



Uttlesford District Council

Chief Executive: John Mitchell

Standards

Date: Thursday, 26 March 2015
Time: 14:00
Venue: Council Chamber
Address: Council Offices, London Road, Saffron Walden, CB11 4ER

Members: Councillors C Cant, J Loughlin, M Lemon and Mrs C Wellingbrook -
Doswell (Independent Person)

AGENDA PART 1

Open to Public and Press

- 1 Apologies for absence and declarations of interest.

- 2 Allegation of a Breach of the Code of Conduct 3 - 18

MEETINGS AND THE PUBLIC

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Website: www.uttlesford.gov.uk

Committee: STANDARDS

Agenda Item

Date: 26 March 2015

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Title: REPORT CONCERNING AN ALLEGATION OF A BREACH OF THE CODE OF CONDUCT

Author: Michael Perry, Assistant Chief Executive 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 Keith Artus of Hatfield Broad Oak parish council had breached that council's Code of Conduct.

Recommendations

2. Members determine whether to accept the findings of the Monitoring Officer and if so what sanction (if any) to impose with regard to the breach which has been found.

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.
 - Report of Monitoring Officer and documents referred to therein (attached).

Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None

Ward-specific impacts	Saffron Walden only.
Workforce/Workplace	None

Situation

6. Following a complaint that Cllr Artus had breached the Code of Conduct of Hatfield Broad Oak Parish Council by bringing the council or his office of councillor into disrepute by virtue of his conduct at a meeting of the parish council on 11 February 2015; that he failed to treat the parish clerk with respect at that meeting and that he failed to declare a non-pecuniary interest at that meeting.
7. An investigation was carried out by the Monitoring Officer whose report is attached for members' consideration.
8. Members will note from the report that Cllr Artus contests the admissibility of certain evidence. It is suggested that Members deal with the issue of admissibility as a preliminary issue.
9. Members are not bound by the Monitoring Officer's findings but should they decide to depart from them then clear reasons for doing so should be given.
10. If members conclude that there has been a breach of the Code of Conduct then the options are:
 - a. To take no further action
 - b. To recommend that the member issue an apology
 - c. To recommend that the member undergoes training
 - d. To recommend that the member engage in mediation
 - e. To censure the member

Risk Analysis

11.

Risk	Likelihood	Impact	Mitigating actions
The person dissatisfied with the decision may seek judicial review	1, given the practical effects of a finding of a breach of the Code it is unlikely that someone	2, the council is likely to win any application for a judicial review with a costs award in its favour but	None.

	would embark on this course	some resources would be required in its defence and some expense would not be covered by an award of costs.	
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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.

REPORT OF THE MONITORING OFFICER INTO AN ALLEGATION THAT CLLR KEITH ARTUS HAD BREACHED THE CODE OF CONDUCT OF HATFIELD BROAD OAK PARISH COUNCIL

Background

1. For some time there has been a project within Hatfield Broad Oak for the provision of a playing field and pavilion on land leased by the parish council. The proposals are hugely controversial and there are very strongly held and conflicting views by parish councillors and members of the community as to how this project should be advanced. Hatfield Broad Oak councillors have been the subject of 11 complaints of breaches of the Code of Conduct all of which appear to be triggered around tensions arising from the development proposals.
2. A meeting of the parish council on 11 February generated a number of complaints against Cllr Artus. The first complaint to be received by a complainant who was prepared not to remain anonymous made the following allegations:
 - a. Cllr Artus frequently interfered in the conduct of the business of the meeting especially under items 5.2 and 6 on the agenda, shouting and refusing to take directions from the chair.
 - b. Cllr Artus bullied the parish clerk under agenda item 10.2. It appears that due to an administrative error the parish clerk had been underpaid. When discussing this issue Cllr Artus is alleged to have stated “is she worth it”.
 - c. Cllr Artus failed to declare a non-pecuniary interest in a charity discussed when the main trustee of the charity is living with Cllr Artus.
3. One complainant also complained that Cllr Artus had been intercepting emails which were sent via a website of which he was the webmaster. The independent member and I considered this allegation. We considered that Cllr Artus’ control of any website was outside his functions as a councillor and therefore the Code of Conduct could not apply in his conduct of that website. Whether or not emails were being intercepted (and for the record Cllr Artus denies this is the case) the Code could not be engaged and therefore this complaint was not investigated. Other than this the other complaints added nothing to the first complaint received and the other complaints weren’t therefore passed for investigation.
4. Although not provided for in the council’s Standing Orders meetings of the parish council are recorded. The purpose of the recording is not for the benefit of the public or third parties but to assist the parish clerk in the preparation of minutes. I understand that at the commencement of each

