent's witness statement.

3.50.2 Appendix C of the report shows that the Respondent has never declared any personal interest that arises from his receipt of gifts and hospitality from Mr Ramsden and his family.

3.50.2.1 In the Respondent's witness statement he has relied on the evidence he submitted to the investigator in his letter of 9 March 2009 when he responded to the investigator's interpretation of the issue of declarations of gifts and hospitality, as he also did in his interviews with the investigator on 18 June 2010 and 16 July 2010.

3.51 Paragraph 8(1)(b) Interest - Close Association with Mr Ramsden

3.51.1 Appendix C of the report shows that the Respondent has not been consistent in declaring any interest arising from his close association with Mr Ramsden.

3.51.1.1 The Respondent says this is not agreed, save in the exact words used as recorded in the minutes of Planning Board meetings.

3.51.2 During 2007, the Respondent declared, in common with other councillors in his position, that he knew Mr Ramsden as a former colleague on the Council and its Planning Board. However, at the four relevant meetings of the Planning Board in 2007, he failed to declare his close association with Mr Ramsden as being a personal interest in any of the matters when Mr Ramsden appeared before the Planning Board and made representations on behalf of clients to the Board. (It should be noted however that at the meeting on 20 August 2007 the Respondent declared a personal and prejudicial interest and withdrew from consideration of a matter where Mr Ramsden was representing the applicant. The Respondent states that the personal and prejudicial interest arose from his own previous employment by the applicant rather than by way of any connection with Mr Ramsden.)

3.51.2.1 The Respondent does not agree, as he made personal declarations in line with the advice received from Law & Governance Officers. The Respondent agrees that he made the appropriate declarations as noted and which are wholly consistent with his understanding of the Code of Conduct and the advice received from officers.

3.51.3 From January 2008, the practice of former colleagues of Mr Ramsden making any declaration in respect of their common earlier membership of the Council ended. However, following advice from the Council's Monitoring Officer, the Respondent then began to declare a personal interest in matters where Mr Ramsden appeared as an agent as a result of his close association. The same declaration was intended to be made at each relevant meeting in 2008. The declaration at the meeting of 16 September 2008 was recorded in different terms but the Respondent states that his intention was to make the same declaration as previously. The Respondent however failed to declare that he had received hospitality from Mr Ramsden and failed to declare that the interest was prejudicial or to withdraw from the meeting.

3.51.3.1 The Respondent does not agree that the interest was prejudicial, nor that declarable hospitality had been received. This issue is dealt with by the investigator at section 11.1 (page 23) of his report where he makes it clear that the Respondent was acting in accordance with advice from officers of the Council which was directly derived from advice issued by the Standards Board for England in May 2007. If there is any doubt in the mind of the Monitoring Officer about the advice she and her officers in Law and Governance have been giving to members since the introduction of the Code, then the Council should obtain a Counsel's opinion on the interpretation of the issue of declarations of gifts and hospitality.

3.51.4 In January 2009, the Respondent declared a personal and prejudicial interest in respect of an application connected with AFC Bournemouth with which he had had previous involvement. However, he made no declaration in respect of any interest that arose as a result of Mr Ramsden appearing to represent the applicant.

3.51.4.1 The Respondent agrees that having declared a prejudicial interest in respect of a former client for that item, he handed over the chair of the meeting and left the room. The Respondent does not agree that he should have made any further declaration as no further declaration was required and in any case it certainly did not occur to him (or the senior lawyer present at the meeting) that it would be necessary or appropriate, given that a prejudicial interest had already been declared. There is email correspondence between the Respondent and the Monitoring Officer on 22 and 23 January 2009 about this and a file note recording that the Monitoring Officer discussed the issues with him in response to an email by the complainant dated 20 January 2009 and the response of the same date. In an email dated 23 January 2009 to the complainant, the Monitoring Officer confirmed that in her view 'no further declaration was necessary'.

3.51.5 On 16 February 2009 the Respondent states that he intended to make the same declaration of a close association as he had throughout 2008 although it was recorded differently as it had in September 2008. The Respondent however failed to declare that he had received hospitality

from Mr Ramsden and failed to declare that the interest was prejudicial or to withdraw from the meeting.

3.51.5.1 The Respondent does not agree as at 3.51.3.1 above.

3.51.6 On 26 February 2009 the Respondent declared a personal and prejudicial interest in respect of an application made by a former client. However, he made no declaration in respect of any interest that arose as a result of Mr Ramsden's firm appearing to represent the applicant.

