

**REPORT OF THE MONITORING OFFICER INTO ALLEGATIONS THAT CLLR
RICHARD BROAD HAD BREACHED THE CODE OF CONDUCT OF HATFIELD
BROAD OAK PARISH COUNCIL**

Background

1. Cllr Keith Artus of Hatfield Parish Council made a number of complaints that Cllr Richard Broad, a fellow councillor and the chairman of the parish council had breached its Code of Conduct. These complaints were considered by an independent member of the Standards Committee and me. We took the view that some of the complaints were in respect of the alleged conduct of the parish council rather than relating to the matters specific to Cllr Broad. These were therefore outside the remit of the Standards Committee and could not be investigated. In any event, a number of the complaints concerned the council's response to requests made by Cllr Artus under the Freedom of Information Act 2000 which should be dealt with by the Information Commissioner. These matters were not therefore passed for investigation. There were however four complaints which the independent member and I considered did merit investigation. All of these concerned in some way proposals for a new sports pavilion on the village green in the parish. The complaints passed for investigation were that it was alleged that Cllr Broad:-

- Repeatedly failed to record a non-pecuniary interest in that he holidays with a member of the cricket club executive and is friends with other cricket club executive members.
- Advised councillors that the working group established to progress the development of the pavilion would not prepare any agendas, or produce meeting minutes or notes, and that the meetings will not be scheduled or announced (effectively in secret, even to parish councillors).
- Authorised correspondence to third parties (grant funders) in the name of or on behalf of the parish council without authority or approval from the council and not providing copies to councillors.
- Wrote reports for the village magazine in the name of the council without authority or approval from the council.

2. In carrying out the investigation I referred to the following papers:-

- a. The complaint
 - b. Minutes of meetings of Hatfield Broad Oak Parish Council held on 13/6/12; 11/7/12; 8/5/13; 12/6/13; 10/7/13; 11/9/13; 9/10/13; 13/11/13; 11/12/13; 8/1/14; 29/1/14; 12/2/14; 12/3/14; 9/4/14; 14/5/14 and 11/6/14.
 - c. An undated document headed "HBO Pavilion Project Management Group Remit"
 - d. Pavilion Working Group Report 12/3/14
 - e. E-mails dated 17/6/13 and 14/11/13 from Cllr Broad to A. Akhurst
 - f. Letter dated (presumably incorrectly) 11/12/14 from "Richard" to "Rupert"
 - g. Letter dated 13/4/14 from Cllr Broad to Sport England
 - h. Undated letter from Cllr Broad to Mr Lettley
 - i. Numerous items of correspondence between the parish council and others not relevant to the investigation and therefore not copied with this report but available for inspection by members of the Standards Committee if they so wish
 - j. Letter dated 20/9/12 Cllr Artus to Essex County Council
 - k. Undated grant application by the parish council to Essex County Council
 - l. Article in the June 2014 edition of the parish magazine
 - m. Standing orders of Hatfield Broad Oak Parish Council (only sections 1 and 18 have been copied as being the only sections relevant to the complaint)
3. In addition to considering these papers I have interviewed Cllr Broad

Facts not in dispute

- 4. Hatfield Broad Oak Parish Council has adopted the Code of Conduct of Uttlesford District Council. As a member of Hatfield Broad Oak Parish Council Cllr Broad is bound by that Code.
- 5. There have been different plans and proposals for the establishment of a village green and sports pavilion within the parish. These plans have not been without their controversy and have given rise to a number of complaints regarding the Code of Conduct in the past, some of which have been passed for investigation and have resulted in a finding of a breach of the Code of Conduct in one instance.
- 6. The complainant, Cllr Artus, is a trustee of Hatfield Broad Oak Village Green Company ("HBOVGC") which is a registered charity.

