

**Committee: STANDARDS**

**Agenda Item**

**Date: 13 October 2014**

**4**

**Title: CORRESPONDENCE RECEIVED FROM  
DEBDEN PARISH COUNCIL**

**Author: Michael Perry, Assistant Chief Executive  
Legal, 01799 510416**

Item for decision

## **Summary**

1. This report is to inform members of correspondence received from Debden Parish Council following the conclusion of an investigation into an allegation that a member of that council had breached its Code of Conduct.

## **Recommendations**

2. That members determine how to respond to the correspondence received.

## **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.
  - Letter of 8 September 2014 from the chairman of Debden Parish Council together with an enclosure.
  - Email of 6 August 2014 from the Parish Clerk of Debden Parish Council to me.

## **Impact**

- 5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	Under the Localism Act 2011, relevant authorities (as defined) are required to have in place a Code of Conduct for its members. For this purpose “relevant

	<p>authority” includes a parish council. Section 28(6) also requires relevant authorities other than parish councils to have in place arrangements under which allegations can be investigated and arrangements under which decisions on allegations can be made. The function of investigating allegations and taking decisions on the allegations regarding parish councils are carried out by the district council for the district within which the parish is situated. There is no legislation or guidance regarding the nature of the arrangements to be put into place. These are within the discretion of the authority. There is no mechanism for an appeal against a decision of a standards committee. Such decisions may only be challenged by proceedings for judicial review.</p>
Sustainability	None.
Ward-specific impacts	Wimbish and Debden
Workforce/Workplace	None.

## Situation

6. On 4 March 2014 the council received a complaint alleging that a member of Debden Parish Council had breached that council’s Code of Conduct. The complaint was passed for investigation and following the investigation by me a report was prepared for consideration by members of the Standards Committee. In my report I had found two breaches of the Code of Conduct. The committee met to consider my report on the 5 August 2014 when members upheld my finding of a breach of the Code of Conduct in one respect only.
7. The factual basis of the breach of the Code upheld by members was that it was alleged that at an extraordinary meeting of Debden Parish Council on the 13 February 2014 the subject member swore at a group of members of the public thereby failing to treat them with respect. The councillor concerned admitted the allegation and accepted that this was indeed a breach of the Code of Conduct.
8. During the course of the investigation the subject member submitted statements from various persons who had been present at the meeting. Many of these persons said they heard the subject member apologise for his remark once he had made it. When I interviewed the subject member he maintained that he had apologised at the meeting concerned.

9. At the time of the preparation of my report I did not accept that the subject member had apologised at the meeting. Despite some evidence he had done so, I noted that the apology was not recorded in the minutes of the February meeting and further at the meeting of the parish council in March 2014, when the accuracy of the minutes of the previous meeting was considered there was no record of the subject member seeking to correct the minutes. Had he done so even if the amendment had not been accepted by the majority of the council, the minutes ought to have recorded that fact. The subject member informed me that when he sought an amendment to the minutes he was told that it was not necessary to record everything which is said at a parish council meeting. I expressed the view in my interview with him that this was an issue that was so important that I felt that had he attempted to have the minutes amended this would have been recorded.
10. In my report to the Standards Committee I set out the subject member's submissions with regard to the allegation. One of these was that he maintained he apologised immediately after swearing. My response to that submission there was insufficient evidence for me to conclude an apology was given but that in any event if members were satisfied that an apology was given that went to mitigation and not to the issue as to whether or not there had been a breach of the Code of Conduct.
11. At the hearing before members, the subject member through his solicitor produced two documents from fellow parish councillors. One of these was present at both the February and March meetings, one was present at the March meeting alone. Both councillors confirmed that at the meeting of the parish council in March 2014 the subject member requested that his apology be noted in the minutes of the February meeting. The councillor who was present at both meetings said that the amendment was refused by a majority of the council but that he was not sure why. The councillor who was present only for the March meeting stated that the subject member asked for his apology to be recorded in the minutes but was refused on the grounds that the minutes do not have to record verbatim everything which is said at a meeting.
12. In the light of that written evidence produced on the day of the hearing I was prepared to accept as a matter of fact that on the balance of probabilities the subject member had apologised for using a profanity at the February meeting and that he had sought an amendment of the minutes when they were considered by the parish council in March 2014.
13. At the hearing the subject member, through his solicitor, stated that in the event that members were not satisfied that an apology had been given or were not satisfied that the apology was sufficiently audible the subject member was prepared to give a further apology to the parish council.
14. Having retired to consider its decision, the committee determined that the subject member had breached the Code of Conduct but it accepted that an apology had been given and was sufficiently audible and that no further action was therefore required.

