

FINAL REPORT

SBE.18843.07

REPORT INTO ALLEGED BREACHES OF THE CODES OF CONDUCT OF CLAVERING PARISH COUNCIL BY CLLR. EDGAR ABRAHAMS

1. Relevant Legislation

This report was prepared by me after an investigation carried out under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 regulation 5 pursuant to a reference of allegations to me as monitoring officer of Uttlesford District Council by an ethical standards officer appointed by the Standards Board under s.60(2) Local Government Act 2000. The complainant whose allegations I was asked to investigate is the Parish Clerk. However I am informed by the Standards Board for England that in addition to the Parish Clerk similar complaints were made by 5 Members of the Parish Council at about the same time. It is my understanding that where there are multiple allegations arising from the same facts and the Standards Board are of a view that the allegations ought to be investigated only one complaint is passed for investigation. Other complainants are informed that as an allegation has already been passed for investigation their complaint will merely be passed to the Ethical Standards Officer for information. I have not been informed by the Standards Board why the Parish Clerk's complaint was singled out as the one to be passed for investigation.

2. The Allegations

- 2.1. That Cllr Abrahams failed to declare a personal interest at a meeting of the parish council on 14 May 2007 in connection with a matter relating to an organisation of which he was chairman
- 2.2. That Cllr Abrahams failed to withdraw from a meeting of the parish council when a request which could lead to a financial benefit for the organisation was discussed.

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2.3. That Cllr Abrahams insisted that the matter be discussed notwithstanding that he was informed that his request was against the Council's Financial Regulations

3. The Relevant Sections of the Codes of Conduct

3.1. Paragraph 4. "A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute."

3.2. Paragraph 7(1) "A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 12 and 13 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend"

3.3. Paragraph 8 "A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent."

3.4. Paragraph 9(1) "... a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice the member's judgement of the public interest"

3.5. Paragraph 10 "A member with a prejudicial interest in any matter must – (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from the standards committee of the responsible authority; and (b) not seek improperly to influence a decision about that matter."

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3.6. Paragraph 13 (a) "Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his other interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the monitoring officer of the responsible authority of his membership of or position of general control or management in any body to which he has been appointed or nominated by the authority as its representative;

4. Evidence

4.1. The Essex Playing Fields Association runs an annual award for best kept playing field of the year inviting entries in a number of categories.

4.2. Prior to 2007 it was not necessary to be a member of the association to enter the award competition. The Jubilee Field Committee (known variously as the Jubilee Field Committee of Management and the Jubilee Sports Field Committee) had in previous years entered a number of playing fields in Clavering in the competition, namely the Jubilee Field, the Adventure Playground, Clavering Cricket Field and the Primary School playing field. One entry fee of £10 covered all entries and was paid by the Jubilee Field Committee (being reimbursed on some occasions by Clavering Parish Council during the period that Cllr Abrahams was Chairman of the Council).

4.3. In 2007 the Playing Fields Association were successful in raising sponsorship so that the awards would be accompanied by significant prizes. It took a policy decision that only its members should benefit from this and therefore wrote to all previous entrants informing them of this decision on 30 March 2007. Membership fees were £25 for town and parish councils, £50 for district and unitary authorities and £15 for sports clubs and associations. The entry fee for the annual awards remained at £10 regardless of the number of fields entered.

4.4. Organisations should only enter playing fields which are managed by them. However it seems that no checks have been made by the Association and

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indeed the Jubilee Field Committee had regularly entered 2 playing fields it did not manage, namely the Cricket Field and school playing field.

4.5. Cllr Abrahams has been a member of Clavering Parish Council for upwards of 40 years including approximately 28 years as Chairman.

4.6. The Council has some rudimentary standing orders (which I understand are currently subject to review) and financial regulations.

4.7. Financial Regulations provide “5.2 A schedule of payments required, forming part of the agenda for the meeting, shall be prepared by the RFO and, together with the relevant invoices, be presented to the Council. The details shall be shown in the minutes of the meeting.” And “13.2 Before the Council agrees to make donations to charities or other outside bodies the Council will make it a condition of the donation that the recipient body will provide a copy of their annual accounts.”

4.8. The standard agenda for Council meeting includes items for correspondence, planning and finance. It is the practice of Members of the Council to attend the meeting venue in advance of meetings for the purpose of looking at correspondence and planning documents. Members of the public may and do attend at that time.

4.9. The Council has a session for the public to address the Council which commences in advance of the meeting being formally convened. Members of the public may speak for up to 2 minutes each with a maximum of 15 minutes being allowed for public speaking. By convention this is not a part of the meeting for debate. Members of the public make their representations and are thanked by the Chairman. If the representations relate to agenda items then they are taken into account at the appropriate time. If they do not relate to agenda items but Members of the Council wish the issue to be discussed the matter will be put on the agenda for the next meeting of the Council.