meeting the chairman reads an announcement to the effect that the meeting is being recorded, that the purpose of the recording is to assist the parish clerk with the preparation of the minutes and that the recording will be erased once the minutes have been formally approved at the next meeting. As all the allegations made against Cllr Artus concern his conduct at the meeting of the council on the 11 February 2015, I made a request to the parish council for production of the recordings of that meeting. The recordings were delivered to me and in the circumstances, my investigation was limited to a consideration of the complaint; consideration of sections of the recordings and correspondence with Cllr Artus. I would mention at this point that Cllr Artus objected to me listening to the recordings and objected to the admissibility of that evidence. I will comment further upon that issue further on in this report.

5. The meeting of the parish council lasted 1 hour 50 minutes. As the complaints were centred around items 5.2 on the agenda (a debate regarding the village green), 6 on the agenda (a vote of confidence in the chairman) and 10.2 on the agenda (approval of payments) I confined my attention to the tape to be particular issues. As no specific complaint was made regarding Cllr Artus' conduct in other parts of the meeting it would have been disproportionate to do otherwise.

Facts not in dispute

6. Cllr Artus is a member of Hatfield Broad Oak Parish Council. Hatfield Broad Oak Parish Council adopted the Code of Conduct of Uttlesford District Council as it is entitled to do under s.27(3)(a) Localism Act 2011. Cllr Artus is bound by this Code.
7. Cllr Artus is a friend of and shares accommodation with a person who is a trustee of the Village Green Charity ("the Trustee").

Facts in dispute

8. The complainant alleges that Cllr Artus interfered with the conduct of the business of the meeting by shouting and refusing to take directions from the chair. This is alleged to have occurred in the discussion on items 5.2 and 6 on the agenda. Cllr Artus denies the allegation and denies that he behaved in any way improperly.
9. The complainant alleges that under item 10.2 on the agenda during a discussion on the parish clerk's back pay Cllr Artus said "is she worth it?". Cllr Artus denies making this or any other improper remark.

10. The complainant alleges that by virtue of his friendship with the Trustee Cllr Artus has a non-pecuniary interest in matters relating to the village green and that he failed to declare that interest.

Findings of Fact

11. I find the facts at paragraphs 6 and 7 which are not in dispute to be facts in this case.
12. Item 5.2 was the village green report. During the course of that item Cllr Artus raised a question regarding the legitimacy of a letter sent to a charity concerned with the village green by Cllr Flack. Cllr Artus asked what authority Cllr Flack had to write that letter on behalf of the parish council. He was not given a definitive answer to that question and indeed there appeared to be some degree of confusion on the part of other councillors as to what authority there was for the letter to be written. The debate on this topic lasted some 14 minutes. After 7 minutes a councillor proposed a motion to move on to the next business. The chairman did not appear to call for a seconder for that motion. Cllr Artus was clearly frustrated that his question was not being answered. He repeated his question a number of times and in some cases forcibly. However, he did not shout. Indeed at one point in the proceedings it is quite clear that other councillors were trying to shout Cllr Artus down. With one exception Cllr Artus did not raise his voice any higher than was necessary in order to be heard. On that one occasion he did not raise his voice unreasonably. He did not refuse to take directions from the chair as none were issued. He complied with the resolution to move on to the next business.
13. Item 6 on the agenda was a vote of confidence in the chairman. The background of this item is that Cllr Artus had made a number of allegations that Cllr Broad had breached the Code of Conduct. Four of the complaints were subject to investigation and resulted in a finding of one breach of the Code of Conduct on the part of Cllr Broad which was due to inadvertence on his behalf and no action was taken by the Standards Committee of Uttlesford District Council in regard thereto. The motion was proposed presumably to enable parish councillors to demonstrate their continued faith in their chairman.
14. Cllr Swainsbury read a statement in support of the motion. He then asked for a recorded vote. Cllr Artus asked Cllr Broad a question regarding his views on the future progress of the village green development. Cllr Broad declined to answer. Other councillors criticised Cllr Artus for raising this question. Cllr Artus rightly contended that he was entitled to ask questions regarding the chairman's stance on an issue to enable him to decide how to vote. At no stage did Cllr Artus shout or raise his voice. At no time did Cllr Artus refuse to take any direction from the chairman as none was given. Cllr Broad declined to answer the question as he was entitled to do. The matter was put to the vote. All councillors other than Cllr Artus voted in favour of the motion and Cllr Artus abstained.