15. The only sanction open to the Standards Committee for a breach of the Code is to censure the member concerned. As an alternative it may make recommendations or request certain action on behalf of the subject member. Although I was not advising the members as I was presenting the case, my view would have been in the context of this case (the one off use of a swear word at what was a particularly heated meeting) if members had considered that the subject member had not apologised, in the light of his offer to the committee to do so a censure would have been disproportionate and a recommendation to issue an appropriate apology would have been the appropriate sanction. The finding of fact made by members made such action unnecessary.
16. Given the evidence that was available to the committee that an apology had been tendered the committee were quite entitled to find as a fact that this had occurred. Had the committee had any concerns on that issue, it would have been possible for the meeting to have been adjourned for further enquiries to be made. However, such a step would have been wholly disproportionate. Having accepted there had been a breach of the Code of Conduct whether or not an apology had been tendered was a matter for mitigation only. To have adjourned the hearing to enquire into mitigation would not have been an appropriate use of resources in the context that had members been persuaded the subject member had not apologised the likely outcome would have been a recommendation for an apology which would not in itself have been enforceable had the subject member then declined to do so.
17. In his letter to the chairman of the Standards Committee the chairman of the parish council raises certain specific questions. The first of these is why the parish council were not advised of or invited to attend the hearing.
18. The parish council did not make the complaint. It was not a party to the proceedings. Hearings are normally held in public as was the case here. The agenda and papers were published in the usual way. The only parties given specific notice of the hearing are the complainant, the subject member and any witnesses (none in this case) who are required to attend. Had any representatives of the parish council attended the hearing they would not have had the right to ask questions or to address members of the committee. There is therefore no purpose in notifying the parish council of or inviting it to attend the hearing.
19. The next question raised by the parish council is why they were not consulted regarding the alleged apology. The chairman of the parish council mistakenly states that the first mention of an apology was during my meeting with the subject member. This is not in fact the case. In his initial response to me regarding the allegation, the subject member submitted statements from members of the public several of which made reference to the fact that he apologised. For reasons set out in my report I gave those witness statements very little weight and for reasons set out in this report I did not accept at that stage that the subject member had in fact apologised. There was no need for me to seek further evidence to support my view. Up until the morning of the hearing my view on the balance of probabilities was that the subject member

had not apologised and there was therefore no need for me to seek further evidence on that subject.

20. Finally, the chairman of the parish council asked why witnesses statements with no addresses and unsigned were accepted on the day of the hearing.

21. Proceedings before a standards committee are not court proceedings. Evidence in any format is acceptable. The statements were tended on behalf of the subject member by his solicitor. In the circumstances, I had no reason to doubt the authenticity thereof. The statements were clearly acceptable. The weight to be put upon them was ultimately a matter for the members of the committee. In my view the committee were fully entitled to place reliance upon them.

22. The parish council are not aggrieved at the decision of the Standards Committee that there has been a breach of the Code of Conduct but are aggrieved at the finding of fact that the subject member did apologise at the February meeting. The parish chairman's letter is adamant that the subject member did not request an apology to be included in the minutes of the meeting of the 13 February. That stance is not entirely consistent with the email from the parish clerk to me of the 6 August 2014. The first point to be taken from that email is that the clerk acknowledges that due to the noise at the meeting in February she may have missed the subject member's apology and therefore did not minute it. I acknowledge that it would have been open to the subject member to raise the issue of the apology in his email comments on the minutes but the fact he did not do so does not mean that he had not given an apology at the February meeting. There was a lot of controversy at that meeting regarding advice I had given concerning members' interests. This is clearly what was at the forefront of the subject member's mind when he was commenting upon the minutes. The parish clerk in her email states "there was no mention of an apology being added in the email he sent to me on 16 February ... or as far as I can recall at the meeting". The parish clerk goes on to ask why the parish council had approved the minutes. To my mind the voting reported by the parish clerk (all in favour save for the subject member who abstained) is consistent with the position taken by the subject member and one of the two councillors who made a late statement on his behalf namely that they were told (correctly) that minutes do not record verbatim everything which is said at a meeting. The subject member's abstention is consistent with him not disagreeing with the accuracy of what was there but not being satisfied that the minutes were complete.

## Risk Analysis

23.

Risk	Likelihood	Impact	Mitigating actions
A person dissatisfied with the decision of	It is doubtful whether the parish council	1, there is virtually no prospect of an	The committee should formulate a suitable response to

<p>the Standards Committee may seek to quash that decision by way of judicial review.</p>	<p>has a legal standing to bring such proceedings. Even if it did have such standing, proceedings for judicial review are expensive and given the risk of an adverse costs award if the application were unsuccessful it is unlikely that the parish would risk embarking on such a course of action to secure what at best is likely to be a recommendation from the Standards Committee that an apology be tendered by the subject member.</p>	<p>application for judicial review being successful.</p>	<p>the letter of the 8 September 2014 from the parish council.</p>
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1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.