7. HBOVGC promoted and raised funds for a scheme which is not now being promoted by the parish council.
8. The scheme now being promoted by the parish council is smaller in scale than that proposed by HBOVGC.
9. At its meeting on 13/11/13 the parish council unanimously passed the following resolutions:-
 - a. The existing development group [for the pavilion] be dissolved
 - b. A new project management group to pursue the design, funding and building of the pavilion be appointed
 - c. The design of the pavilion shall be the changing room wing of the existing planning permission extended to provide a committee room of 6m x 8m within an overall length of 21m
 - d. The exact terms of reference of the group be finalised
 - e. Confirm the council's long term policy is to minimise the cost to the public as much as possible
 - f. That the council's ultimate aim was to let the pavilion to a body representing the interests of sporting organisations in the village in the event of an appropriate body being formed
 - g. The council will retain ultimate responsibility for the pavilion under the terms of the head lease.
10. Cllr Broad declared a non-pecuniary interest at this meeting to the extent only that he knew some people who may be interested in being appointed to the new project management group.
11. At the following meeting on 11/12/13 Cllr Artus either proposed or seconded a number of motions regarding the village green each of which was defeated by 7 votes to 2, namely:-
 - a. Any pavilion development shall be self funding with no costs or liability to the parish council. Users of the facility shall be responsible for its running and maintenance
 - b. The remit of the development group should reflect that any pavilion development complies with that policy
 - c. The development group remit should reflect the requirement to consider the needs and wishes of all village clubs and organisations when

reviewing the design such that the project genuinely is a public amenity benefiting parishioners generally

- d. The design of the pavilion should not be tailored to any club or organisation to the exclusion of others such that the parish council would incur an ongoing liability to support or subsidise any individual club.

12. Cllr Broad did not declare an interest at this meeting
13. At the parish council meeting on 29/1/14 (which was an extraordinary meeting) the parish council appointed a Pavilion Working Group ("PWG"). There were 5 appointees. 4 appointees were not members of the parish council and the 5th (Cllr Swainsbury) was appointed as the parish council's representative.
14. The group was expressed to be a working group of the council. No terms of reference were agreed but it was resolved to ask the PWG to meet with the chairman and vice-chairman of the council to discuss the remit.
15. Cllr Broad declared a non-pecuniary interest at this meeting to the extent that he knew some of the candidates.
16. In response to my request for all documents relating to the PWG the parish clerk provided me with the document referred to at 2 c. above. As the document is undated it is not clear when this was made. However it appears to be referred to in the Pavilion Working Group Report 12/3/14 referred to at 2 d. above so it is reasonable to infer that it came into being sometime between the extraordinary meeting of the parish council on 29/1/14 and 12/3/14.
17. The only intervening meeting of the parish council occurred on 12/2/14. There is no evidence that the parish council approved the PWG remit at that meeting or at any subsequent meeting.
18. At the meeting of the parish council on 9/4/14 the council resolved by 7 votes to 1 that the village green (which it holds under a lease) and any buildings or structures thereon including the proposed pavilion remain within the control of the parish council and that a sub-lease or long term rental agreement will not be granted to the Village Green Company.
19. Cllr Broad did not declare any interests relative to that item at this meeting.
20. After the meeting Cllr Broad wrote the letters referred to at 2 g. and h. above. The minutes do not indicate that these letters were approved or requested by the council

21. It appears from the minutes of the parish council meeting on 14/5/14 there was further discussion regarding the proposed pavilion. Sometime thereafter Cllr Broad submitted to the parish magazine for publication the article referred to at 21. above. The minutes do not indicate that the article was approved or requested by the Council.
22. The proposed pavilion will be in Village Ward
23. Cllr Broad acknowledges that he is a friend of a member of the cricket club and has been on holiday with him. Not surprisingly for a village the size of Hatfield Broad Oak he also acknowledges that he knows other members of the cricket club.

Facts in dispute

24. There appears to be a dispute as to whether the revised proposals for the pavilion would render it suitable for use by a variety of sporting clubs or fit for use by the cricket club only. I have not considered it necessary to make any finding of fact on this issue but it is important to highlight this dispute as a background factor to the complaint and the nature of Cllr Broad's interest in the village green.

The Law

25. Under s.101 Local Government Act 1972 a council may only discharge its functions by itself, through a committee or sub-committee, by an officer of the council or by another local authority. Save for councils operating executive arrangements (which parish councils are not able to do) there can be no delegation to or performance of function by an individual member whether by name or by position (e.g. chairman).
26. By virtue of the Local Government Act the minimum number of members which can be appointed as a committee is 3.
27. Whilst it is common practice for local authorities at all levels to have working groups and such groups may include persons who are not members of the council they are not recognised by the Local Government Acts. They are therefore governed entirely by the standing orders of the appointing council and/or the terms of reference laid down by that council when appointing a working group. Hatfield Broad Oak Parish Council's standing orders provide that the council may appoint advisory committees and working groups which may be

made up of councillors and non-councillors or can consist of entirely non-councillors. This standing order refers back to standing order 1 which deals with meetings. This says that meetings shall normally be held in public. However this is annotated to show that it is mandatory for meetings of the council and its committees but is silent as to the application to sub-committees and working groups.

