

STANDARDS SUB -COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10.00 am on 13 JULY 2012

Present:- Councillors C Cant, K Eden, R Lemon (Uttlesford District Council).
Mr V Lelliott (Independent Member).

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

SSC1 ELECTION OF CHARIMAN

RESOLVED that Councillor R Lemon be appointed Chairman for the meeting.

SSC2 APOLOGIES AND DECLARATIONS OF INTEREST

Councillor Eden declared a non- pecuniary interest as a political colleague of Councillor Knight. Councillors Cant and Lemon declared a non – pecuniary interest as fellow district councillors to Councillor Knight.

SSC3 HEARING INTO AN ALLEGATION OF A BREACH OF THE CODE OF CONDUCT

The hearing had been called to determine allegations of a breach of the code of conduct of Uttlesford District Council by Councillor Tina Knight.

The Chairman welcomed everyone to the meeting. Councillor Knight was accompanied by a representative, Mr Baldwin.

The Chairman outlined the procedure for the meeting. He understood that Mr Baldwin wished to call a number of witnesses and asked that the questions asked be confined to the two issues that were to be considered by the committee.

Mr Baldwin asked for an adjournment of at least 7 days to enable consideration of a legal case, if it was referred to in the course of the meeting. This case was concerned with whether a councillor could switch in a meeting between the role of councillor and a member of the public. This was a large document which he had not yet had the opportunity to consider. The Monitoring Officer replied that the report was in the public domain and available on the website. In any event the committee would receive its legal advice from the officer at the meeting and it was usual practice not to have advance notice of this. The Chairman was happy for the meeting to proceed on this basis.

Mr Baldwin asked that his objection to this decision to be noted.

Report of the Deputy Monitoring Officer

The Deputy Monitoring Officer had been instructed to consider two complaints against Councillor Knight as follows :-

Complaint of Mrs Elaine Culling (parish clerk)

Councillor Knight failed to treat me with respect and that at all times she was acting in her capacity as a District Councillor.

1. At the Debden Parish Council meetings of 4 August 2010 and 1 September 2010 I was subjected to what I consider to be unreasonable attacks regarding my professionalism and integrity by Councillor Knight.
2. Councillor Knight was critical of the minutes of the meeting for 7 July 2010 stating I had recorded the Public Forum section of the minutes incorrectly and that all other Councils recorded this section in far more detail.
3. For the meeting of 1 September 2010 I produced two reports for the Parish Council, one relating to the filling-in of the Purton End Lay-by and one about the painting of double yellow lines at the entrance to the NATS site at Debden. When they were read out Councillor Knight informed the meeting that my reports were not true and contradicted her investigations. She has failed to provide any evidence to back-up her claim.

Complaint of Mr William Bidwell

On more than one occasion between June and November 2010 Councillor Tina Knight acting in her capacity as Councillor for the wards of Wimbish and Debden failed to show respect for Debden Parish Council, its Chairman and the Parish Clerk.

The Deputy Monitoring Officer had found that there has been no breach of the code of conduct in respect of Mr Bidwell but there has been a breach of the code of conduct in respect of the Parish Clerk.

The hearing was now required to consider two issues:-

- i) Whether Councillor Knight was acting in her capacity as a District Councillor and if so,
- ii) Whether her behaviour at the meetings amounted to a breach of the code of conduct.

The Deputy Monitoring Officer presented her report. The summary of events were taken as read, essentially around the filling in the Purton End lay-by at Debden and the events at the subsequent parish council meetings on 2 June 7 July and 4 August 2010.

In the course of the investigation a number of witnesses had been interviewed. All had been asked the same questions and responses had been

taken down verbatim. There had been a wide divergence of views but all the witnesses had given what they believed to be an honest account.

In terms of whether Councillor Knight was acting in her private capacity, the Deputy Monitoring Officer cited the case Richardson and North Yorkshire County Council which had concluded that a councillor could not simply divest himself of acting in an official capacity by declaring that he was acting personally.

The Deputy Monitoring Officer's report concluded the following

i) In respect of acting in official capacity

Councillor Knight could not make investigations in her capacity as a District Councillor and then speak at the Parish Council meetings about that matter in a private capacity. She could not step in and out of her role as a District Councillor, merely because she was speaking during the Public Forum; or by announcing during the Public Forum that she was speaking as a member of the public when there was no obvious personal matter which would indicate her need to make a statement in her private capacity.

ii) In respect of treating with disrespect

Mrs Culling was an employee and as such had no right of reply to criticism and was entitled to be treated with respect. There were 3 issues, her competence had been challenged in public by Councillor Knight with regard to the content of the minutes, the reports she prepared were challenged in public by Councillor Knight as inaccurate without providing proof of inaccuracy and . Mrs Culling had been asked three times by Councillor Knight if she was going to resign.