3.51.6.1 The Respondent does not agree as at 3.51.3.1 above.

3.51.7 At Planning Board meetings on 18 May and 24 July 2009, Mr Ramsden's firm was representing applicants. The Respondent made declarations that he had an association with the firm. He states that his intention was to make the same declaration of close association as had been previously agreed but adjusting it for the fact that Mr Ramsden was not personally appearing at the meeting. The Respondent however failed to declare that he had received hospitality from Mr Ramsden and failed to declare that the interest was prejudicial or to withdraw from the meeting.

3.51.7.1 The Respondent does not agree as at 3.51.3.1 above.

3.51.8 In August 2009, Mr Ramsden appeared before the Planning Board and the Respondent, as before, declared his connection in a personal capacity. The Respondent however failed to declare that he had received hospitality from Mr Ramsden and failed to declare that the interest was prejudicial or to withdraw from the meeting.

3.51.8.1 The Respondent does not agree as at 3.51.3.1 above.

3.51.9 In November 2009, Mr Ramsden's firm was agent for an application concerning a Medical Centre. The Respondent states that he was unaware of that connection and accordingly made no declarations at all.

3.51.9.1 The Respondent does not agree. The investigator is incorrect as the Respondent did not state this to him. Appendix JB2 of the investigator's report states that what he said was that 'on advice received from staff in Law & Governance there was no declarable interest as the applicant made his own deputation as a doctor from the Poole Road Medical Centre, the application site.' The Planning Case Officer's report states the applicant as the Poole Road Medical Centre but makes no mention of a planning agent.

3.51.10 At the meeting on 2 December 2009, Mr Ramsden once again appeared before the Planning Board. The Respondent made a declaration of a personal interest due to their close association. The Respondent however failed to declare that he had received hospitality from Mr Ramsden and failed to declare that the interest was prejudicial or to withdraw from the meeting.

- 3.51.10.1 The Respondent does not agree as at 3.51.3.1 above.
- 3.51.11 At the meeting on 21 December 2009, Mr Ramsden's firm was an agent in respect of three matters before the Board. The Respondent declared that he had an association with the firm. The Respondent states that he intended to make a similar declaration to those made in May and July 2009 but that it was recorded differently. The Respondent however failed to declare that he had received hospitality from Mr Ramsden and failed to declare that the interest was prejudicial or to withdraw from the meeting.
- 3.51.11.1 The Respondent agrees with the first three sentences but does not agree with the final sentence as at 3.51.3.1 above.
- 3.51.12 In March 2010 the Respondent made a statement that he would make no declaration in relation to Mr Ramsden or his business thereafter.
- 3.51.12.1 The Respondent does not agree and it is taken out of context, notwithstanding that he has explained the details to the investigator. The wording of the declaration in March 2010 is as set out in Appendix JB2 of the investigator's report. The Respondent made the same declaration in similar circumstances in June 2010 in his final declaration as Chairman of the Planning Board.
- 3.52 Paragraph 8(1)(b) Interest- Employer of Close Associate
- 3.52.1 Appendix C shows that the Respondent has not been consistent in declaring any interest arising from his connection with Planning Solutions CTP Ltd through his close personal association with Mr Ramsden who is a director or employee of the company.
- 3.52.1.1 The Respondent does not agree, save in the exact words used as recorded in the minutes of Planning Board meetings.
- 3.52.2 The Respondent failed to make any declaration of interest in respect of Mr Ramsden's planning consultancy in any relevant matter between August 2007 and February 2009.
- 3.52.2.1 The Respondent does not agree as he has not failed to declare interests in respect of Mr Ramsden on any occasion, nor has he failed to do so in respect of any application where a representative of Planning Solutions CTP Ltd appeared before the Planning Board when he was present. Indeed, such declarations were made in that respect in May, July and December 2009 as stated by the investigator at 3.52.3 below. If on the other hand the investigator is suggesting that in making a declaration of interest in respect of Mr Ramsden when he was personally making a deputation to the Planning Board the Respondent should also have made a declaration in respect of Planning Solutions CTP Ltd, he does not agree with such an interpretation of this section of the code and presumably

the Officers in Law & Governance did not either as they did not at any time suggest such a further declaration to be appropriate.

3.52.3 Declarations were made in May, July and December 2009 that the Respondent had a personal interest in matters where Mr Ramsden's planning consultancy was representing a client before the Planning Board but not in respect of an application (in December 2009) where he also had a personal and prejudicial interest through previous involvements with AFC Bournemouth.

3.52.3.1 The Respondent does not agree, as his response to the same allegation at 3.51.4.1 above.

3.52.4 In March 2010 the Respondent made a statement that he would make no such declaration thereafter.

3.52.4.1 The Respondent does not agree, as his response to the same allegation at 3.51.12.1 above.

3.53 Paragraph 8(1)(b) Interest - Applicant employing or appointing a Close Associate

3.53.1 Appendix C of the report shows that the Respondent has never declared any personal interest that arises the interest of a close associate of his who has been employed or appointed by an applicant for planning permission.