Findings as to whether the facts (which are not disputed) amount to a breach of the Code of Conduct

28. With regard to the first allegation, Cllr Broad accepts that his friendship with a member of the cricket club constitutes a close association. Following from that he accepts that if matters under consideration by the parish council would impact upon his friend's financial position to a greater extent than the majority of other persons living or carrying on business in the ward affected by the decision this would constitute a pecuniary interest other than a disclosable pecuniary interest as defined by the Localism Act 2011 and regulations made thereunder. If matters under consideration by the parish council would impact upon his friend's wellbeing to a greater extent than the majority of other persons living or carrying on business in the ward affected by the decision this would constitute a non-pecuniary interest. Cllr Artus does not allege there to be a pecuniary interest here and I consider his assessment in that respect to be correct.
29. Cllr Broad clearly acknowledged this in November and December 2013 as he declared non-pecuniary interests at meetings of the parish council on the basis that his friend was interested in becoming a member of the PWG.
30. Where a member is present at a meeting of his council and has a non-pecuniary interest in a matter being considered at that meeting the Code of Conduct requires that he should declare the existence and nature of that interest. This Cllr Broad failed to do.
31. The downsizing of the proposed pavilion will clearly have the effect of reducing costs. This reduces the amount of money the parish council will have to raise in order to build the pavilion which in turn makes it likely that the building will be completed and ready for use by the cricket club and potentially other groups sooner. This will affect Cllr Broad's friend's wellbeing to a greater extent than the majority of people living in the ward most of whom will not take part in sports

activities. Cllr Broad therefore does have a non-pecuniary interest in matters relating to the pavilion arising from his friendship with a member of the cricket club.

32. Cllr Broad failed to declare a non-pecuniary interest and in that respect I find he has breached the Code of Conduct.
33. For completeness I find that although Cllr Broad does know other members of the cricket club his relationship with them is not so close as to fall within what would be called a "close association" and the breach of the Code is limited to only one of Cllr Broad's friends.
34. Cllr Broad accepted that he had to declare an interest when considering appointment to the PWG. He failed to appreciate that the interest extended beyond being appointed to that group. Had he realised that he had an interest that should have been declared I believe he would have declared it consistent with his earlier declaration. He is now aware of the fact that this is an interest which needs to be declared and I fully expect him to declare the interest in the future.
35. The next complaint concerns the operation of the PWG. When considering whether this complaint should be investigated the independent member and I took the view that if this was a decision of the council it could not be a breach of the Code of Conduct as a decision of the parish council cannot be the subject of a complaint against the chairman. However if this was a decision of the chairman acting alone the Code of Conduct may well be engaged. This allegation therefore warranted investigation to ascertain the facts.
36. The minutes of the meeting on 29/1/14 shows that the PWG was appointed by the council. Clearly the remit of the group should have been determined by the council either at that time or at a later meeting. A working group has no decision making powers on behalf of the parish council. It can only make recommendations which the council accepts or rejects. In particular a working group cannot establish its own terms of reference. The chairman and vice-chairman of the council with whom the PWG were to discuss the remit (as per the minutes of the meeting of 29/1/14) did not constitute a committee of the council and could not therefore approve the remit on the council's behalf. The decision of the parish council was clearly flawed but as it was a resolution of the council the Code of Conduct is not engaged.