The report concluded that if Councillor Knight had wished to change the way the minutes were prepared she should have approached this in the proper way with a motion placed on the agenda. Councillor Knight had not provided cogent evidence that the reports prepared by Mrs Culling were inaccurate. It would be humiliating to ask Mrs Culling if she was going to resign, whether or not it was during the meeting or immediately afterwards. It was therefore concluded that Councillor Knight treated Mrs Culling with disrespect.

Questions to the Monitoring Officer

Mr Baldwin questioned the Deputy Monitoring Officer on her report.

He first asked whether the complaint could be considered stale as it had not been received until 6 months after the event. He then asked a number of questions regarding the witness statements, questioned why certain witnesses, especially PC Lock had not been interviewed, the credibility of the witnesses and the accurateness of what had been reported.

He asked if account had been taken of the way things had been expressed rather than just what had been said, particularly in relation to the statement

made about the clerk's resignation. He also asked if account had been taken of the number of witnesses that had corroborated Councillor Knight's statement.

The Deputy Monitoring Officer replied that she had not been involved in the decision to pass the complaint for investigation. Essentially all the relevant information was in the report. She had asked all the witnesses the same questions and had written down everything that they said and had agreed these accounts with the witnesses. She had considered the details of what had been said by the witnesses rather than the number of accounts given.

Mr Baldwin then questioned two of the statements made in the report, that there was "no obvious personal matter which would indicate her need to make a statement in her private capacity" and the assertion that Mrs Culling had 'felt humiliated'. He also asked for clarification of where in the evidence it showed that Councillor Knight had challenged the minutes?

The Deputy Monitoring Officer replied that the first statement was based on the fact that the issue of the lay-by did not affect Councillor Knight anymore than everyone else in the Parish. The statement that Mrs Culling had felt humiliated was in the conclusions section of the report and was the impression she had gained from the interview with her rather than a direct statement from Mrs Culling. The Deputy Monitoring Officer had considered that there were enough references in the report to assume that Councillor Knight had challenged the minutes.

The Committee had no questions for the Deputy Monitoring Officer

Mr Baldwin's Statement

Mr Baldwin said that as the meetings in question took place over 2 years ago there would be clouded memories about what had occurred. He considered there to be too many inaccuracies in the report for there to be a case to answer. Councillor Knight had behaved as directed by the Legal Officer and had believed she was acting in her private capacity and therefore not subject to the code of conduct.

He said there was a lot of evidence in the report which was subject to interpretation and asked if he could call witnesses in order to clarify aspects of the case. The Chairman said he was only inclined to hear from new witnesses as all the other witness statements were already included in the report.

Mr Baldwin stated that he objected to this decision.

Mr Baldwin summed up by saying that this had been horrendous ordeal for Councillor Knight over something that was essentially a tit for tat complaint, and one that had been received some time after the alleged incident had occurred. He reiterated that Councillor Knight had made it clear that she was speaking as a member of the public and this was confirmed by 5 witnesses. He felt there was a lack of credibility with the witness statements. Mrs Culling

herself had admitted that because of the nature of the meeting she had not been able to fully report people's views. He concluded that Councillor Knight would not intentionally cause offence. She was respected business woman and an experienced councillor and did not behave inappropriately.

Councillor Knight's Statement

Councillor Knight then made her statement. She explained the circumstances of the events leading up to the meeting and the advice she had sought in relation the incident with the lay-by at Purton End.

She said that as she had been concerned about her role at the meeting she had sought advice from the UALC and officers at UDC as to how she could make a distinction between her role as a District Councillor and her private role at the meeting. When she spoke on the subject of the lay-by she had made it clear to the meeting that she was now speaking as a member of the public.

However, irrespective of how she had been perceived she said that at no stage had she misbehaved or acted inappropriately. She had asked strong questions and repeated them a number of times but had not sworn or been abusive. The interview notes did not provide evidence that she had been disrespectful.

She said that it was the public that had been outraged at the minutes; Mrs Culling had argued and engaged with the public. Mrs Culling had said that she was only required to record decisions of the meeting. That was technically correct but she reminded her that the council's standing orders required a full record of the public speaking session. The minutes had only recorded a fraction of what had been said and she felt it was her duty to question them if they were not a true reflection of the meeting.

She had challenged the inaccuracy of the reports to the parish council meeting because she believed them to be incorrect. The complaint had stated that there was no evidence for the claims but she said that she had a personal notebook which contained notes of all meetings and correspondence on this issue.