3.53.1.1 The Respondent does not agree, as his response to a similar allegation at 3.52.2.1 above.

3.54 Paragraph 10 - Prejudicial Interest

3.54.1 Appendix C of the report shows that the Respondent has never declared any prejudicial interest that arises from his receipt of registrable gifts and hospitality from Mr Ramsden and his family; from his close personal association with Mr Ramsden nor from the interests of Mr Ramsden's business nor his clients.

3.54.1.1 The Respondent does not agree, as his various earlier responses elsewhere in his witness statement and above.

3.54.2 It follows that there have been no withdrawals from Planning Board meetings for any of the above reasons.

#### **4 Whether the material facts disclose a failure to comply with the Code of Conduct.**

4.1 The Respondent's submissions:

##### Declarations

4.1.1 The Respondent asked the Council's Democratic Services officers to research all declarations of interest made by him in the course of his Chairmanship of the Planning Board since 2007. This specific issue has been raised previously by the complainant in respect of the wording of the personal declarations and was investigated by the Council's

Monitoring Officer in conjunction with the political Group Leaders on 11 December 2007 and 9 January 2008. At a meeting on 9 January 2008, attended by the Monitoring Officer, Councillor Roger West (the complainant), Councillor Claire Smith (Lib Dem Group Leader), Councillor Stephen MacLoughlin (Conservative Group Leader) and the Respondent, it was decided that it was no longer necessary for other members to declare any personal interest in respect of Mr Ramsden on the basis that they had served as councillors with him on Bournemouth Borough Council. However, at the same meeting it was also agreed that in his case he should continue to declare a personal interest and in order to ensure further transparency, that personal interest would emphasise his friendship, especially given that the other members' declarations would no longer be made. Following the meeting on 9 January 2008 and for the period that he remained as Chairman of the Planning Board, this is the declaration that he made on each and every occasion that Mr Ramsden appeared before the Board on behalf of his clients.

- 4.1.2 In her witness statement the Monitoring Officer states that at the time of the meeting on 9 January 2008 she *'had the clear impression that the relationship was past history'* and that *'had I been aware of an ongoing friendship I would have advised differently.'* However that is not correct as evidenced by the file notes for the meeting and an email from her to Democratic Services dated 15 January 2008. The file notes for the meeting held on 9 January 2008 record that the *'relationship with him not changed'*. The Monitoring Officer's witness statement records that she was already aware that the Respondent *'had helped Mr Ramsden set up a business, as he had done with other clients, that he had gone to Mr Ramsden's wedding and was a godfather to Mr Ramsden's child'*. At the conclusion of the file note, the Monitoring Officer records that *'JB declare personal interest as close association – not prejudicial'*. This was later confirmed in an email dated 15 January 2008 from the Monitoring Officer to Democratic Services in terms of the wording to be used in future declarations where she confirms, *'wording ok with me'*. If as she now states, she believed the relationship to be past history, why did she suggest and confirm that the wording for future declarations should include the words *'close association'* if that was no longer the case? The position of the Monitoring Officer is simply inconsistent and her witness statement is not supported by the documentation.
- 4.1.3 With regard to the issue of the declaration of interests generally, the Respondent's position is that he always seeks advice from the appropriate officers before coming to a view if he is unclear as to whether a declaration is appropriate. On occasions, Democratic Services have referred him to the Monitoring Officer for further advice, although he now gathers that no records are kept on the advice sought or provided. The only record of course is that as recorded in the minutes of the meeting. Ultimately the decision of whether or what declaration should be made rests with the member, although it would have been helpful to be able to demonstrate an audit trail which included the advice sought and provided by the Council's own officers.
- 4.1.4 As Chairman of the Planning Board the Respondent was always conscious of the requirement not to lead the Board when summing up

prior to a vote being taken as explained earlier. On the very rare occasions when he might have moved or seconded an application it was always due to its location in the Ward that he represented. With regard to the Code of Conduct, the Respondent has absolutely never sought to improperly influence a decision and refute any allegation of such behaviour by the complainant.

#### Studland Dene Hotel

4.1.5 The application site is in the Westbourne & West Cliff Ward which the Respondent represents.

4.1.6 The issue of the Studland Dene Hotel was raised by the complainant on several occasions in the past and has been investigated by the Council's Monitoring Officer in conjunction with the political Group Leaders. As a result of his complaint on exactly the same issue in 2007, the Monitoring Officer wrote to the complainant on 17 January 2008 stating;

*'The planning history and policies were explained at our first meeting. On 9 January you confirmed that the explanations were satisfactory.'*

As far as the Respondent is aware nothing has changed since that date and the situation remains that there is absolutely no substance or evidence to support the repeated allegations.

