

Case Reference – HML/703/4/18/1 – Councillor Roy Darke, Oxford City Council.

On 9 October 2009 and 26 November 2009, the Standards Committee at Oxford City Council referred allegations against Councillor Darke to Jeremy Thomas, Monitoring Officer, Oxford City Council for investigation in accordance with section 57A(2)(a) of the Local Government Act 2000.

In accordance with guidance issued by Standards for England, Jeremy Thomas appointed Helen Lynch, Lawyer, Oxford City Council to conduct the investigation.

This report sets out the outcome of that investigation.

Helen Lynch
7 January 2010

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1. Executive Summary

1.1 Summary of Allegation

Dr Susan Mallett alleges that Councillor Roy Darke failed to declare a personal and prejudicial interest at:

- Meetings of the North East Area Committee (NEAC) on 19 April 2009, 21 July 2009, 18 August 2009 and 15 September 2009;
- Meetings of the Strategic Development Control Committee (SDCC) on 26 August 2009 and;
- Full Council on 17 September 2009.

It is also alleged that Councillor Darke took on the role of Sewage Flooding Co-ordinator on behalf of NEAC without declaring the same personal and prejudicial interest.

1.2 Summary of Investigation Outcome

Councillor Darke did not fail to comply with the Member Code of Conduct.

2. Councillor Darke's Official Details

- 2.1 Councillor Darke was elected to Oxford City Council on 26 March 2009 for a term of 3 years. He is also currently a Councillor for Oxfordshire County Council. Prior to this he was the Chair of the New Marston Residents Association from 2005 to 2008 and served a previous term as a City Councillor between May 2002 and June 2004.
- 2.2 Councillor Darke is currently the Chair of the Council's NEAC and SDCC. He is also a member of the Value and Performance Scrutiny Committee, General Purposes Licensing Committee and the Audit and Governance Committee.
- 2.3 Councillor Darke gave a written undertaking to observe the City Council's Member Code of Conduct on 26 March 2009.
- 2.4 Councillor Darke completed training on the Members of Code of Conduct and Planning on 22 June and 29 June 2009 respectively.

3 The Relevant Legislation and Protocols

- 3.1 Oxford City Council has adopted a Members' Code of Conduct in which the following paragraphs are included:

8.— Personal interests

(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.— Disclosure of personal interests

- (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 2000¹.

10.— Prejudicial interest generally

(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 judgement 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.

11. Prejudicial interests arising in relation to overview and scrutiny committees

You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

12.— Effect of prejudicial interests on participation

(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.

4 The Evidence Gathered

4.1 I have spoken to and/or received written representations from:

Dr Susan Mallett (Complainant); and
Councillor Roy Darke (Subject of Complainant)
Ceri Kilty (Customer Relations, Thames Water)

4.2 I have also considered the following documentary evidence:

Study Ref – 3D0F SMG Ref 712 Ferry Road, Marston, Oxford Foul Water Sewerage Systems; and
Reports and minutes from the meetings referred to in the allegation.

5 Summary of Material Facts

History of Sewage Flooding at Councillor Darke's property in Edgeway Road

- 5.1 In 1996, Councillor Darke purchased a piece of land in Marston. At the time he purchased the land, there were sewerage smells, which Councillor Darke did raise with Thames Water. In 1999, Councillor Darke built a house on the land (The Oak Barn, 80 Edgeway Road) and subsequently experience sewage flooding (storm water overflow mixed with foul water) in his garden and under the house.
- 5.2 Councillor Darke contacted both Thames Water and OFWAT in an attempt to resolve the flooding problems. In approximately, 2003/04 Thames Water carried out routine cleaning but there were still flooding problems. In approximately 2004, Thames Water installed a number of non-return valves on the manholes in affected areas including one on the outfall manhole on Councillor Darke's property. Since then, Councillor Darke's property has not been affected by sewage flooding.
- 5.3 As a result of persistent lobbying by Councillor Darke, Thames Water also installed some overflow storage tanks in Court Place Farm Fields, Marston and Stockleys in 2004. After these were installed, excessive surface water caused these tanks to "back up" and resulted in foul water flooding in parts of the area between 2005 and 2009. Councillor Darke's property was not affected by these incidents of foul water flooding.
- 5.4 More recently, Thames Water have carried out more routine maintenance and renovation works on the main sewer in Marston Road, which has somewhat mitigated the problem of sewage flooding