15. At item 10.2 on the agenda there was a short discussion regarding the clerk's back pay. Due to administrative error on the part of the payroll administrators the parish clerk had been underpaid. The council was asked to authorise payment of the deficit. It is alleged that under this item Cllr Artus made a remark "is she worth it". Had such a remark been made then this would likely to have amounted to treating the parish clerk with disrespect. Cllr Artus denies making this remark.
16. The recording appears to indicate that Cllr Artus' attention was not initially focussed on this matter. He asked for clarification. When clarification was given he said "yes OK". Although more than one complainant indicated that Cllr Artus said these words, such an allegation is wholly unsupported by the recording and I find that Cllr Artus did not make the remark attributed to him.

Whether the facts as found constitute a breach of the Code of Conduct

17. With regard to the allegations at 2 a. and b. above there is no evidence to support these and I find therefore that there has been no breach of the Code of Conduct.
18. With regard to the allegation that Cllr Artus failed to declare an interest Cllr Artus submitted that "my relationship with [the Trustee] is irrelevant as there was nothing on the agenda that would be affected by such. Cllr Flack made the village green report to which I contributed nothing. My only involvement was to remind the parish council that it had received a petition from the charity and to question on behalf of the parish council itself the authority of a committee chairman to write a letter on the council's behalf. There was no proposal, no motion, no vote, nor anything that would impact upon the council or public. On that basis I made no declaration and will continue to only make a declaration where appropriate as was found against Richard Broad when he was supposed to declare an interest when there was a vote where his friendship could be considered prejudicial".
19. Paragraph 5 of the Code of Conduct defines "other pecuniary interests". The Code provides that "you have a pecuniary interest in any business of your authority where ... a decision in relation to that business might reasonably be regarded as affecting the financial position of a related person to a greater extent than the majority of ... other council tax payers, rate payers or inhabitants of the electoral division or ward ... affected by the decision".
20. "Related persons" are defined by paragraph 7 of the Code as including "a member of your family or any person with whom you have a close association" and "anybody of a type described in paragraph 6.1.2 of which such persons are members or in a position of general control or management".

21.6.1.2 of the Code of Conduct includes “any body ... directed towards charitable purposes”. From the recording it is an inescapable conclusion that the discussion at 5.2 on the parish council agenda did have the potential to impact upon the financial position of the charity. As the Trustee is a member of the charity by virtue of paragraph 7.1 and 7.4 of the Code of Conduct the charity is a “related person” to Cllr Artus and that the interest was a pecuniary interest (other than a disclosable pecuniary interest) by virtue of paragraph 5 of the Code.

22. The effective interest upon participation of councillors in meetings is set out in paragraph 9 of the Code of Conduct. Paragraph 9.3 of the Code provides “if you have a pecuniary interest other than a disclosable pecuniary interest in any business of your authority which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and you are present at the meeting of the authority at which such business is to be considered or being considered you must:-

9.3.1 Disclose the existence and nature of the interest in accordance with paragraph 8.1 and 9.3.2 unless you have obtained a dispensation from your authority, withdraw from the room or chamber where the meeting considering the business is being held, in a case where paragraph 9.4 applies, immediately after making a representation or in any other case when the business is under consideration.