4.1.7 Had the investigator examined the issues again by interviewing the respective Planning Officers, the Respondent would have absolutely no doubt that they would have confirmed to him that he performed his duties with complete integrity and fully in the public interest throughout and in full compliance with the Council's adopted planning policies. The Respondent totally refutes the assertions and implications contained in both the original complaint and the witness statements submitted by other planning agents which are completely without foundation. As a Ward Member the Respondent ensured that he had a full understanding of all aspects of the application through the respective Council Officers (and only through them) and he believes that to be a procedure with which some of those who have made comments may not be fully acquainted. The Respondent was certainly not in discussion with the applicant through an intermediary, unless that 'intermediary' was either the Case Officer, the Highways Officer or the Tourism Officer. However, unless the officers conveyed any views he may have formed about the application directly to either the applicant or his agent, the Respondent can only conclude this to be a matter of speculation which has now been included in third party emails or witness statements.

4.1.8 In brief, the facts about the Studland Dene are that the first planning application (outline) came before the then Planning Committee in 2000 and was refused. This decision was upheld at a public inquiry at which the Respondent appeared on behalf of the LPA and the appeal was dismissed. Two further schemes in 2006 were both refused, the first of which was in the process of going to a further public inquiry when the applicant then engaged a different planning consultant (Planning Solutions) and submitted a further application which

complied with planning policy, unlike the previous applications which had not. This application came to the Planning Board with an Officer recommendation to grant, subject to the completion of a S106 agreement which was in the process of negotiation by officers.

- 4.1.9 Not unusually, in the period between the circulation of the planning papers and the Planning Board meeting some 10 days later, further negotiations by the Planning Officers had led to a conclusion over the draft S106 agreement which meant that the draft legal agreement deleted the reference to affordable housing and replaced it with highway works to Studland Road. Since the proposed development was for 14 flats this complied with the adopted policy at the time. The application was considered by the Planning Board in November 2007 and the move to grant was made by the then Ward Member Councillor Newport (a barrister by profession) and seconded by the Respondent as the other Ward Member. As the Respondent recalls, Councillor Newport explained in some detail the planning reasons for the proposed changes to the S106 contributions and how those complied with the statutory criteria for such contributions as sought by officers. He spoke to support the move, stating that he did so as a Ward Member and because he had considerable experience of the site over the previous seven years since the first application was determined. The application was granted by 9 votes to 1, the complainant being the only member to dissent. The applicant's former planning agent subsequently withdrew from the second public inquiry, presumably because the case was weak on planning grounds and the applicant no longer required the services of his former agent.
- 4.1.10 In reference to the other issues raised by the complainant in respect of this application, the development that was finally granted was not contentious, either locally or amongst elected members. Previous applications on this site (all of which were refused) had indeed been contentious, but this one complied with the Council's adopted planning policies and was not contentious, hence the report that came to the Planning Board. As usual, the Respondent took advice from officers on the issue of declarations and as Planning Solutions were the agents, represented in their five minute deputation by Mr Ramsden, he declared a personal interest in the usual way. Finally, although some members may have enjoyed hospitality at the former Studland Dene Hotel, as a Ward Member the Respondent made a point during the period of all the later schemes only to visit the premises with officers to inspect the hotel for planning purposes.

#### Poole Road Medical Centre

- 4.1.11 This application site is also in the Ward the Respondent represents.
- 4.1.12 The deputation to the Planning Board on 16 November 2009 was made by Dr Nigel Price, a doctor from the practice, on behalf of the applicant, the Poole Road Medical Centre. At the end of the debate there was a move to grant by Councillor Grower, seconded by Councillor Kelsey and the application was granted by 9 votes to 1, with Councillor Coope voting against. Having summed up the application in the usual way, the Respondent voted in favour of the application, although he did not speak on the application itself. The planning issues in the determination of the application were basically



around the weight attached to the conservation issues against those for the provision of medical facilities for the local community. The majority of members took the view that the latter outweighed the former. As usual, the Respondent considered the issue of declarations and the advice received from staff in Law & Governance was that there was no declarable interest as the applicant made his own deputation as a doctor from the practice. The Planning Case Officer's report states the applicant as the Poole Road Medical Centre but makes no mention of a planning agent. Although they were not present at the meeting, the Respondent was aware that Planning Solutions were the agents, as were officers in Democratic Services. The advice he received from officers prior to the meeting was that there was no interest to declare.