4.10. Clavering Parish Council adopted the Code of Conduct for Members on 4 March 2002. Cllr Abrahams signed to be bound by the Parish Code in April 2002. He was re-elected to the Parish Council in May 2003 and signed

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the declaration of acceptance of office containing an undertaking to observe the Code of Conduct on shortly thereafter. After re-election in 2007 he signed a declaration of acceptance of office containing an undertaking to observe the Code of Conduct at the Council meeting on 14 May 2007. At that stage the Council had not adopted the revised Code of Conduct so the 2002 Code continued to apply.

- 4.11. Cllr Abrahams is one of the Council's appointed representatives on the Jubilee Field Committee. He is also the Chairman of that committee. He has registered that position in the Register of Members interests maintained by me as monitoring officer under s. 81 Local Government Act 2000 as required by paragraph 13(a) of the Code.
- 4.12. After the election of Councillors in May 2007 the first/annual meeting of the new council was summonsed to take place on 14 May 2007. The meeting was intended to be a business meeting to deal with the formalities of a new council. Accordingly the usual items of correspondence, planning and finance did not appear on the agenda. The public were however permitted to address the Council in the usual way.
- 4.13. On 11 May 2007 Jill Simpson (a member of the Jubilee Field Committee) wrote to the parish clerk regarding the Essex Playing Fields Association enclosing an application form and requesting that the subscription be paid. The letter was not placed on the agenda because there was no agenda item for correspondence for the May Parish Council meeting.
- 4.14. At the Parish Council meeting on 14 May 2007 Mrs Simpson tried to raise the issue of her request during the session set aside for public speaking at the start of the meeting. The then Chairman, Nigel Cook, refused to let her speak on the issue as it was not an agenda item upon which the Council could make a decision that evening.
- 4.15. At this point Cllr Abrahams spoke. He was told by one or more people that he had a prejudicial interest in the matter and should leave the room.

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- 4.16. After the public speaking had concluded the meeting went through its agenda. When it got to the item of “Any other business” Cllr Abrahams again tried to raise the issue of the annual playing fields competition but was prevented from doing so.
- 4.17. The minutes of the meeting of 14 May 2007 record that under item 11 “Any other business” “Edgar Abrahams instigated the discussion to get the Council to pay money to the Jubilee Sports Committee and requested the donation before the deadline of 31 May (a £25 subscription). He did not declare a prejudicial interest as Chairman of that Committee, nor leave the meeting, and was reminded by Councillors that he was in breach of the Code. He was also reminded that Finance was not on the agenda and that financial matters could not be decided under AOB. After further attempts the matter was closed”.
- 4.18. The original draft minutes of the meeting also recorded that during the public speaking session “Mrs J. Simpson asked for a donation to the Jubilee Sports Field Committee; Cllr Edgar Abrahams joined the discussion and supported the request strongly, insisting that it should be paid immediately. The Acting Chairman said that finance was not on the agenda and that as chairman of that Committee Cllr Abrahams had a prejudicial interest and should cease speaking. After further debate the Vice Chairman and councillors stopped the discussion.” This section was deleted from the minutes presented to the next meeting as it is not the practice of the Parish Council to minute the public speaking session before the start of a meeting.
- 4.19. At the meeting on 4 June 2007 the Parish Council received the minutes of the meeting on 14 May 2007 for approval. The minutes of the meeting on 4 June show that Cllr Abrahams challenged the accuracy of the minutes of the May meeting on the basis that he had not asked the Council to vote money for the Jubilee Field membership subscription. The minutes show that the Chairman asked all members of the Council individually and all (except Des Abrahams) confirmed that their recollection was clearly that he had done so.

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5. Facts not in Dispute

- 5.1. The evidence referred to in paragraph 4 of this report is not disputed
- 5.2. It is not disputed that Cllr Abrahams did not declare an interest as a Member of the Jubilee Fields Committee either during the public speaking section of the meeting or under any other business

6. Facts in Dispute

- 6.1. It is disputed that Mrs Simpson wrote to the Parish Clerk requesting a donation to the Jubilee Field Committee.
- 6.2. It is disputed that Cllr Abrahams requested a donation to the Jubilee Field Committee.
- 6.3. It is disputed that Cllr Abrahams did not leave the meeting during the public speaking session or during any other business when the Essex Playing Field Association was being discussed.
- 6.4. It is disputed that it was suggested that Cllr Abrahams had an interest during the discussion on the issue under any other business and that in trying to discuss the issue was in breach of financial regulations.