37. With regard to the conduct of and records of proceedings of the PWG there are no standing orders governing these nor does the remit contain any provisions save for a requirement to report monthly to the parish council on its activities and to send copies of all minutes and reports generated to the parish clerk for distribution if required. Significantly there was no requirement to generate any minutes or reports and in the absence of any provision to the contrary “if required” can only mean “required by the appointing authority” i.e. the parish council. This matter was considered by the parish council at its meeting on 14/5/14 when a motion was proposed that meetings of the PWG should be open for councillors to attend and that the group should publish agendas and minutes. This motion was defeated by 7 votes to 2. Whilst this is a somewhat surprising state of affairs and clearly runs contrary to the government’s transparency agenda nevertheless it is a resolution of the parish council and therefore cannot form the basis of a complaint against the chairman.
38. On the issue of the conduct of the PWG I therefore conclude that there has been no breach of the Code of Conduct.
39. The other two complaints are very similar, namely that Cllr Broad wrote letters and issued articles for publication in the parish magazine without authority or approval of the council.
40. With regard to correspondence I asked the parish clerk to provide all correspondence concerning the village green. Within that correspondence there are some letters addressed to Cllr Broad as chairman but those letters have been replied to by the parish clerk. Cllr Broad is not of course in anyway responsible as to how others address their letters. The only examples I found of e-mails or letters from Cllr Broad which may be considered to have been written on behalf of the parish council are those referred to at 2 e. – h. above.
41. Cllr Artus alleged that more than one article had been published. I requested copies of the articles complained of or links where I could access them. Despite having had ample opportunity to provide other articles the one referred to at 2 i. above is the only article he has supplied.
42. The first question to be answered is whether in sending those items of correspondence and issuing the article for publication Cllr Broad was subject to the Code of Conduct. The Code only applies when a councillor is conducting the business of his authority (including the business of the office to which he was

appointed or elected) or acts or claims to act or gives the impression of acting on behalf of his authority.

43. In the e-mails to A. Akhurst Cllr Broad does not describe himself as chairman of the parish council or as a councillor. However that is not conclusive. In the first of the e-mails Cllr Broad says that the parish council have asked him to obtain further information and he then asks a number of questions about the possible involvement of a sports club with the proposed pavilion. This was clearly council business and as the e-mail was purportedly sent on behalf of the council I find that Cllr Broad was holding himself out as acting on behalf of the council when he sent it and was subject to the Code of Conduct at the time.
44. With regard to the second e-mail to A. Akhurst this appears to report the outcome of the parish council meeting on 13 November 2013. It gives details as to what steps will be taken by Cllr Broad to implement the decisions of the council. Whilst it does not say it is written on behalf of the council it gives the impression that Cllr Broad is acting on behalf of the authority and therefore Cllr Broad was subject to the Code of Conduct when he sent it.
45. Turning to the letters, the letter of 11 December 2013 to "Rupert" reports on council decisions and steps to be taken. Although in this letter Cllr Broad does not describe himself as chairman or councillor nevertheless it is in the same vein as the second e-mail to A. Akhurst and for the same reasons I find that Cllr Broad was subject to the Code of Conduct when he sent it.
46. The other two letters are in very similar terms. They are both written on parish council headed paper and both are signed by Cllr Broad as chairman of the parish council. Clearly Cllr Broad was subject to the Code of Conduct when these were sent.
47. The article which appeared in the parish magazine deals exclusively with parish council matters. It is signed off "Councillor Richard Broad Chairman Hatfield Broad Oak Parish Council". Again Cllr Broad was clearly subject to the Code of Conduct when submitting this article.
48. Having established that Cllr Broad was subject to the Code in all of these circumstances the next question is did he breach it?
49. I can find no evidence in any of the minutes of meetings of the parish council to show that the parish council requested, authorised or approved any of the correspondence or the article. As individual members should not undertake

actions on behalf of the council for the reasons given at paragraph 25 above it follows that technically the correspondence ought to have come from the parish clerk and not Cllr Broad.