#### Background comments by the Complainant

- 4.1.13 It is inconceivable that the complainant was unaware of the Respondent's involvement in the tourism industry. They have both been on Bournemouth Council since the Respondent's election in 2000 and the Respondent doubts that there could be another member who was unaware of his line of business. The Respondent has spent his entire career in the hotel business and his connections are included fully in the Register of Members' Interests. He has owned and operated hotels in Bournemouth for over 30 years and during much of that time he has had a fairly high public profile through the trade organisations in which he has been involved. He is a Fellow of the Institute of Hospitality (FIH) and also operates a consultancy in the hospitality sector. He has always declared the appropriate interests around tourism or his businesses or those of his clients at Planning Board or on any other relevant occasion during his time as a Bournemouth councillor.
- 4.1.14 It is a complete mystery to the Respondent as to how the complainant came to second his nomination as Chairman of the Planning Board as recently as June 2009 if his preferred outcome from the inquiry was to see his 'removal from the Planning Board.' Apart from the complainant's more recent conversion to this view, the Respondent believed that he retained the full confidence of the other members of the Planning Board as their Chairman and they all knew that he would never do anything to jeopardise that or the reputation of the Board itself.
- 4.1.15 References made by the complainant to the changes to the Council's Constitution that were agreed by the full Council are not accurate but are presumably outside the scope of this inquiry in any case. The Respondent shall therefore not comment on these further. Similarly, the Pitt Report has been considered by the Audit and Governance Committee and the Service Director for Planning & Transport has given a presentation on the issues as they might or might not affect other Local Planning Authorities, including Bournemouth. The Respondent has assumed therefore that the Pitt Report also falls outside the scope of this inquiry.

#### The Code of Conduct

- 4.1.16 The Code of Conduct and the Council's Code of Best Practice relating to Planning Issues are central to the proper interpretation of the allegations made by the Complainant.
- 4.1.17 At the outset the Respondent needs to stress that he has always done his utmost to interpret and comply with the Code and to make the appropriate declarations whenever he concludes that he has a personal or prejudicial interest. In every case he has been guided by the Code and the advice of Democratic Services Officers or the Monitoring Officer in advance of the meeting or the Senior Lawyer present at the meeting. Although he appreciates that it is ultimately for a member to decide on the declaration of an interest, in the Respondent's case he has always done so proportionately and made his decision based on the advice he has received from the Council's Officers.
- 4.1.18 The Bournemouth Borough Council's 'local code of best practice relating to planning issues' deals with the point at which a personal interest becomes a prejudicial interest (6.3) thus... 'If the personal interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the members' judgement of the public interest.'
- 4.1.19 In terms of planning issues it goes further and says (6.4) that, 'the two stage test of personal and prejudicial interests requires a councillor to abstain from involvement in any issue the outcome of which might advantage or disadvantage the personal interests of the councillor, his or her family, employer or business'.
- 4.1.20 The Code then goes on to say (6.4) that 'Councillors serving on the Planning Board need to consider whether the existence of a personal interest could create the perception that they were not completely impartial'. Finally in this section, the Code says (6.4) that, 'The Council's Head of Law and Corporate Governance will provide advice to councillors'.
- 4.1.21 In the Code of Conduct, 'guide for members', issued by the Standards Board for England, it asks the question in the section on prejudicial interests (page 23,1c), 'What is so significant that it is likely to prejudice your judgement?' to which it gives the additional advice that, 'You must ask yourself whether a member of the public – if he or she knew all the relevant facts – would think that your personal interest was so significant that it would be likely to prejudice your judgement'.
- 4.1.22 The Respondent is totally clear that with the knowledge of all the relevant facts, a reasonable member of the public would not think that his personal interest in respect of Mr Ramsden was so significant that it would be likely to prejudice the Respondent's judgement in respect of an application for which he or his business were acting as the planning agents for the applicant. Further, whilst the Respondent accepts that there is always going to be some degree of subjectivity in terms of the interpretation of the declaration of a personal interest, he does not believe that he has ever failed to observe the guidance or spirit of the Code in his position on the Planning Board, either as a member of the Board or as its Chairman.

4.1.23 It is alleged by the complainant that the Respondent had a close association with Mr Ramsden which resulted in an interest which went beyond that which he declared. He does not believe that to be the case. Indeed this specific allegation has previously been investigated by the Council's Monitoring Officer as a result of his complaint on exactly the same issue in 2007. As a result of that complaint the Monitoring Officer wrote to the complainant on 17 January 2008 stating,

*'It was agreed that I would discuss this further with my colleagues in Democratic and Legal Services. Following those discussions, the current practice of declaring Ramsden as an ex-Councillor will cease. The Respondent will continue to declare a personal interest when appropriate.'*

This the Respondent has complied with meticulously as referred to elsewhere in this statement.

4.2 The Standards Committee's submissions:

4.2.1 Paragraph 1(2) of the Council's Code of Conduct draws attention to the General Principles contained in the Relevant Authorities (General Principles) Order 2001. The Order includes the following:

'Honesty and Integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.'