Role of Sewage Flooding Co-ordinator

- 5.5 At the NEAC meeting on 21 April 2009, a resident from the Stockleys addressed the Committee on outstanding flooding problems in the Stockleys area. They suggested that somebody needed to "get a handle on sewage flooding issues for the area". Given his previous experiences with sewage flooding and dealings with Thames Water, Councillor Darke volunteered to be that person and as a result became the "Sewage Flooding Co-ordinator" for NEAC. This was not a formal office or any form of employment. Rather it was a shorthand expression of acting as a community representative. In other words, it was a natural corollary to and expression of the office of Councillor.
- 5.6 In undertaking that co-ordination role, Councillor Darke raised the issue of sewage flooding with the Chief Executive Peter Sloman, Councillor Bob Price and Executive Director Tim Sadler (who was asked to take a brief to the Oxford Area Flood Partnership). As a result, the issue of sewage flooding was added to the remit of the Flood Partnership. Councillor Cook is the Council's 'lead member' on the Flood Partnership, however Councillor Darke is on its circulation list.
- 5.7 Also, since late summer 2009, Councillor Darke has undertaken walkabouts with Steve Smith, the Council's Senior Engineer and a

representative from Thames Water in Ferry Road and Stockleys looking at ongoing work to the storm drain system. He has also discussed the problem of sewage flooding in Stockleys with Thames Water. As a result, there is currently an ongoing investigation of the watercourses culvert near Stockleys so as to establish what works are required to ensure that there will be sufficient capacity to deal with rainwater events in the future.

Summary of the relevant planning issues

Morrell Hall Development, John Garne Way

- 5.8 In June 2007 (prior to Councillor Darke's election to the Council), the Council's SDCC resolved to approve a planning application by Oxford Brookes University for the Morrell Hall development, John Garne Way in Oxford. In accordance with representations received from Thames Water (a statutory consultee), the permission was subject to the following condition:

"Before the development commences the construction of the foul and surface water drainage system shall be carried out in accordance with the details submitted to and approved in writing by the Local Planning Authority. Only the approved drainage system shall be implemented.

Reason: To prevent pollution of the water environment."

- 5.9 It is usual practice that Officers deal with the discharge of such conditions. However, in view of the problems with sewage flooding in the Marston area, Councillor Rundle asked that the discharge of the drainage conditions be first approved by NEAC.
- 5.10 Consequently, the matter was brought before the Committee on 21 April 2009. The Officer report explained that in accordance with the above condition, the applicant had submitted details of the foul and surface water drainage system. Thames Water considered the proposals but was concerned that the level of detail/evidence provided to show that there was adequate capacity to accommodate additional flows from the development was insufficient. At the same time, Thames Water advised that their Modelling Team was undertaking a catchment capacity study in the Marston area to establish if there were any issues or any work that needed to be undertaken in the area.
- 5.11 The applicant's agent submitted further information, following which Thames Water confirmed that they were satisfied with the submitted technical details of the drainage system at Morrell Hall. They also confirmed that the drainage capacity study (Study Ref -3D0F SMG Ref 712 Ferry Road, Marston, Oxford Foul Water Sewerage Systems) had been completed and concluded that the development at Morrell Hall would not increase the risk of flooding in Ferry Road, Edgeway Road, Purcell Road, Parry Close, Old Marston Road and Marston Road

(which had previously been affected by sewage flooding).
As a result, Thames Water were satisfied that the applicant's submission complied with the planning condition.

