

STANDARDS SUB-COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 3.00 pm on 6 SEPTEMBER 2010

Present:- S Brady – Chairman (Independent Person - Chairman).
Councillor K L Eden (Uttlesford Member) and
Councillor C Clarke (Town and Parish Councils).

Officers in attendance:- M Cox (Democratic Services Officer).
C Oliva (Solicitor and Deputy Monitoring Officer) and M J Perry
(Assistant Chief Executive and Monitoring Officer).

SSC1 APOLOGIES AND DECLARATIONS OF INTEREST

In relation to the 2nd hearing, Councillor Eden declared a personal interest as he was in the same political group as Councillor Artus. Councillor Clarke also declared a personal interest as he served on the Uttlesford Association of Local Councils with Councillor Artus.

The Monitoring officer said that Councillor Sanders had confirmed that she would not be attending the hearing. Councillor Artus had expressed a wish to attend the meeting for his case.

SSC2 HEARING INTO ALLEGATIONS OF BREACHES OF THE CODE OF CONDUCT

The meeting had been called to determine allegations of a breach of the code of conduct of Hatfield Broad Oak Parish Council by Councillor Jenny Sanders and Councillor Keith Artus. The Chairman confirmed that this was a public meeting.

The meeting of the Standards Assessment Sub-Committee on 5 August 2010 had received the Monitoring Officer's reports under the Standards Committee (England) Regulations 2008. That meeting had determined that the powers of sanction of a Standards Committee would be sufficient and the matter should therefore be referred to a sub-committee for hearing pursuant to Regulation 17 (1) (b) of the regulations.

The report before members was to present the findings following an investigation into allegations that Councillors Artus and Sanders had breached the code of conduct of the council by failing to declare personal interests when they ought to have done so and in the case of Councillor Artus by bringing his authority into disrepute. The Monitoring Officer had found that the breaches as alleged had been established and the reasons were set out in the report. However members were advised that they were not bound by the findings of fact or the conclusions and could form their own view on whether the code of conduct had been breached.

COUNCILLOR SANDERS

The Monitoring Officer gave a summary of the allegations made against Councillor Sanders in that she failed to declare a personal interest in matters of Hatfield Broad Oak Parish Council when required to do so.

The background to the case was that in 2009 there were proposals to develop an area of land within the village as a village green. Councillor Sanders lived opposite the land concerned. The minutes of the meeting of the parish council prior to February 2010 did not disclose that Councillor Sanders declared an interest when matters relating to the proposed village green were considered. Councillor Sanders accepts that she did not do so and she was not aware that it was necessary for the interest to be declared.

Findings of fact

These facts were not disputed and therefore accepted by the sub-committee.

- 1 Councillor Sanders was a substantive councillor by virtue that she had acted as such and regarded herself as bound by the code of conduct.
- 2 The Monitoring Officer had visited the site to ascertain the proximity of Councillor Sanders' home to the proposed village green. It was very close indeed and it was concluded that she did have a personal interest as she would be affected to a greater extent than the majority of people living in the ward. However this interest was not prejudicial as there would be no effect on the value of the property.
- 3 It was also found that Councillor Sanders had failed to declare the nature of that interest at meetings of the parish council when the village green was under consideration prior to February 2010 although she had done so since.

Findings as to the Breach of the Code

The Monitoring Officer explained the paragraphs of the code of conduct that applied in this case.

Paragraph 8 - defines a personal interest as being an interest in business of the authority which may affect the member to a greater extent than the majority of council tax payers, ratepayers or other inhabitants of the ward.

Paragraph 9 - requires members to declare the existence and nature of a personal interest when the item comes under consideration or where the interest becomes apparent.

Councillor Sanders had a personal interest arising from the proximity of her home to the proposed development site. She failed to declare the existence or nature of that interest at all meetings of the parish council when the village green was considered before February 2010.

The sub-committee concluded that she had breached the code of conduct in these respects.

Members asked a number of questions in relation to the case. The Monitoring Officer said that once the facts had been pointed out Councillor Sanders had made an apology and had declared the interest at all subsequent meetings. It was noted that Councillor Sanders had not received training in the Code of Conduct. Training sessions had been provided to parish councillors, but records showed that she had not attended these sessions nor had other members of the parish council.