Failure to comply with paragraph 9 of the Council's Code of Conduct

4.2.2 The Respondent has made declarations of a personal interest whenever Mr Ramsden has appeared before the Planning Board, in common with other councillors, on the basis that Mr Ramsden was known to them as a former councillor. However, on those occasions, the Respondent has failed to make any declaration of personal interest in respect of the hospitality that he had received from Mr Ramsden and his family.

4.2.3 Equally, the Respondent has on occasion failed to make any declaration of personal interest that Mr Ramsden is a person with whom he had a close association.

4.2.4 When a client of Planning Solutions was concerned with a matter before the Planning Board, the Respondent has failed to make any declaration of personal interest that Planning Solutions is a business that was operated by Mr Ramsden, a person with whom he had a close association.

- 4.2.5 When a client of Planning Solutions CTP Ltd was concerned with a matter before the Planning Board, the Respondent has failed to make any declaration of personal interest that Planning Solutions CTP Ltd is a business that employs Mr Ramsden, a person with whom he had a close association.
- 4.2.6 When an applicant for planning permission had employed or appointed Mr Ramsden as its representative before the Planning Board, the Respondent failed to make any declaration of personal interest that his close associate was employed or appointed by a person or body that would be affected by the decision of the Board.

Failure to comply with paragraph 12 of the Council's Code of Conduct

- 4.2.7 The Respondent has failed to declare prejudicial interests and withdraw from meetings where he had personal interests through his connections with Mr Ramsden (as above).

Failure to comply with paragraph 5 of the Council's Code of Conduct: Disrepute

- 4.2.8 Conduct by a member which could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties properly will bring the authority into disrepute.
- 4.2.9 Decisions on planning applications involve the balancing of the personal interests of the applicants with the personal interests of those who may be affected by proposed development and the general public interest as expressed through planning policies. Decisions are often finely balanced and ought to be demonstrably fair by the explicit exclusion of any appearance that the private interests of a councillor making the decision or the interests of any of the councillor's close connections have been given any weight. The required processes of declaration of such personal interests and withdrawal from the meeting when those interests could be considered prejudicial ensure that decision-making on such matters is demonstrably not being influenced by the personal interests of the decision-makers or their close connections. The integrity of the planning process therefore depends crucially on proper behaviour by planning board members in relation to their own personal interests or those of their connections.
- 4.2.10 Failure to deal correctly with personal interests will tend to undermine confidence that the Council's decision making in relation to planning applications is being undertaken without any regard for the personal interests of councillors, their friends or the employers of their friends.
- 4.2.11 It is considered that a reasonable person with knowledge of the facts would conclude:
- 4.2.11.1 That since 2007 there have been breaches of the Council's Second Code of Conduct in that the Respondent failed to deal correctly with his personal and prejudicial interests in relation to Mr Ramsden, Mr Ramsden's Planning Solutions business and, since April 2009, Planning Solutions CTP Ltd; a company of which Mr Ramsden is a director or employee and clients of Mr Ramsden.

- 4.2.11.2 That as a consequence the Respondent has brought his offices as Chair of the Planning Board, as Deputy Leader of the Council and as a Councillor as well as the Bournemouth Borough Council into disrepute.
- 4.2.12 The investigator included the receipt of hospitality from Mr Ramsden and his family as evidence which demonstrated that there is a close association between the Respondent and Mr Ramsden. It is unclear from the submissions made by the Respondent (at 3.25 above) as to whether he accepts that he has attended family gatherings with Mr Ramsden and his family and other meals or hospitality. It is considered that some clarity should be sought from the Respondent in this regard.
- 4.2.13 It is factual to state that the Respondent has registered the receipt of gifts and hospitality in accordance with paragraph 13. Whether he was required to do so is a matter of interpretation of the Code of Conduct.
- 4.2.14 The investigator's comments are not inaccurate. The investigator sets out in this paragraph and paragraphs 3.21 to 3.25 the evidence that he relies upon which establishes that there is a close association. It is understood that the evidence was that provided by the Respondent to the investigator and has not been exaggerated.
- 4.2.15 The submission made by the Respondent is not understood as the Respondent agrees that he had a close association with Mr Ramsden. Also the Respondent states in response to paragraph 3.43.1 in his response to the investigator's report that he has made the declaration required by paragraph 9 of the Code of Conduct. Whilst the Respondent declared the existence of a personal interest, the investigator comments in this paragraph that the Respondent did not declare the nature of that personal interest, i.e. he did not declare that his personal interest was due to his close association with Mr Ramsden and his family.
- 4.2.16 As an observation, the Respondent states that it did not occur to the senior lawyer present at the meeting that it was necessary or appropriate for a declaration to be made. It is considered that it is not the responsibility of the senior lawyer advising the Planning Board to be aware of each member's interests and tell members when they may have a declaration of interest to be made. The role of the senior lawyer is to assist in relation to the legal interpretation of planning, answer any questions and to advise on matters of procedure. It is difficult for officers during the course of a meeting to give accurate and detailed advice to members about their interests. Members are generally urged to seek advice well in advance of meetings. Members must take responsibility for their own interests and be alert to all possible matters which may arise during the meeting in which they may need to make declarations.
- 4.2.17 The Tribunal is invited to reach its conclusions as to the Respondent's statements about the Medical Centre application and the declaration in March 2010 following review of the evidence provided by the Respondent.