50. The only sections of the Code which appears to be engaged are those which requires a councillor not to do anything which might bring his authority or his office into disrepute and the provision not to use a councillor's position as a member improperly to confer on or secure for themselves or another person an advantage or disadvantage..
51. The provision regarding not bringing the authority or office into disrepute is taken from the Codes of Conduct which were prescribed under (now repealed) provisions of the Local Government Act 2000. It is therefore relevant to look at decisions of the Adjudication Panel/First Tier Tribunal as to the interpretation of this phrase. The tribunal held that action which brought the council into disrepute was action which lessened the public confidence in the ability of the council to perform its functions and action which brought an office into disrepute was action which lessened the public confidence in the ability of that member to perform the functions of his office.
52. With regard to the provision not to use a member's position to confer or secure and advantage or disadvantage, in the First Tier Tribunal Case of Cllr Myers of Walford Parish Council Cllr Myers had written to developers complaining about a development within his parish which they were undertaking and also wrote to other parties to the contract. He sent the letters on his own notepaper but signed them as vice-chairman of the parish council. He acknowledged that he had no authority from the council to do so but maintained that if asked the parish council would have agreed to the letters being sent. The First Tier Tribunal held that Cllr Myers could have legitimately sent the letters in a personal capacity or even as a councillor on behalf of his constituents. However sending the letter in such a way as to give the clear impression that he was writing on behalf of and with the authority of the parish council did amount to using his position improperly to secure a disadvantage for another person.
53. Dealing firstly with paragraph 3.3.7. of the Code (disrepute), in this case the views expressed by Cllr Broad in the various items of correspondence are not contrary to those of the council. Whilst there is no evidence that the council did formally request Cllr Broad to seek the information he requested from A. Akhurst

it is easy to see in context why such information would be helpful to the council in its deliberations and the questions themselves do not appear to be unreasonable. The other items of correspondence merely reported factually what the council had resolved to do. In particular the letters to Sports England and Mr Lettley gave notice of the council's resolution not to grant a lease to the HBOVGC. These parties had a legitimate interest in receiving this information as they had agreed to make grants to the HBOVGC on the basis that a lease would be granted and at the same time Cllr Broad was seeking to establish whether they would be prepared to give grants to the parish council to assist its project.

54. With regard to the article in the parish magazine the inference I draw from Cllr Artus's complaint is that it is a regular occurrence for the chairman to issue such articles. Indeed in my experience as an assessor for quality parish status it is not unusual for parish magazines to carry regular articles from the chairman of the parish council.
55. Whether or not the correspondence and article were strictly permitted by s.101 Local Government Act 1972 is not the issue. The question is whether Cllr Broad by his actions has lessened the public confidence in the ability of Hatfield Broad Oak Parish Council or in him as a councillor or as chairman of the council to perform their respective functions. In my judgement he has not.
56. The public and the recipients of the letters would not be aware of the niceties of s.101. They would expect the parish chairman to write letters on behalf of the council and publish articles on its behalf. This is evidenced by the fact that as referred to in paragraph 40 above some correspondence was addressed to Cllr Broad as chairman of the parish council and although it would appear that there have been a number of articles from Cllr Broad published in the parish magazine there have been no complaints prior to this one.
57. I also take note of the fact that it appears that there may be a culture of failing to adhere rigidly to the provisions of s.101 of the Act. In 2010 a complaint was made alleging misuse of council resources by a member of the parish council. The complaint was not upheld but arose from a member contracting to purchase items on the council's behalf contrary to s.101. As will be apparent from the documents referred to at 2 j. and k. above the grant application to ECC was submitted not by the parish council but by a councillor on the council's behalf. In the correspondence I have seen which is not directly relevant to the investigation

it is apparent that there are other instances of councillors acting on behalf of the council contrary to s.101. I believe that the public would judge the actions of Cllr Broad in the light of the culture of the council rather than a strict interpretation of the legislation.

58. I find therefore that the e-mails, letters and articles do not constitute actions on behalf of Cllr Broad which would lessen the public confidence in the ability of the council or of Cllr Broad to perform their functions and he has therefore not brought his council or his offices as councillor or chairman of the council into disrepute. I find no breach of the Code in this respect.

59. Turning now to paragraph 3.3.8 of the Code (improper use of position to confer or secure a disadvantage) I find it highly probable that the offer of grant funding to the HBOVGC would have been withdrawn. However that withdrawal (if it occurred) would not have been as a result of Cllr Broad's actions but as a consequence of the resolution of the parish council not to grant a lease of the village green to the HBOVGC. Whilst seeking funding for the parish council would secure a benefit for the parish council as the HBOVGC would not receive funding (as a result of the council's resolution) and the parish council was seeking funding I do not consider it arguable that Cllr Broad was using his position improperly to secure that benefit.

Summary

60. I find that Cllr Richard Broad of Hatfield Broad Oak Parish Council breached the Code of Conduct by failing to declare a non-pecuniary interest at meetings of the parish council when matters relating to the village green were discussed but that there have been no other breaches of the Code.

Michael J. Perry

Assistant Chief Executive – Legal and Monitoring Officer

30 September 2014