Sanction

The Monitoring Officer then asked the sub-committee to consider the appropriate sanction in light of the findings. He said that Councillor Sanders had admitted ignorance of the provisions of the code of conduct, but had signed an undertaking to be bound by the code.

On concluding its deliberations, the sub-committee resumed public session, and the Chairman made a statement of the decision.

We find that there has been a breach of the code of conduct in that the interest was not declared. We accept that no material effect arose from the breach and Councillor Sanders is more aware of her obligations under the Code. Therefore no sanction is imposed.

However we note that time and money has been spent in dealing with this matter and it is hoped that this aspect will be noted.

SSC4

COUNCILLOR ARTUS

The Chairman welcomed Councillor Artus to the meeting and explained the procedure that was to be followed.

The Monitoring Officer summarised the details of the allegations against Councillor Artus, that he had breached the code of conduct in failing to declare personal interests when required to do so and that he had failed to treat Councillor Sanders with respect at a meeting of the parish council held on 11 November.

Councillor Artus had been a parish councillor since 2002 and a district councillor since 2003. He had signed the statutory declaration of office which contained an undertaking to be bound by the code. He had received no training on the code at parish level but had had training at district level after his election in 2003.

The council had adopted the code of conduct and the following paragraphs were relevant in this case.

Para 5- conduct in a manner reasonably be regarded as bringing your office or that of the authority into disrepute

Para 8 – definition of personal interests

Para 9 – requirement to declare the existence and nature of personal interests at meetings when items relating to those interests are under consideration.

Summary of case

i) Failure to declare a personal interest

Hatfield Broad Oak had a website which was designed and maintained by Councillor Artus and was supported by the parish council. He made no charge to the parish council for his work in this respect. He had an account with two companies which hosted the website and paid these companies for the village website and passed the invoices to the parish clerk for reimbursement. These were listed on the list of accounts to be paid for approval at meetings of the parish council. Such payments had been authorised on 8 July 2009, and 12 January 2010. The payments were for £13.59 and £23.88 respectively.

Councillor Artus was present at the meetings on 8 July 2009, and 12 January 2010. He acknowledges that he did not declare a personal interest on either occasion.

In May 2009 the parish council became aware that there was to be an armed forces day in June and e-mails were sent between members regarding the purchase by the parish council of a flag for this day. The members were generally supportive but the clerk pointed out that the expenditure would have to be authorised by the council but there was no meeting in advance of the day when this could be done.

Councillor Artus and Mr Trevitt agreed to purchase a flag and present the bill to the parish council for re-imburement, if it did not wish to do so they would share the cost between them. The payment for the flag in the sum of £30 was on the agenda for the meeting on 8 July 2009. Councillor Artus was in attendance and has acknowledged that he did not declare an interest when the payment came up for consideration. The payment to Councillor Artus was approved without debate.

ii) Bringing the Council into disrepute

Early in 2009 there were proposals to develop an area of land within the village as a village green. This would include certain sporting facilities. Councillor Artus was appointed by the parish council to the village green working group. The development was controversial with a number of residents (and parish councillors) for the proposal but others were against. Councillor Artus was in favour of the development. Councillor Sanders was opposed.

The allegation concerning his contact occurred at the meeting of the parish council on 11 November 2009. During the meeting it was stated that Councillor Artus had said he would “spam” Councillor Sanders’s e-mails. Councillor Artus said that he did “spam” Councillor Sanders’s e-mails as he got too many of them. He said that he had in the past asked Councillor Sanders to send enquiries regarding the village green to the working group but that she had continued to send him e-mails personally.

Councillor Sanders alleged that after the meeting Councillor Artus said to her he would “spam” all her e-mails.

Findings of fact

The facts as below were not disputed

- 1 Councillor Artus failed to declare a personal interest at meetings on 8 July and 12 January when payments were approved for website hosting and reimbursement for the cost of the flag for armed forces day.
- 2 Councillor Artus said during the course of the meeting on 11 November that he did spam Councillor Sanders’s emails.

Reasoning as to whether there had been failure to comply with the Code of Conduct

i) Failure to declare a personal interest

The Monitoring Officer set out his findings. He found that the payments authorised on 8 July 2009 and 12 January 2010 was a personal interest as it fell under Para 8 of the code, being a decision which might reasonably be regarded to affect the well being or financial position of the member to a greater extent than other council tax payers, ratepayers or inhabitants of the parish. Paragraph 9 of the code of conduct required members with a personal interest to declare the existence and nature of that interest at the commencement of the consideration or as soon as the interest becomes apparent. Councillor Artus did not declare an interest on either occasion and therefore was in breach of paragraph 9 of the code of conduct.