- 5.12 However, despite this advice from Thames Water, NEAC decided that the Thames Water report raised issues that needed to be investigated before the condition could be discharged.
- 5.13 The issue was considered by NEAC on 21 July 2009 but they were still not satisfied that the condition could be discharged. On 15 September 2009, the Head of City Development submitted a further report recommending that NEAC agree that the decision to confirm compliance with the planning condition be delegated to Officers. The report explained that Thames Water, as the expert consultee maintained no objection to the drainage systems implemented by the applicant. It would therefore be very difficult for the Council to justify the refusal to discharge the condition. This view was supported by Legal and Democratic services who advised Councillor Darke as chair of the committee prior to the meeting on 15 September 2009. The NEAC therefore resolved that the decision to confirm compliance with the drainage condition be delegated to the Head of City Development.

Oxford Brookes University, Gipsy Lane Development

- 5.14 On 18 August 2009 the NEAC commented on an application by Oxford Brookes University to demolish existing buildings on the Gypsy Lane Campus and build a new student centre. These comments were reported to SDCC on 26 August 2009, where the application was determined (but subsequently "called in" to Council). Councillor Darke chaired both Committees.
- 5.15 Thames Water provided a consultation response on the application stating that it was the developer's responsibility to make proper provision for drainage to groundwater courses or a suitable sewer. It therefore recommended that storm flows are attenuated or regulated into the receiving public network through on or off site storage.
- 5.16 Reference was made again to the Study Ref - 3D0F SMG Ref 712 Ferry Road, Marston, Oxford Foul Water Sewerage Systems. Whilst the Gipsy Lane development was not included in this study, Thames Water had completed a desktop study and stood by the conclusions in the report, namely that the development would not increase the risk of sewage flooding at Ferry Road, Edgeway Road, Purcell Road, Parry Close, Old Marston Road and Marston Road.
- 5.17 The SDCC resolved to approve the Gipsy Lane development. However, the application was called in to full Council, which considered and refused the application on 17 September 2009. Councillor Darke was also present at that meeting.

Dr Mallett's Allegations

- 5.18 Dr Mallett argues that since Councillor Darke's property has been and still is, affected by sewage flooding, he should have declared a personal prejudicial interest in the meetings of NEAC, SDCC and full Council which considered the drainage condition at Morrell Hall and the Gipsy Lane development.
- 5.19 When I spoke to Dr Mallett on 10 November 2009, she said that in her view the fact that the Thames Water report Study Ref - 3D0F SMG Ref 712 Ferry Road, Marston, Oxford Foul Water Sewerage Systems referred to Councillor Darke's address gave rise to a personal interest.
- 5.20 In her written submission dated 18 December 2009, Dr Mallett explained she considered that the interest was also prejudicial because a risk of flooding affects the long term value of property and "an endorsement by a City Council Committee of a report stating that Councillor Darke's property has no additional risk of sewage flooding resulting from 3 major Oxford Brookes developments could be perceived by the public as affecting the long term value of his property."
- 5.21 In support of her argument that Councillor Darke should have declared a personal and prejudicial interest at the full Council meeting, Dr Mallett refers to Councillor McManners not being permitted to take part in the meeting "due to matters affecting his private residence being similarly reported in the planning application."
- 5.22 Dr Mallett believes that Councillor Darke should also have declared this interest when taking on the role of "Sewage Flooding Co-ordinator" for the NEAC.

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

- 6.1 Before considering whether or not there has been a breach of the Code of Conduct, it is useful to consider what a personal interest is and what a personal prejudicial interest is.

Personal Interest

A Councillor has a personal interest in a matter if that matter affects their well-being or financial position or that of their relatives or people with whom they have a close association more than it would affect the majority of other people in the ward(s) to which the matter relates.