She explained that the comment about resignation concerned the painting of the yellow lines and the fact that the Parish Clerk had said she would resign if it transpired that Mr Bidwell had lied. Subsequently Councillor Knight had said to Mrs Culling 'well are you going to resign?' but this was a throw away comments and said when they were leaving the meeting, not in the public forum.

She concluded that she had been surprised when this complaint had been made 6 months after the meeting and she did not consider that she had breached the code of conduct.

Legal Issues

The Legal Officer summed up the relevant legal issues to be considered by the committee.

He explained that this complaint was being considered under the new Standards regime under the Localism Act 2011. The conduct of the meeting was fairly similar to previously; the main change was to the process for determining whether an allegation should be passed for investigation. Rather than being decided by a sub-committee of members it was now decided by the Monitoring Officer in consultation with an Independent member. Under the old regime the committee had adopted criteria by which to decide whether a case should be referred, but these were for guidance only. In this case the sub-committee would have decided that there were relevant grounds to depart from the policy regarding the time limit for the complaint.

The committee then adjourned at 12.10 pm

At 12.50pm the committee returned and asked to hear the statements from the witnesses.

Mr Baldwin called the following witnesses - Mr Murphy, Mr Bayliss, Mr Sander, Mr Banks and Mr Rogers and asked each the following questions.

- 1) Had they attended the meetings in question?
- 2) Had Councillor Knight made it clear that she was acting as a member of the public?
- 3) Was Councillor Knight discourteous or rude at the meetings?

All the witnesses stated that at the meetings they had attended, Councillor Knight had made it clear that she was acting as a member of the public and had not be rude or discourteous to the Parish Clerk. A number of witnesses confirmed that it was the public that had initiated the questioning of the minutes.

Councillor Eden asked Mr Rogers why the public was so outraged about the minutes. He replied that the minutes had omitted significant factual matters and did not reflect the depth of public feeling.

Councillor Lemon referred to a statement from Mr Ward that had been circulated prior to the meeting. It said that Councillor Knight had represented views of others and he suggested that in doing so this indicated that she was speaking in a certain capacity.

The Deputy Monitoring officer had no further comments to add to her report.

The Committee retired at 12.45pm to consider its decision.

Decision

At 2.50pm returned and announced the following

The committee has today considered 2 complaints that Councillor Knight had breached the Code of Conduct of Uttlesford District Council. The first complaint to be made in time was that of Mr Bidwell, former chairman of Debden Parish Council who alleged that Councillor Knight had failed to treat him, the parish council and the parish clerk with respect. The deputy monitoring officer who investigated the complaints found that there was no breach of the Code of Conduct so far as Mr Bidwell and the parish council were concerned. The committee accept that finding. The committee also found that there was nothing in Mr Bidwell's complaint regarding the allegation that Councillor Knight treated the parish clerk with disrespect which was not covered by the second complaint.

The other complaint which was investigated by the deputy monitoring officer was that of the parish clerk herself who alleged that Councillor Knight had failed to treat her with respect. The complaint was concerned with the alleged behaviour of Councillor Knight at meetings of the parish council on 4 August 2010 and 1 September 2010. The parish clerk complains that at the August meeting Councillor Knight was critical of the minutes of the meeting of 7 July 2010 stating that the public forum section of the meeting had been incorrectly recorded and that at the September meeting Councillor Knight informed the meeting that reports prepared by the parish clerk concerning a lay-by in the parish were not true.

The background behind the complaints is that it would appear that Mr Bidwell had filled in a lay-by in the parish which caused some controversy. The matter was discussed at a number of parish council meetings. It appears to the committee that there was a heated debate regarding the issue in the public forum at the July meeting. This was minuted only briefly and this was challenged at the meeting in August. There is a factual dispute as to whether Councillor Knight was personally involved in this challenge. At the September meeting the parish clerk produced 2 reports, 1 relating to the filling in of the lay-by, the other relating to the painting of yellow lines in the parish. The complaint alleged that Councillor Knight stated that the contents of the report were not true and contradicted her investigations.

There are essentially 2 questions the committee have had to consider. The first is, when present at the meetings was Councillor Knight acting in an official capacity. This is a fundamental issue as if Councillor Knight was not acting in an official capacity then the Code of Conduct has no application. "Official capacity" is defined in paragraph 2 of the Code of Conduct applicable at the time of the events complained of. This provides that the code applies whenever a member conducts the business of their authority (including the business of the office to which a member has been elected) or where a member acts, claims to act or gives the impression that they are acting as a representative of their authority.