7. Findings of Fact

- 7.1. I find as facts the evidence contained in paragraph 4 of this report and the facts not in dispute set out in paragraph 5.
- 7.2. I find that Mrs Simpson did not either in her letter of 11 May nor at the meeting of the Parish Council on 14 May request a donation to the Jubilee Field Committee. My interpretation of her letter is that she was asking the Parish Council to join the Essex Playing Fields Association as a member in its own right. Her letter was accompanied by a copy of the application form which was clearly to be returned to the Essex Playing Fields Association with payment and not to the Jubilee Field Committee.
- 7.3. I also find that Cllr Abrahams did not request a donation to the Jubilee Field Committee either during the public speaking session or under any other

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business notwithstanding the fact that this was the clear recollection of all witnesses interviewed (other than Mrs Simpson) and that it is recorded in the minutes of the Council meeting (approved as accurate by all Members of the Council present when the same were considered with the exception of Cllrs D. and E. Abrahams).

7.4. s.41 Local Government Act 1972 provides for minutes of meeting to be kept and signed and that such minutes shall be received without further proof. Until the contrary is proved the meeting is due to have been duly convened and all members present were deemed to be duly qualified.

7.5. This creates a rebuttable presumption that the minutes are accurate. I find as a fact that the presumption has been rebutted in this case and that Cllr Abrahams did not ask the Parish Council to make a payment to or on behalf of the Jubilee Fields Committee. In reaching this conclusion I in no way call into question the honesty or integrity of any of the witnesses who formed a different impression of the conduct of Cllr Abrahams on the night of the meeting and had a different recollection thereafter. It is my opinion that the witnesses gave me their honestly held views as to what happened at the meeting but that their views were mistaken. My reasons for not accepting their recollections are :-

7.5.1. The evidence from Mrs Simpson and Cllr Abrahams is that the Jubilee Field Committee were asking that the Parish Council should join the Essex Playing Fields Association in its own right as a Parish Council and that if it did so the Jubilee Field Committee would pay the entry fee of £10 for all 4 playing fields in the village to be entered for the annual award.

7.5.2. This is supported by the wording of the letter of 11 May 2007 from Mrs Simpson to the Parish Clerk.

7.5.3. It is further supported by the minutes of the Jubilee Field Committee meeting on 15 May 2007 which records "Entry into the Best Kept Playing Field Competition, a long discussion followed. The Jubilee Field will pay

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the entry fee of £10 into the competition and ask the Parish Council to pay the membership fee of £25 to the Essex Playing Field Association so we can enter the school and the Cricket Club, if not we will pay the sports field fee of £15 to the Essex Playing Fields Association and just enter the Jubilee Field and Adventure Play Area. Jill Simpson will speak to Edward Oliver, new Chairman of the Parish Council. Entries have to be in by 31 May 2007”.

7.5.4. It is further supported by the fact that the membership fee for a Parish Council is £25 (the sum that the Parish Council was being asked to pay) and the membership fee for a sports association is £15 which is the sum paid by the Jubilee Field Committee.

7.6. I am therefore satisfied on the balance of probabilities that Cllr Abrahams did not request a donation to the Jubilee Field Committee. However I am equally satisfied on the same standard of proof that had the Parish Council acceded to the request a financial benefit to the Jubilee Field Committee would have been secured. As the Parish Council did not comply with the request the Jubilee Field Committee had to pay not only the entry fee of £10 to register the Jubilee Field and Adventure Playground for the awards but also the membership fee of £15. As Cllr Abrahams himself put it in an undated letter to me received 21 September 2007 “If they [the Parish Council] had joined it would have saved us £15”.

7.7. I find that Cllr Abrahams did not leave the meeting when the Essex Playing Fields Association was discussed during the public speaking session or under any other business. He is the only person who believes he may have done so. All other witnesses interviewed refer to him being present throughout and the minutes do not suggest that he withdrew.

7.8. . I find as facts:-

7.8.1. Cllr Abrahams was challenged as to the existence of his interest in the item. This is recalled by a number of the witnesses interviewed and is recorded in the minutes.

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7.8.2. Cllr Abrahams was advised that the discussion was a breach of financial regulations. This again is recalled by a number of the witnesses interviewed and is recorded in the minutes.

7.9. The public speaking session was before the meeting of the Parish Council and did not therefore constitute part of the formal meeting. However Cllr Abrahams attended that session as a Member of the Parish Council to hear representations from members of the public and he was therefore acting in his official capacity. He was also clearly acting in his official capacity during the formally constituted meeting of the Parish Council.

7.10. As I have found that there was no request for a donation I find that Financial Regulation 13(2) was not engaged. However Financial Regulation 5 requiring a schedule of payments to be made to be on the agenda did apply and that seeking to secure a payment otherwise than in accordance with Financial Regulations was a breach thereof.

8. Whether the facts constitute a breach of the Code of Conduct

8.1. Cllr Abrahams was the appointed representative of Clavering Parish Council on the Jubilee Field Committee. Accordingly this was an interest registerable by virtue of paragraph 13(a) of the Code of Conduct. The interest was properly registered.