Prejudicial Interest

If a Councillor has a personal interest, they must then consider whether that interest is also prejudicial.

A personal interest will be prejudicial if:

- a) a member of the public, who knows the relevant facts, would reasonably think that the personal interest is so significant that it is likely to prejudice the Councillor's judgment of the public interest, and
- b) the matter affects the Councillor's financial interests/relates to a licensing or regulatory matter, and
- c) the interest does not fall within one of the exempt categories at paragraph 10(2)(c) of the Code of Conduct (not applicable in this case).

6.2 Having considered the relevant facts, I do not consider that Councillor Darke had a personal interest in whether the drainage condition for Morrell Hall development should be discharged or in the Gipsy Lane application. The key reason for this is that Councillor Darke's property has not been affected by sewage flooding since 2004. Therefore, the discharge of the drainage condition at Morrell Hall development or the Gipsy Lane development cannot be said to have affected Councillor Darke's well being or financial position more than it would affect the majority of the people in the relevant ward(s).

6.3 Dr Mallett alleges that Councillor Darke's property continues to be subject to sewage flooding. She stated that the manhole cover within his property boundary lifts up and raw sewage, loo paper and tampons are spread across his property. Prior to receiving this submission from Dr Mallett, I met with Councillor Darke who explained that nature of the flooding experienced constituted storm water overflow mixed with foul water. On receipt of Dr Mallett's submission, Councillor Darke confirmed, "there has never ever been flooding of solid matter and detritus on my property." Dr Mallett has not provided any photographic or documentary evidence in support of her submission. I therefore have no reason to doubt Councillor Darke's assertion that the flooding issues on his property were resolved in 2004 and that the flooding did not include any solid matter/detritus.

6.4 I disagree with Mr Mallett's argument that the fact that Councillor Darke's address was referred to in the report Study Ref - 3D0F SMG Ref 712 Ferry Road, Marston, Oxford Foul Water Sewerage Systems gave rise to a personal interest. Firstly, a number of roads were referred to in the report rather than specific references to Councillor Darke's property. Secondly, the report was simply confirming that those roads were not at an increased risk of flooding as a result of the Morrell Hall Development. The same must be true of several other streets that were not named in the report. Therefore, I do not consider that the matter affected Councillor Darke more than it did the majority of people in the ward. Whilst it is not directly relevant, it would be useful

to distinguish at this point why Councillor McManners was precluded from determining the Gipsy Lane application. The reason Councillor McManners did not take part in the determination of the Gipsy Lane development was because his property adjoined the development site, which resulted in him declaring a personal and prejudicial interest

- 6.5 I also disagree with Dr Mallett's assertion that "an endorsement by City Council Committee" of a report stating that Councillor Darke's property has no additional risk of sewage flooding resulting from 3 major Oxford Brookes development could be perceived by the public as affecting the long term value of his property." Again, it is crucial that Councillor Darke's property has not been affected by sewage flooding since 2004. I would also note that the Committee did not "endorse" the report by Thames Water. Thames Water is a statutory consultee and the Council is required to have regard to their expert advice.
- 6.6 Since I do not consider that Councillor Darke had a personal interest, it follows that he did not have a prejudicial interest. There was therefore no requirement for him to make any declaration at the meetings referred to in this report or when he took on the role as Sewage Flooding Co-ordinator.
- 6.7 For completeness, I have considered whether Councillor Darke should have declared his role as "Sewage Flooding Co-ordinator". Having considered the nature of the role, I do not think it was necessary for him to do so. The title "Sewage Flooding Co-ordinator" suggests that the role was more formal than it was. In reality, I do not consider that the role involved anything over and above that of local Councillor.
- 6.8 I have not considered Dr Mallett's allegation that Councillor Darke had pre-determined the outcome of the NEAC meeting on 15 September 2009 for two reasons. Firstly, my remit as investigator is limited to the original allegations referred for investigation by the Standards Committee. Dr Mallett raised this issue for the first time in her submission dated 18 December 2009. Secondly, the issue of pre-determination is not directly covered by the Code and is a matter for the Courts. If there were a finding by a Court to that effect then the Committee might receive a complaint that the finding brings the office of Councillor or Authority into disrepute but in the absence of such a finding such a complaint is not engaged by the Code.
- 6.9 If I were asked to give a view however, I do not think (on the information provided) there is sufficient evidence that Councillor Darke approached the decision on 15 September 2009 with a closed mind. It is entirely appropriate that Councillors seek advice from Officers on particular issues prior to matters being determined at Committee. It is also reasonable for Councillors to share that advice as they think appropriate. The minutes from NEAC on 15 September 2009 indicate that there was a debate on the matter at the Committee and members of the public addressed the Committee but that no expert evidence

