

Committee: STANDARDS

Agenda Item

Date: 5 AUGUST 2014

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**Title: ALLEGATION OF A BREACH OF THE CODE
OF CONDUCT OF DEBDEN PARISH
COUNCIL**

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Legal, 01799 510416**

Item for decision

Summary

1. This report is to inform members of the outcome of an investigation into an allegation that Cllr Stewart Luck of Debden Parish Council has breached that council's Code of Conduct.

Recommendations

2. That members determine whether to accept the findings of the Monitoring Officer and if so what sanction (if any) to impose.

Financial Implications

3. None.

Background Papers

4. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
 - Minutes of meeting of Debden Parish Council held on 13 February 2014
 - Complaint form from the complainant.
 - Email of 27 March 2014 from Chris Ward
 - Statement of 28 March 2014 from Cllr Luck with 7 witness statements attached.
 - Notes of telephone conversation with Andrew Tetlow, Chairman Debden Parish Council
 - Notes of telephone conversation with Christine Griffin, Clerk of Debden Parish Council.
 - Note of telephone conversation with Gillian Lee

Impact

- 5.

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| Communication/Consultation | None |
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| Community Safety | None |
| Equalities | None |
| Health and Safety | None |
| Human Rights/Legal Implications | An investigation has been carried out in accordance with procedures adopted by Uttlesford District Council pursuant to the Localism Act 2011 |
| Sustainability | None |
| Ward-specific impacts | Wimbish and Debden |
| Workforce/Workplace | None |

Situation

6. On the 4 March 2014 the council received a complaint from Cllr Tina Knight of Uttlesford District Council that Cllr Stewart Luck of Debden Parish Council had breached that council's Code of Conduct in that:
- He showed disrespect to the Parish Clerk of Debden Parish Council, the Chairman of Debden Parish Council and the Monitoring Officer of Uttlesford District Council.
 - He refused to observe the protocols or codes of practice adopted by the authority
 - He bullied the Parish Clerk.
 - He swore at members of the public.
 - By virtue of his conduct he caused a meeting to be closed before the business of that meeting had been concluded.
7. Investigations into allegations of a breach of the Code of Conduct must be proportionate. No more resources should be used in such investigations than are necessary to reach a just conclusion. With that in mind I wrote to Cllr Luck on the 13 March with a number of questions. The purpose of doing this was to endeavour to narrow the scope of the investigation to areas where there was a dispute. My email to Cllr Luck specifically stated that "it will assist me in determining how I can proceed with my investigation if you would respond to the points below by way of a yes/no answer. As indicated above you will have the opportunity to present your full case in due course. The purpose of these questions is merely to ascertain which allegations you accept and which you deny. In the event

that you admit any allegation you will be given the opportunity to advise mitigating factors at a later stage”.

8. Cllr Luck did respond with answers to my questions and enclosed a number of witness statements from members of the public. It appears that he had passed the questions I had asked him to members of the public and asked them to respond. In so doing I take a view that Cllr Luck has interfered with the course of the investigation. Should I have concluded that it was necessary for me to speak to members of the public who were present at the meeting, the evidence of those put forward by Cllr Luck has now been compromised.
9. The allegations all arose from the meeting of the Debden Parish Council on the 13 February 2014. This was an extraordinary meeting which had been called to enable the parish council to fix the precept for the financial year 2014-2015. At the same meeting the parish council was to consider increasing the precept by a sum sufficient to enable the parish council to service a Public Works Board loan which it was intended to raise to fund the costs of constructing a new village hall. This was a controversial issue which attracted a great deal of local attention. Indeed the minutes record that 62 members of the public attended the meeting.
10. It will be wholly disproportionate for me to interview everyone who attended the meeting. Even if I were to do so my experience is that where numerous witnesses are being interviewed regarding certain events, their recollection of those events will differ significantly. However, witnesses are inherently honest and will be giving me their genuinely held view as to what they believe occurred. It is very difficult in such circumstances to reach a conclusion as to what actually took place. I therefore determined not to interview any members of the public save for one (Mrs Gillian Lee). With regard to the witness statements tendered by and on behalf of Cllr Luck I give these little weight save for where they support the complainant's case.
11. In preparing my report I have interviewed the following persons:
 - Cllr A Tetlow, Chairman Debden Parish Council
 - Mrs Christine Griffin, Clerk Debden Parish Council
 - Mrs Gillian Lee, member of the public at the meeting
 - Cllr Stewart Luck

I have also had regard to the complaint made by Cllr Knight and to the extent mentioned above the witness statements tended by and on behalf of Cllr Luck.

12. The facts not in dispute

- (i) Debden Parish Council has adopted the Code of Conduct of Uttlesford District Council pursuant to the Localism Act 2011.

