

**Report of an Investigation in Accordance with the Arrangements for
Dealing with Standards Allegations under the Localism Act 2011
In the case of Councillor Mohammed Rouf**

INVESTIGATION REPORT CONTENTS

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Background

1. The Monitoring Officer received a complaint with 5 allegations from Julian Saunders concerning the alleged conduct of Councillor Mohammad Rouf, a member of Sandwell MBC. The Monitoring officer considered the allegations and found insufficient evidence for referral for investigation on 2 matters but referred 3 matters for investigation on 8 August 2018.
2. The investigation team consisted of Officers from Legal Services and Audit Services. The Monitoring Officer informed Cllr Rouf that the matter was referred for an investigation.
3. This report details the results of investigations carried out into the 3 matters referred for investigation by the Monitoring Officer.

Summary of Allegations

4. A number of allegations were made the detail of which is below,
 - Allegation 1 – **That Cllr Rouf failed to register his beneficial interest with 28 days as required under the member code of conduct** and gave false information in various editions of his Register of Interests concerning a beneficial interest he had in a property, 88 Shireland Road, Smethwick. The land was registered in the name of Councillor Rouf's son and then in the name of another family member since at least 2005. Councillor Rouf confirmed that

he had a beneficial interest in the property in his Register of Interests dated 15th July 2008, despite the fact that his son claimed to be the owner in a planning application in 2007 (DC/07/47647). Councillor Rouf did have a beneficial interest in the property in 2008 but has failed to declare his interest in same and subsequent Register entries and in his application for Council housing. He made no declaration in the 2014 Register, but now claims that the property is in the beneficial ownership of his wife.

- **Allegation 2 – That Cllr Rouf failed to register his beneficial interest with 28 days as required under the member code of conduct** In his Register of Interests dated 25th September 2014 Councillor Rouf falsely claimed that he was the beneficial owner of 33 Trafalgar Road, Smethwick to conceal the fact that he was living in a Sandwell MBC Council House.
- **Allegation 3 - That Cllr Rouf failed to register his beneficial interest with 28 days as required under the member code of conduct** Councillor Rouf failed to declare his occupation as a taxi driver in his Register of Interests dated 10th July 2008 and 25th September 2014, although this may not be exhaustive.

5. The allegations detail a potential breach of the seven principles of public life, openness and honesty and there is also a potential breach of the members code of conduct; members must declare

and maintain their register of interests with 28 days of any changes (Part 11, 2, 2.1-2.3).

Investigation Procedure

6. The investigation brief was agreed with the Monitoring Officer, who except for guidance on procedural matters has remained independent from the investigation.
7. The investigation process involved reviewing a number of documents including the original Declarations of Interest, and evidence gathered throughout the Audit investigation.
8. It was considered whether witness evidence was required; but this was not deemed necessary. Cllr Rouf was interviewed, to gather his evidence.
9. This report was completed and submitted to the Monitoring Officer in draft. The Monitoring Officer provided a copy of the report to the Complainant and the subject member on 21 February and requested comments on the report by no later than 12 noon on 7 March 2019.
10. Comments were received by the complainant on 1 March 2019, no comment were received from the subject member by the deadline.

11. The investigator considered the comments and was minded to re-consider the issue of taxi insurance as a valid question but, did not consider that the other comments were such that the report should be amended or further evidence gathered.

12. Further questions were put to the subject member in relation to insurance but the subject member no longer held this detail given the passage of time. On balance this explanation was accepted by the investigator. As such the report was not amended.

Arrangements for dealing with Standards Allegations

13. Pursuant to the provisions of the Localism Act 2011, the Council has put in place “arrangements” under which allegations that a member or co-opted member of the authority has failed to comply with the authority’s Code of Conduct are dealt with.

14. The Monitoring Officer will decide whether a complaint merits formal investigation. It was determined in this case that two parts of the complaint did not merit further investigation, but three parts of the complaint did merit investigation, and as such, the monitoring officer appointed an Investigating Officer.