4.2.18 There is no suggestion in the investigator's report that the Respondent has influenced the Planning Board decisions in which he remained in the meeting despite having prejudicial interests. Exhibit BBC1 provides the officer's recommendations for each of the decisions.

#### Paragraph 5

4.2.19 It is not proposed that the Standards Committee will make detailed submissions as to the investigator's view that there is a breach of paragraph 5 of the Code. Ms Lefort will be happy to respond to any questions which the Tribunal may have in considering whether there has been a potential breach of this paragraph.

#### Improper influence

4.2.20 It is noted that the Respondent refers to his handling of the Planning Board meetings. It is stressed that it is not suggested that the Respondent used his position improperly or that decisions were altered as a result of him not withdrawing from the meeting. The investigator's report does not conclude that the Respondent failed to comply with paragraphs 12(1)(c) or 6(a) of the Code of Conduct.

### **4.3 Tribunal decision**

4.3.1 The fundamental issue with which the Tribunal concerned itself was the nature of the relationship between Mr Ramsden and the Respondent and whether in all the circumstances a prejudicial interest could be established. The evidence of the Respondent was that he had known Mr Ramsden since 1999. They had been friends all that time. He had, along with many other councillors and officers attended Mr Ramsden's wedding. He had been an unpaid company officer for a retail company that Mr Ramsden had been concerned in. He was a close friend of Mr Ramsden's wife. Along with three other friends and some family members he had become a godparent of Mr Ramsden's second (of three) children in 2005. He went to Mr Ramsden's house perhaps once or twice a year for a children's party and lunched or dined with him perhaps as frequently in a restaurant or hotel. On such occasions the Respondent would either pay all, or his share of the bill. There had been no giving or receiving of substantial presents between the friends. The Respondent stated that his relationship was no different from that he had with a number of friends.

4.3.2 The issue of the Respondent's position and declarations with respect to Mr Ramsden were discussed at a meeting attended by the Respondent, Councillors West, Smith and MacLoughlin and the Council's Monitoring Officer on 9 January 2008. The issue of his executive role and Chair of the Planning Board was raised. The notes of the meeting suggest that this was seen as a question of public perception which was a matter which could be explained. The practice which the Respondent had adopted (in common with other councillors) of declaring the relationship with Mr Ramsden in terms of his former membership of the Council was challenged. The Respondent's friendship, former business association and role as godfather were before the meeting.

- 4.3.3 The Monitoring Officer advised that there would be a distinction between Mr Ramsden as an agent and Mr Ramsden in the role of applicant or objector. At a subsequent meeting of the Monitoring Officer and other officers on 11 January 2008 it was agreed that the declaration of the relationship with the ex-councillor should cease and the Respondent should "declare interest as close association – not prejudicial". This advice was conveyed to the Respondent by email. He subsequently acted on the advice making such a declaration (with minor variations) at relevant meetings of the Planning Board.
- 4.3.4 The Tribunal heard evidence from the Respondent that, following his taking advice from the Monitoring Officer, he had concluded that, even if the nature of his relationship had been so significant that he had a prejudicial interest in relation to planning matters involving Mr Ramsden and the Planning Board, this would only arise in the circumstances where Mr Ramsden was the applicant for planning permission. The Respondent told the tribunal that he believed that there was no possibility of a prejudicial interest arising where Mr Ramsden or one of his companies fulfilled other roles such as agent for an applicant or consultant to an applicant. In the event, the consequences that flow from this position were not argued before the Tribunal as the existence of a prejudicial interest arising from the close association between the Respondent and Mr Ramsden was not made out. The distinction drawn by the respondent between the various guises in which Mr Ramsden was involved in matters before the Planning Board was accepted as reasonable by the Tribunal although it required careful analysis which might not always be undertaken or readily understood by even fair minded and informed members of the public. In addition, many members of the public, no matter how fair minded and reasonable they may be, might justifiably question (in view of the need for transparency and due regard for public perception to be considered) the need or desirability for the Council's property and planning responsibilities at member level to be under the remit of the same person; all the more so when that person also has a consultancy business and a proprietary interest in Bournemouth involving matters which might arise fairly regularly before the Planning Board. As part of our decision, we recommend that the Respondent reflect further on the position he outlined in evidence, and take further advice on the nature and extent of the definition of prejudicial interest set out in paragraph 10 of the Code.
- 4.3.5 The Tribunal heard evidence and submissions from the Standards Committee and the Respondent about the Respondent's conduct in relation to his declaration of interests on the occasions where he had multiple interests.
- 4.3.6 A particular example concerned a meeting of the Planning Board on 19 January 2009, when an application listed as 51 Thistlebarrow Road and Land r/o Stadium was to be considered. The Respondent declared his personal and prejudicial interest in the item and withdrew from the chamber during the consideration of the application. This declaration rested on a direct relationship between one of the Respondent's businesses and AFC Bournemouth, who were directly interested in the outcome of the application.