- (ii) Pursuant to section 101 Local Government Act 1972 Debden Parish Council has delegated power to Uttlesford District Council to grant dispensations and to impose sanctions for a breach of the Code of Conduct.
- (iii) Cllr Luck is bound by the Code of Conduct by Debden Parish Council.
- (iv) Cllr Luck is a member and chairman of the Debden New Village Hall Group (“NVHG”) as are a number of other members of the council.
- (v) I was asked for advice by a number of persons connected with the councillor as to the ability of members of the NVHG to take part in the debate and vote. My advice was that:
- Members of the NVHG had been appointed to that body. Consequently it was a pecuniary interest within the meaning of paragraph 5.1 of the Code which provides “you have a pecuniary interest in any business of your authority where either: - 5.1 it relates to or is likely to affect any person or body who employs or has appointed you”.
 - By virtue of paragraph 11.1 of the Code such an interest should be registered with me as Monitoring Officer.
 - Members with a pecuniary interest arising from being members of the NVHG will need to declare the interest at meetings of the parish council where matters relating to the hall were being discussed.
 - If a member of the public with knowledge of the relevant facts would regard the interest as being so significant as to prejudice the member’s judgement of the public interest then unless a dispensation has been obtained members could speak during the public speaking session but must withdraw from the room having spoken and may not vote.
 - My preliminary view was where finances were under discussion a member of public knowing of a member’s involvement with the NVHG would consider the member’s judgement and the public interest to be prejudiced and that the member’s ability to contribute was therefore limited.
- (vi) Advice given by the monitoring officer is not binding upon councillors. The fact that a councillor does not accept the advice of the Monitoring Officer is not in itself a breach of the Code of Conduct even where the councillor concerned disagrees with that advice in strong terms. For that reason the allegation that Cllr Luck failed to treat the Monitoring Officer of Uttlesford District Council with respect has not been investigated it being accepted that Cllr Luck is free to

come to his own decision as to whether or not he has a pecuniary interest although if following an investigation it was established that he had such an interest he would be in breach of the Code of Conduct if he voted on the issue.

- (vii) Cllr Tetlow and Cllr Knight both informed Cllr Luck that he should not vote and that should he do so he would be bringing the council into disrepute and liable to be fined up to £5,000 and disqualified from being a councillor.
- (viii) As a matter of law the advice given to Cllr Luck by Cllr Tetlow and Cllr Knight was incorrect. Cllr Luck's interest was clearly not a disclosable pecuniary interest as defined by the legislation. Criminal liabilities and the power of disqualification under the Localism Act 2011 only relate to improper conduct with regard to disclosable pecuniary interests.

13. Facts not agreed

- (i) It is alleged that Cllr Luck shouted down the Chairman of the Parish Council during the precept setting meeting. This allegation is denied by Cllr Luck. Cllr Tetlow (Chairman) does not consider that he was shouted down.
- (ii) It is alleged that Cllr Luck shouted down the Parish Clerk during the meeting when she was trying to explain procedures. Cllr Luck denies this allegation. The Parish Clerk considers that Cllr Luck did shout her down.
- (iii) It is alleged that Cllr Luck referred to Cllr Knight as a liar. Cllr Luck denies this allegation.
- (iv) It is alleged that during the course of the meeting Cllr Luck referred to members of the public as "you idle shits at the back". Cllr Luck denies this allegation.
- (v) It is alleged that the Chairman of the Parish Council called the meeting to an end before the transaction of business had been concluded because of disturbance at the meeting. Cllr Luck denies this allegation.
- (vi) It is alleged that Cllr Luck's conduct was the cause of the Chairman closing the meeting. Cllr Luck denies this allegation.
- (vii) In the alternative it is alleged that Cllr Luck's conduct was a contributory factor to the Chairman's decision to close the meeting. Cllr Luck accepts and denies that allegation.

14. Findings of Fact

- (i) I find as fact those matters referred to in paragraph 12 above to be facts in this case.
- (ii) I find that Cllr Luck did not shout down the Chairman of the Parish Council during the meeting on the 13 February. The allegation is not supported by Cllr Tetlow who is the reported victim of the alleged conduct on Cllr Luck's behalf.
- (iii) I find on the balance of probabilities that Cllr Luck did shout down the Parish Clerk. This allegation made by Cllr Knight is supported by the Parish Chairman and the Parish Clerk herself. Although Cllr Luck has produced a number of witnesses that support his statement that he did not shout down the Parish Clerk, for reasons given above I regard the evidence to be tainted. Further it is probable that if I were to interview other persons present some would support the opposite view. The Parish Chairman and Parish Clerk are the two parties most closely involved and I prefer their evidence on this point.
- (iv) On the balance of probability I find that Cllr Luck did not call Cllr Knight a liar. This allegation by Cllr Knight is not supported by any other evidence. I therefore give Cllr Luck the benefit of the doubt on this issue.
- (v) I have been given different versions of Cllr Luck's address to the public re the initial allegation that he called some members of the public "you idle shits at the back". One witness stated that Cllr Luck said "as for all you shits at the back who do f-all for the village ...". Other witnesses recall Cllr Luck referring to members of the public as doing "jack shit". Cllr Luck states that he said "the people at the back had done shit towards getting the new village hall". Whatever the precise words used, I find as a fact that Cllr Luck did swear at some members of the public present at the meeting who were opposing the increase in the precept.
- (vi) I find that Cllr Tetlow called the meeting to an end because of Cllr Luck's comment to members of the public and because he was concerned that if the meeting continued it may have been disrupted. In that respect I consider that Cllr Tetlow made an error or judgement. In my view he should have required Cllr Luck to leave the meeting or alternatively consider suspending the meeting for a short period to allow parties to recover their composure. I take the view that to bring the meeting to a close before the business had been concluded without taking such steps was premature.
- (vii) Whilst undoubtedly Cllr Luck's comments to the public was the cause of the meeting being closed, for reasons given above I consider that such a decision was premature.