The council's constitution provides that the role of members includes actively encouraging community participation and representing their communities. As part of this role many councillors attend meetings of parish councils within their wards as district councillor. Councillor Knight appears to have undertaken this at the relevant time, attending the council meetings of both parish councils within her ward notwithstanding the fact they appear to have

been held on the same night. Councillor Knight acknowledges that when she attends and gives her district council report she is acting in her official capacity as a district councillor. However she says that in the public forum she is not acting in her official capacity but as a private citizen and that she makes it clear which hat she is wearing whenever she addresses the council. In doing so she says that she is acting in accordance with advice given to her by the council's monitoring officer.

The committee accept that Councillor Knight was acting in good faith in accordance with the advice she perceived she had received from the monitoring officer but nevertheless find that at the meetings of Debden Parish Council on 4 August 2010 and 1 September 2010 she was at all times acting in her official capacity as a district councillor of Uttlesford District Council. The committee have been referred to the case of Richardson –v- North Yorkshire County Council in which the court of appeal held that “a member of the authority attending a council meeting cannot simply by declaring that he attends in a private capacity, thereby divest himself of his official capacity as a councillor. He is still to be regarded as conducting the business of his office.”

This judgement was concerned with a member attending a meeting of his own authority in circumstances where he had a prejudicial interest. In the court below Mr Justice Richards had held that the Code of Conduct did not in principle preclude attendance by a councillor solely in his private capacity to defend his own personal interests. However in this case Councillor Knight was clearly present at the meeting in an official capacity to present her district council report. She was not seeking to advance or defend her personal interests but was speaking on issues of general interest in the parish and by all accounts in a representative capacity. She had also carried out investigations in her capacity as a district councillor. The committee find conclusion of the deputy monitoring officer that Councillor Knight cannot make investigations in her capacity as a district councillor and then speak at the parish council meetings about that matter in a private capacity compelling.

Having concluded that Councillor Knight was at all material times acting in an official capacity the committee then have to determine whether the facts establish a breach of the code of conduct. The committee are grateful to the deputy monitoring officer for her painstaking and thorough investigation and finds itself faced with the same difficulty as confronted her, namely the differing recollections of the various witnesses.

The committee's approach therefore was to look first at the evidence of the parish clerk who made the complaint. In her statement when dealing with the meeting on 4 August the clerk refers to “certain members” being unhappy with the minutes of the meeting on 7 July. The committee take this as being a reference to members of Debden Parish Council. The clerk goes on to say that the public were not happy and said that she should have minuted the public forum in far more detail. With regard to Councillor Knight the clerk states that “Councillor Knight stood up and agreed that I should have minuted this section in more detail. I said “you cannot minute verbatim” and Councillor Knight said “yes you can”. I also pointed out that my responsibilities as clerk was to minute the decisions of the council only. She said that Michael Perry agreed with her, she had consulted him and that all other councils minuted

their public forum in far greater detail. I said that this was not the advice given in training or books on council meetings. Councillor Knight audibly snorted”.

The committee accept that during the public forum members of the public may comment upon the minutes and there is no reason why a district councillor present in an official capacity should not also make comment. There is nothing in the evidence of the parish clerk to indicate that whatever Councillor Knight may have said regarding the content of the minutes (which is what appeared to be the issue) was said in a way which impugned the professionalism or integrity of the clerk or was said in a way which was in any way disrespectful.

With regard to events on the 1 September the parish clerk in her complaint says that Councillor Knight informed the meeting that the contents of the reports to members were not true and contradicted her investigations. In her evidence however she stated that Councillor Knight said that the reports “completely disagreed with her findings”. If there were concerns regarding the factual accuracy of the clerk’s reports then Councillor Knight, acting in an official capacity was entitled to raise them. There is nothing in the evidence of the parish clerk which suggests that Councillor Knight’s concerns were raised in a way which could be considered inappropriate.

Finally it was said that at the meeting on 1 September Councillor Knight twice asked the parish clerk if she was going to resign. Councillor Knight acknowledges that she did this but that this was in the context of an earlier conversation when the clerk had said that if it was established that Councillor Bidwell had painted the yellow lines in the parish she would resign. As it turned out Councillor Bidwell did ultimately acknowledge that he had painted the yellow lines. Although the clerk says that the suggestion that she should resign was made at the meeting she does not say it was made during the meeting. The committee note that none of the witnesses appear to have heard this being said which is consistent with Councillor Knight’s evidence that the comments were made after the meeting as the parties were leaving the hall. Given the earlier conversation the committee do not consider that this amounts to a failure to treat the clerk with respect.

Accordingly the committee find that Councillor Knight has not breached the code of conduct.