8.2. As a registerable interest the interest was a personal one by virtue of paragraph 7(1) of the Code.

8.3. Paragraph 8 of the Code requires a Member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent. It was clear that what was being sought by requesting the Parish Council to join the Essex Playing Fields Association was a benefit for the Jubilee Field Committee and therefore the interest was declarable within the circumstances set out in the Code.

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- 8.4. As the public speaking session was not part of the formal meeting of the Council there was no obligation upon Cllr Abrahams to declare an interest at this juncture. His failure to do so does not therefore constitute a breach of the Code.
- 8.5. When he raised the issue again under any other business this was clearly part of the meeting of the Council and the interest should have been declared. As I have found that it was not it follows that by failing to declare a personal interest when he raised the issue of the playing fields Cllr Abrahams breached paragraph 8 of the Code.
- 8.6. The question then arises as to whether the interest was prejudicial. In his undated letter to me referred to above Cllr Abrahams said that the Jubilee Field Committee did not need a donation as it had over £4000.00 in the bank. That begs the question as to why it asked the Parish Council to join the Essex Playing Fields Association to try and save the Jubilee Field Committee its membership fee of £15. There was a clear financial benefit to the Jubilee Field Committee had the Parish Council agreed to join the Essex Playing Fields Association. Further a number of witnesses referred to the manner in which Cllr Abrahams approached the issue as being pushing or insistent. The draft minutes show that in the public speaking part of the meeting Cllr Abrahams supported the Jubilee Field Committee's position "strongly" and the minutes themselves show that he made a number of attempts to prolong the discussion. In my view members of the public with knowledge of the relevant facts would reasonably regard the personal interest as being so significant as to be likely to prejudice the Member's judgement of the public interest. The interest was therefore a prejudicial one. As a consequence Cllr Abrahams should have left the room under any other business had any other Member had raised the issue and he should not have raised the issue himself without declaring the interest and leaving immediately before any discussion ensued. In this respect Cllr Abrahams has breached paragraph 10(a) of the Code of Conduct. There was no such breach in the public speaking session

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however due to the fact that this was not a formal meeting of the Council and the requirement to withdraw did not arise at that point.

8.7. Paragraph 10(b) of the Code provides that where a Member has a prejudicial interest he should not seek improperly to influence a decision about that matter. I find that in addressing the Council in both the public speaking session and in the meeting proper Cllr Abrahams was seeking improperly to gain a financial benefit for the Jubilee Field Committee and in both cases was in breach of paragraph 10(b) of the Code.

8.8. I am of the view that Cllr Abrahams has brought his office as Councillor into disrepute in breach of paragraph 4 of the Code of Conduct. I form this opinion because:-

8.8.1. Cllr Abrahams sought to persuade the Council to make a payment otherwise than in accordance with financial regulations despite the fact the breach of financial regulations was drawn to his attention.

8.8.2. Cllr Abrahams initiated a discussion on a matter in respect of which he had a prejudicial interest and sought to perpetuate the discussion after he was challenged with regard to that interest.

8.9. I am of the view that Cllr Abrahams had a genuine but mistaken belief that he did not have a personal or prejudicial interest in the request for the Parish Council to join the Essex Playing Fields Association as he was not asking for money to be paid to the Jubilee Field Committee. In holding this belief Cllr Abrahams failed to acknowledge that although money would not be paid directly to the Committee had the request been agreed a financial benefit for the Committee would be the result.

Documents referred to/steps taken in connection with the investigation

- Reference from the Standards Board for England
- Complaint letter
- Standing Orders for Clavering Parish Council

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- Financial Regulations for Clavering Parish Council
- Clavering Parish Council Code of Conduct
- Draft minutes of meeting of Clavering Parish Council held 14/5/07
- Minutes of meeting of Clavering Parish Council held 14/5/07
- Minutes of meeting of Clavering Parish Council held 4/6/07
- Minutes of Jubilee Field Committee meeting held 15/5/07
- Essex Playing Fields Association membership application form
- Letter 11/5/07 from Mrs J. Simpson to the clerk of Clavering Parish Council
- Letter of invitation to enter the Best Kept Playing Field Competition dated 30/3/07
- Letter of 8 June 2007 from A. Tomlinson to the Chairman
- Undated letter from Cllr Abrahams received 21/9/07 with various enclosures
- Interview with Mrs J Simpson
- Interview with Cllr B. Barrow Clavering Parish Council
- Interview with Cllr R. Carter Clavering Parish Council
- Interview with Cllr N. Cook Clavering Parish Council
- Interview with Cllr E. Oliver Clavering Parish Council
- Interview with Cllr R. Stanford Clavering Parish Council
- Interview with Carol Wilkinson, Parish Clerk, Clavering Parish Council
- Interviews with Cllr Abrahams

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