Relevant Legislation and Protocols

The Council adopted a Members' Code of Conduct. This has been regularly reviewed. The most recent Code was adopted October 2016.

15. These allegations span a number of years; therefore, I have considered the Code and/or standards regime that was in place at the time of the incident alleged.
16. I have considered the arrangements for dealing with standards allegations, the Council's Constitution, specifically Article 2 The Code of Conduct: Guide for Members May 2007, Protocol for Member / Officer Relations.
17. I have also considered the guidance from the Standards Board for England which has now been disbanded but is still relevant, given the timeframe of this complaint.

Official Capacity/ Scope of the Code

18. Section 27(2) of the Localism Act 2011 requires the Council to adopt a Code of Conduct "dealing with the conduct that is expected of members ... when they are acting in that capacity." The Council's Member Code of Conduct is expressed to set out the standards of conduct that are expected of members when they are acting in that capacity and applies to members in all aspects of their activities as members. It does not seek to regulate what members do in their purely private and personal lives.

Standards Case Law

19. Whether a member is acting in an official capacity, was one of the central issues in *Livingstone v APE* [2006] EWHC 2533. Collins J held that the then Mayor of London was not acting in an official capacity when responding to being “door stepped” by a journalist when leaving the offices of the Greater London Authority. The case made clear that a distinction is to be drawn between the individual as a Councillor and the individual as an individual and that a Councillor is not a Councillor twenty-four hours a day. The case provided helpful guidance on whether the Code applied when a Member does not appear to act as a Member but does misuse their office. Mr Justice Collins made the following comments:

“If the words ‘in performing his functions’ are applied literally, it may be said that such misuse, and other misconduct which is closely linked to his position as such may not be covered. It seems to me that the expression should be construed to apply to a member who is using his position in doing or saying whatever is said to amount to misconduct. It is obviously impossible for a member who was acting in his official capacity to argue that by acting improperly he was not performing his functions. Such a construction would emasculate the system set up by Parliament”.

20. The *Livingstone* judgment was considered in detail in *Bartlett, Milton Keynes Council* [2008] APE 0401 in an appeal from a decision of the local standards committee. In the Case Tribunal’s

view, the Livingstone should be interpreted to mean that for a councillor to be acting in an official capacity:-

- (a) the councillor should be engaged in business directly related to the council or constituents; or
- (b) the link between the councillor's office and the conduct should have a degree of formality.

21. In *MC v Standards Committee of the London Borough of Richmond* [2011] UKUT 232 (AAC), the tribunal further stated the need for a link between the Councillor's office and the alleged conduct. The tribunal indicated that merely acting, claiming to act or giving the impression of acting as a Member was insufficient for the conduct to be covered by the code. There had to be sufficient material for the tribunal to properly conclude that the member was in fact acting as a representative of the Council.

22. *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin) confirms that the correct test to be applied in Standards Cases is the civil standard of proof; on the balance of probabilities. In this case, the Councillor was found to have breached the Code of Conduct as he had referred to the Adult Social Care Directorate as a shambles and shambolic, he had improperly sought to interfere with the housing allocation decision making process, failed to show respect and consideration to officer and bullied officers. The Court considered the relationship between members and officers and found that there "*is a mutual bond of trust and confidence between elected members and their*

officers...local government in this country could not sensibly function without it.”

23. A case decided by the First-Tier tribunal on an appeal from Bromsgrove Borough Council dealt with a failure to declare a personal interest at two Parish Council meetings where the business discussed was the proposed development of land in the village. The case is Councillor David Matthews of Alvechurch Parish Council v Bromsgrove District Council Standards Committee, LGS\2011\0565. The personal interest was a relationship that the Councillor had; first Cousin once removed.
24. The relevant Code of Conduct stated that a councillor had a personal interest when *“a decision in relation to [the business of the Council] might reasonably be regarded as affecting the wellbeing or financial position of a relevant person to a greater extent than the majority of ...other council tax payers, ratepayers or inhabitants”*. A relevant person was defined as including a member of the councillor’s family or a person with whom the councillor has a close connection.
25. In this case, the councillor was found not to have breached the code of conduct. The tribunal stated, *“had there been a close association then, regardless of whether the co-owner was to be regarded as having a family connection with the appellant, there would have been a personal interest.”* Further, it stated *“it would be*