- 4.3.7 It was alleged by the Standards Committee that the Respondent had failed to mention his personal interest by virtue of Mr Ramsden and his company also being connected to the application. In response the Respondent argued that as he had already identified his direct prejudicial interest in the matter and had left the chamber, the question of any other interests that may or may not have existed became irrelevant, as he was no longer conducting the business of the authority concerning that item.
- 4.3.8 The Tribunal was not asked to make a determination on this point, as the Standards Committee chose not to pursue this matter following the ruling on the preliminary matter. However, the Tribunal makes the general observation that the purpose of the Code is to promote better standards of conduct in public life, and that by reference to the Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership, it may be that best practice would be to make the fullest possible declaration of all interests.
- 4.3.9 It was uncontested that the Respondent had a personal interest with respect to Mr Ramsden. For there also to be a prejudicial interest that interest had to be one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Respondent's judgement of the public interest.
- 4.3.10 The distinction between a personal and a prejudicial relationship has significant effects on the ability of a councillor to participate in the relevant item of Council business and consequently on his ability to contribute his views or represent the views and concerns of his ward with respect to that matter. For there to be a prejudicial interest the nature and quality of the relationship needs to be distinctly different from that which gives rise to a personal interest.
- 4.3.11 The relevant facts to be considered by the member of the public in coming to a conclusion must also include both the facts about the relationship and also the relevant facts about the councillor concerned. In this case the Respondent had been on the Planning Board for a number of years and Chair of it for three years. He had regularly taken advice as to propriety and always acted upon it. He had discussed the nature of his relationship with the Monitoring Officer who, with full knowledge of the relevant facts, had advised him. He had followed that advice. Where his clients had an interest in the matter before the planning board he had declared a prejudicial interest and left the meeting. There was no indication of any other behaviour than that of an individual careful to ensure that he discharged his significant public responsibilities fully and fairly. He is a mature and experienced individual with considerable experience as a councillor and a good understanding of his responsibilities.
- 4.3.12 The Tribunal considered that the cases cited by the Applicant were not particularly relevant to the unusual situation it was being asked to determine here and that there was no guidance from Standards for England on close associations involving people not in the same family. The investigation had not sought to involve the other half of the close association and therefore there was a lack of evidence which might



have assisted the analysis of what was contributed by the Respondent.

4.3.13 The test to be applied under the Code of Conduct is in essence the same as the test for apparent bias. The member of the public viewing these circumstances would demonstrate two key characteristics – adopting a balanced approach and while not being complacent would not be unduly sensitive or suspicious (*Gillies v Secretary of State for Work and Pensions* [2006] 1WLR 781). The matter must be considered from the point of view of an observer who is both informed and fair minded. The question to be addressed by the member of the public with these characteristics is whether there is a likelihood in other words a real possibility (*Porter v Magill* [2002] 2AC 357) of bias.

4.3.14 Applying this test to the Respondent it is clear that such a reasonable informed and fair minded individual would not conclude that the Respondent's close association with Mr Ramsden was so significant as to make it likely to prejudice the Respondent's judgement of the public interest. The reasonable member of the public would recognise that the Respondent had acknowledged the potential for prejudice; had taken appropriate advice; had exercised judgement in the conduct of his friendship with Mr Ramsden, and that his conduct in his official capacity as a councillor and Chair of the Planning Board conformed to the Code in this and other matters where he had both personal and prejudicial interests.

## **5 Tribunal Decision**

5.1 The Respondent is found not to have been in breach of the Code of Conduct

### **5.2 Recommendations to relevant authority**

5.2.1 The Council consider whether the combination of regulatory and executive functions with respect to planning and property should be combined in one portfolio.

**6** Any request for permission to appeal needs usually to be made to the First-tier Tribunal within 28 days of receipt of the Tribunal's reasoned decision. Such applications need to be in writing.

Chris Hughes OBE  
**Judge**  
14 March 2011