(other than that from Thames Water) was presented. Therefore, the Committee determined the issue in accordance with the technical advice available.

7. Conclusion

- 7.1 For the reasons referred to above, I do not find that Councillor Darke failed to declare a personal prejudicial interest in relation to the matters raised by the complainant. Consequently, I find that there has been no failure to comply with the Code of Conduct.

Helen Lynch
Lawyer
Law and Governance
Direct Dial: 01865 252806

7 January 2009.

APPENDIX A

SCHEDULE OF EVIDENCE TAKEN INTO ACCOUNT

Case Reference: HML/703//4/18/1 – Councillor Roy Darke, Oxford City Council.

Document No:	Description	Pages
Core Documents		
1	Complaint Form and Supporting Evidence	1-7
2	Decision Notices dated 2 October 2009 and 26 November 2009: Referral for Investigation	8-12
3	Written submissions received from Dr Mallett dated 18 December 2009	13-21
4	Letters dated 6 and 28 November 2009 from Councillor Darke in response to initial allegation	22-24
5	Attendance note of meeting with Councillor Darke (amended by Cllr Darke) on 9 December 2009	25-27
6	Written Submissions from Councillor Darked dated 27 December 2009	28-31
7	Code of Conduct	32-41
Correspondence		
8	Letter dated 22 October 2009 from Helen Lynch to Nicky McHugh at Thames Water	42-43
9	Letter dated 2 November 2009 from Helen Lynch to Dr Mallett	44-45
10	Letter dated 2 November 2009 from Helen Lynch to Councillor Darke	46-47
11	Email dated 3 November 2009 from Ceri Kilty at Thames Water	48-49
12	Email dated 11 November 2009 from Helen Lynch to Dr Mallett	50
13	Letter dated 17 November 2009 from Helen Lynch to Councillor Darke	51
14	Email dated 23 December 2009 from Councillor Darke to Helen Lynch	52-53
15	Letter dated 12 January 2010 from Helen Lynch to Councillor Darke	54-55
16	Letter dated 12 January 2010 from Helen Lynch to Dr Mallett	56-57
Reports and Minutes		
17	Minute 143 from NEAC on 21 April 2009 and relevant report	58-61

Document No:	Description	Pages
18	Extract from minutes from NEAC on 19 May 2009 amending minute 143 above (doc 15)	62-63
19	Minute 28 from NEAC on 21 July 2009 and relevant report	64-69
20	Report to NEAC on 18 August 2009 and SDCC on 26 August 2009 and relevant minutes	70-124
21	Minute number 54 from NEAC on 15 September 2009 and relevant report	125-129
22	Minutes of Full Council from 17 September 2009	130-132
23	Study Ref – 3D0F SMG Ref 712, Ferry Road, Marston, Oxford, Foul Water Sewerage Systems.	133-141

Unused Evidence (not enclosed)

- Correspondence between Helen Lynch and Dr Mallett relating to the investigation process rather than the investigation itself;
- Correspondence from Nicky McHugh confirming that my letter dated 22 October 2009 (document 8) had been passed to Customer Relations for a response.