However the papers before the council clearly showed that what was being considered was a payment to Councillor Artus. No one attending the meeting could have had any doubt that Councillor Artus had a personal interest in the matter. In the view of the Monitoring Officer, the breach of the code was of a technical nature only.

Councillor Artus had previously submitted written comments on the report and expanded on these at the meeting. He said that he had been instructed by the clerk to proceed with the payments, the action had been taken on behalf of the council and to its benefit. He claimed therefore that this sum was a debt and not an expense. He drew attention to the fact that these payments were very small amounts of money, the payment had been authorised at a public meeting and everyone would have been aware of the nature of his interest. He agreed that if a breach existed it was of a technical nature only.

ii) Bringing the authority into disrepute

The Monitoring Officer had found that in making a public statement at a meeting of the council that he “spams” Councillor Sanders e-mails Councillor Artus had brought the council into disrepute and broken para 5 of the code.

He cited a recent case in which the First Tier Tribunal Local Government Standards in England had given guidance on this issue. The judgement stated “A member’s conduct will bring that member’s authority into disrepute if it could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties.”

He found that although Councillor Artus was entitled to ask Councillor Sanders to communicate through appropriate channels, by saying at a public meeting that he “spams” her e-mails he gave the public the impression that he was not prepared to have any communication with her at all. This could be reasonably regarded as reducing public confidence in the authority being able to fulfil its functions and duties as councillors need to communicate with each other, even if through appropriate channels. The ruling stated that it was not necessary to prove that the public had taken that impression only that the facts as such showed they were capable of so doing.

Councillor Artus conceded that his remark might not have been the most diplomatic but he did not feel that it would have reduced confidence in the Council. He said that he had asked Councillor Sanders on numerous occasions to use the proper channels and not to his private email address. He had asked for the questions to be directed to the working group where a collected response could be given and the questions and answers would be put in the public domain. He said he continued to answer her many questions at parish council meetings. He felt that he was at liberty to ignore her emails and to say so, with explanation, in a public forum. As he had asked for the questions in writing and had verbally answered her questions he did not feel that he had given the impression that he was “not prepared to have any communication with her all”. He said that by only limiting one of her avenues of communication it could not be concluded that the Authority could not fulfil its functions.

The members questioned Councillor Artus about the composition of the playing fields working group and about the availability of a separate email domain address for this group. They also asked about the number and nature of the emails received from Councillor Sanders.

The Monitoring Officer concluded that Councillor Artus was entitled to ask Councillor Sanders to communicate in a different way but to make the statement that he did in a public session could have the effect of weakening public confidence in the effectiveness of the council to fulfill its functions and duties.

Sanctions

The sub-committee then retired to consider it considered that there had been a breach of the code of conduct and if so the appropriate sanction that should be imposed.

On concluding its deliberations, the sub- committee resumed public session, and the Chairman made a statement of the decisions

In respect of failing to declare a personal interest we find that Councillor Artus did breach the Code of Conduct and agree with the Monitoring Officer's conclusion that the breach was technical in nature only because it was entirely apparent to everyone at the meeting that what was being considered was the reimbursement to Councillor Artus of a payment which he had made as a result of a general acceptance by the parish council that it wished to make this expenditure.

Councillors should be aware that where financial matters are dealt with interests are likely and must be disclosed.

In respect of the allegation that the behaviour at the meeting bought his council into disrepute the sub-committee found that there was no breach of the code of conduct. The reasons were as follows:-

Having considered the facts and submissions, we are of the opinion that since Councillor Artus has confirmed and acted in a manner which allows Councillor Sanders to communicate through other channels, we do not consider that this action could reasonably be regarded as reducing the public confidence in the authority being able to fulfil its functions and duties.

We agree with Councillor Artus that his actions were not the most diplomatic possible.

Councillor Artus was advised that he would receive a written copy of the decision within 10 days of the meeting and that it would be published in a newspaper circulating in the Hatfield Broad Oak area.

The meeting ended at 5.00pm.