unrealistic and unreasonable for a member of your family to be interpreted for the purposes of the code as encompassing the broader reaches of the extended family and it would be wrong for a first cousin once removed as coming with the definition.” It went further to say that “if, despite, the distance of the family connection, there is nevertheless a close association then the second limb of paragraph 8 (2) (a) [close association] will come into play and require a declaration of interest.”

Human Rights

26. Throughout the investigation, I have remained mindful of the article contained within the European Convention on Human Rights the articles set out below.

27. Article 6 of the European Convention on Human Rights provides:-

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to

the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

28. Article 8 of the European Convention on Human Rights provides:-

(1) Everyone has the right to respect for his private and family life, his home and his correspondence;

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

29. Article 10 of the European Convention on Human Rights provides:-

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society,

in the interests of the protection of the reputation or rights of others.

Investigation Outcome

30. There has been a breach of the Members code of conduct in respect of allegations 1, 2 and 3 in particular Cllr Rouf has failed to register his beneficial interest with 28 days as required under the member code of conduct.
31. Further information is included below,
32. Allegation 1 – That Cllr Rouf failed to register his beneficial interest with 28 days as required under the member code of conduct 88 Shireland Road. Council tax records; Land Registry entries; the Members Register of Interests; and details of the Planning application in 2007, have been obtained and reviewed by the Council's Audit Services.
33. In reference to this allegation, I have the following findings:
 - a. There were inaccurate declarations made with regard to Councillor Rouf's beneficial interests.
 - b. Councillor Rouf was residing at 88 Shireland Road, when the declarations were made, and incorrectly stated that he had a beneficial interest in that property.

- c. The Councillor has stated in mitigation that he believed at the time that this occupation constituted a beneficial interest in that property.
 - d. The Councillor accepts that these declarations were inaccurate.
 - e. Councillor Rouf has stated that the inaccuracy was as a result of his misunderstanding of the definition of Beneficial Interest in this context.
 - f. Code of Conduct training has been undertaken since these inaccurate declarations were made, and Councillor Rouf has stated that he now better understands the nature of the Beneficial interests that must be declared.
 - g. Councillor Rouf has stated that in fact, he did not have a beneficial interest in that property when the declaration was made, and there is no other external evidence to indicate that the Councillor had an actual Beneficial Interest in 88 Shireland Road.
34. Allegation 2 – That Cllr Rouf failed to register his beneficial interest with 28 days as required under the member code of conduct 33 Trafalgar Road, Smethwick. Details relating to the history of this property which is a Council property, were obtained and reviewed by the Council's Audit Services.
35. In reference to this allegation, I have the following findings:

- h. There were inaccurate declarations made with regard to Councillor Rouf's beneficial interests.
- i. Councillor Rouf was residing at 33 Trafalgar Road, when the declarations were made, and incorrectly believed at the time that this occupation constituted a beneficial interest
- j. The Councillor accepts that these declarations were inaccurate.
- k. Councillor Rouf has stated that the discrepancy or inaccuracy was as a result of his misunderstanding of the definition of Beneficial Interest in this context.
- l. Code of Conduct training has been undertaken since these inaccurate declarations were made, and Councillor Rouf now better understands the nature of the Beneficial interests that must be declared.
- m. Councillor Rouf has stated that in fact, he did not have a beneficial interest in that property when the declaration was made, and there is no other external evidence to indicate that the Councillor had an actual Beneficial Interest in 33 Trafalgar Road

36. Allegation 3 - That Cllr Rouf failed to register his beneficial interest with 28 days as required under the member code of conduct in his failure to declare occupation as a taxi driver. Details relating to the Register of Interests and the history of Councillor Rouf's private hire licence and work as a private hire driver leading

to the surrender of the licence in 2014 have been obtained from a neighbouring Council by the Council's Audit Services. In reference to this allegation, I have the following findings:

- n. There were inaccurate declarations made with regard to the declaration of interest's forms submitted by Councillor Rouf in 2007, 2008 and 2010
- o. Councillor Rouf stated that he could not recall why the details of his employment had not been included in the declarations submitted in 2007, 2008 and 2010.
- p. Councillor Rouf indicated that the forms were completed by SMBC staff and he signed the completed forms.
- q. Councillor Rouf stated that he understands that it is his responsibility to ensure the accuracy of these forms, and that it was his oversight that has led to the inaccurate declarations being submitted.
- r. None of the external evidence obtained contradicts the statements made by Councillor Rouf with regard to when he was actively working as a Taxi driver.
- s. Councillor Rouf has undertaken training on the Code of Conduct and understands the obligations on individual Councillors now. He has also co-operated with the investigation.
- t. Councillor Rouf stated that his three-year licence, was obtained and paid for in 2010, but shortly afterwards he

ceased working as a Taxi driver, however as he was not entitled to a refund of the licence fee, even if he surrendered his licence prematurely, he took what he believed at the time to be the pragmatic decision to allow the licence to continue until its expiration in 2013.

u. Councillor Rouf accepted that 4 declarations of interest had been submitted with incorrect statements as to his employment status, these declarations being:

i. 30 May 2007 – employment status left blank

ii. 17 August 2007 – employment status left blank

iii. 10 July 2008 – employment status stated as “None”

iv. 14 May 2010 – employment status stated as “None”

37. The full details of the allegations are set out in paragraphs 2 – 6 above.

a. Relevant part of the Code of Conduct

The relevant Nolan principles for this matter are:

Selflessness – holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Accountability – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness - holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

b. Investigation Methodology

I considered declarations made by Councillor Rouf over the previous relevant years.

Councillor Rouf was invited to interview on the following occasions, 4 September 2018, 21 September 2018, 3 October 2018 but did not reply.

Cllr Rouf attended an interview on 28th November 2018 at 14:00 hrs.

c. Agreed Facts

Some of the declarations of interest have been inaccurate

d. Disputed Facts

There are no disputed facts of any substance

e. Findings of Fact

None required, Cllr Rouf has accepted that the declarations were inaccurate.

f. Acting in Official Capacity?

Councillor Rouf was acting in an official capacity in making the relevant declarations.

g. Conclusions

Cllr Rouf failed to make the relevant declarations on his register of interests and such as breached the members code of conduct.

Overall Conclusions

38. The overall conclusion is that, with regard to Allegation 1 and Allegation 2; there has been a breach of the Code of Conduct for Members, in that:

- Councillor Rouf did make false declarations relating to owning a beneficial interest in 88 Shireland Road, and 33 Trafalgar Road.

- Councillor Rouf was aware of his obligations with regard to the accuracy of these declarations.
- The harm caused by the false declarations was to the reputation of the Council, and its systems and procedures for accurately monitoring the interests of its Councillors, and to the confidence the public has in the accuracy of the Council's records relating to Member's interests. There appears to have been no prejudice to any decisions made by the Council as a result of the false declarations.

39. The overall conclusion with regard to Allegation 3 is that, although Councillor Rouf did continue to licence to drive a taxi until 2013, there is no evidence to conclude that he continued to work as a taxi driver during the period 2011 – 2013 and on balance given the evidence that he has provided it is accepted that he was licensed but not working as a taxi driver. There has however been a breach of the Code of Conduct for Members in regard to the declaration of interests, in that

- Councillor Rouf did make false declarations relating to his employment in 2007, 2008 and 2010
- Councillor Rouf had no explanation for the inaccurate declaration

Considering the evidence and findings it is concluded that Cllr Rouf has breached the members code of conduct by failure to declare and register his interests although he has since received training on this issue and no

evidence has been found to suggest that decisions were improperly made or that Cllr Rouf's failure was for any personal interest.

Related Documents

Evidence Bundle