15. Cllr Luck's Submissions

| Submission | Monitoring Officer's comment |
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| Cllr Luck denied that by approaching witnesses he had interfered with the conduct of the investigation. | Whilst acknowledging that there is no property in a witness having been approached by Cllr Luck, I view the witnesses he tendered as witnesses for the defence. As a standards investigation is an inquisitorial process it is better if witnesses are not approached by interested parties to an investigation. However I do not consider this issue relevant to the determination as to whether there has been a breach of the Code |
| Cllr Luck states that members of the New Village Hall Group were not appointed, they volunteered | This goes to the advice as to whether Cllr Luck had a pecuniary interest in matters relating to the village hall. I remain of the view that he did and will expand upon that if requested to do so but it is not relevant to my findings as to a breach of the Code |
| Cllr Luck does not accept that his use of a swear word was directed at any individual or group of individual members of the public | My finding is that Cllr Luck's comment was directed at a group of members of the public and this is borne out by his recollection of the words he used. |
| Cllr Luck maintains that he apologised immediately after he swore | There is insufficient evidence for me to conclude that Cllr Luck apologised. Cllr Luck concedes that not everyone present at the meeting may have heard his apology. In the event that Members are satisfied that an apology was made that in my opinion goes to mitigation, not whether there has or has not been a breach of the Code. |
| Cll Luck denies that he lost his temper | It would be surprising if Cllr Luck's choice of words were the result of a temperate thought process. If it is his case that he had not lost his temper and that the words were deliberately chosen then in my view the breach of the Code is more severe. |

16. Reasons as to whether the facts as found constitute a breach of the Code of Conduct

- (i) I find that Cllr Luck did not show disrespect to the Chairman of Debden Parish Council as I am not satisfied on the evidence that he shouted the Chairman down. Whilst Cllr Luck's conduct at the end of the meeting was a contributory factor in the Chairman's decision to bring the meeting to a close, I find that he was not given any instruction by the Chairman acting in that capacity which he disobeyed and therefore there can be no question of disrespecting the Chairman at that point in the meeting.
- (ii) I find that in shouting down the Parish Clerk, Cllr Luck did fail to treat the Parish Clerk with respect in breach of paragraph 3.1 of the Code of Conduct. However, I am not satisfied that his conduct was sufficient to constitute bullying which would have been a breach of paragraph 3.3.2.
- (iii) In so far as the allegation that Cllr Luck refused to observe protocols or codes of practice adopted by the authority, I note that Cllr Luck stated his intention to vote on an issue in respect of which he had a pecuniary interest (other than a disclosable pecuniary interest). However, he held a dispensation from me permitting him to take part in the debate and he did not in actual fact vote as no vote was called for on the issue where his interest arose. I find therefore there is no breach of the Code of Conduct in this respect.
- (iv) Although the atmosphere at the meeting was undoubtedly heated, I consider Cllr Luck's behaviour towards the public as being wholly unacceptable. There is a difference of views as to whether it is possible to be in breach of paragraph 3.1 of the Code of Conduct (which requires councillors to treat others with respect) where the behaviour is not directed at an identifiable individual or individuals.

For example in an Adjudication Panel case prior to the current standards regime intemperate comments made by a member concerning his council's Planning Department were held not to be in breach of this provision of the Code as no individual planning officer was identified. This can be contrasted with the recent decision of the High Court in R (on the application of Dennehy) v London Borough of Ealing. The court concluded that comments by Cllr Dennehy directed at residents of part of the borough amounted to treating those residents with disrespect. Although the Adjudication Panel decision was not quoted in the Dennehy case it would not be binding upon the High Court.

I prefer the rationale in Dennehy. I find that Cllr Luck's remarks were directed at an identifiable section of the public and that the remarks

were offensive not only by his use of bad language but also by his inference that the persons to whom his remarks would object did little or nothing for the benefit of the village. I find therefore that Cllr Luck did breach paragraph 3.1 of the Code of Conduct by failing to treat those members of the public with respect. I also take a view that for Cllr Luck to lose his temper in this way and to swear at the public would reduce public confidence in his ability to carry out his responsibilities as a councillor, and he has therefore breached paragraph 3.3.7 of the Code by behaving in a manner which could be reasonably regarded as bringing his office into disrepute.

- (v) Whilst I find that Cllr Luck's conduct did contribute to the meeting being closed before the business of the meeting had been concluded, for reasons set out above I consider that the decision of the Chairman to close the meeting was premature and I do not consider Cllr Luck to blame for the fact that the meeting was brought to an early end.

Risk Analysis

17. There are no risks associated with this report.