9.4 Where you have a pecuniary interest other than a disclosable pecuniary interest and any business of your authority unless you hold a dispensation you may attend a meeting for the purpose of making representations only”.

23. The fact that there was no motion on the table and that no vote was taken is entirely irrelevant. The provisions of the Code of Conduct with regard to interests apply whenever a matter in respect of which a pecuniary interest is being considered. It is surprising that Cllr Artus should not have been aware of that fact. He has been a councillor for a number of years and ought to be familiar with the Code of Conduct. The finding in respect of Cllr Broad on the complaint made against him is set out in paragraph 30 of that report which says “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.” Members will note that consistent with the Code this paragraph of the report refers to a matter being considered and not to a vote being taken.

24. From my investigation of previous complaints regarding Cllr Artus it is clear that he has very strongly held views as to how the village green should be developed. The strength of those views is well known within the parish. I

consider that a member of the public with knowledge of the relevant facts would reasonably regard Cllr Artus' interest in the village green as being so significant that it be would likely to prejudice his judgement re the public interest. Having made his point he ought to have withdrawn from the chamber pursuant to paragraph 9.3.2 of the Code but as the debate was brought to an end by a procedural motion to proceed to the next business he did not have the opportunity to do so.

25. I find therefore that Cllr Artus breached paragraph 9.3.1 of the Code of Conduct by failing to declare a pecuniary interest at the meeting of the parish council on 11 February 2014.

Admissibility of Evidence

26. Cllr Artus objects to the admissibility of the recording of the meeting. The basis of his objection is that the purpose of the recording being made was only to assist the clerk in the preparation of the minutes of the meeting and that it is council policy that the recording is to be erased as soon as the minutes have been approved. He submits that "it sets a dreadful precedent that a tape recording that was made purely to assist the clerk in her job (although it was not formally approved) could be 'sequestered' using heavy handed FOI laws and used in evidence against a councillor, a purpose for which it was not intended and in fact was specifically excluded as it was simply to help her construct the minutes. It's just wrong, unprincipled and should it be allowed, be a dangerous precedent"

27. Under s.1 Freedom of Information Act 2000 local authorities (including parish councils) have a duty to confirm or deny whether they hold information of a particular class and to provide that information upon request unless a statutory exemption applies.

28. Councils may have a policy regarding destruction of records and indeed it is good practice to do so. There is nothing improper in the parish council's practice of erasing recordings after minutes have been approved at the next meeting. However the purpose of creating records is completely irrelevant to the operation of the FOIA. If a request is made for information whilst records are in existence then the request must be complied with. To destroy records after a request has been received before it has been dealt with is a criminal offence now punishable by an unlimited fine.

29. I consider that there are no statutory exemptions which would have entitled the parish council to refuse my request. I have asked Cllr Artus if he is able to suggest any exemption which would apply and if he were able to do so to explain how the public interest test would be satisfied in applying the exemption if it were a qualified exemption. He has not put forward any submissions in this respect.

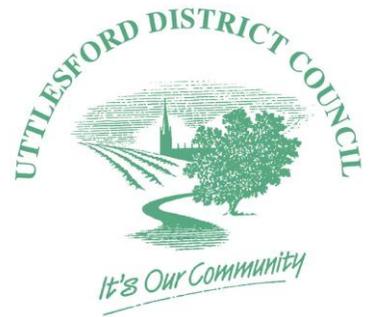
30. It is in the interests of justice that the best evidence reasonably obtainable should be available. The evidence was available, was legitimately obtained and should be admitted.

Summary

31. Where members wilfully disrupt council meetings and ignore the instructions of the council chairman this can amount to bringing the council or office of councillor into disrepute. I find that there is nothing in Cllr Artus' conduct at the meeting which fell into that category and that he did not breach the Code of Conduct in that regard.

32. Making disparaging remarks regarding council officers is likely to amount to failure to treat others with respect. The remark attributed to Cllr Artus would probably have fallen into that category. However, giving my finding of fact that no such remark was made I find that Cllr Artus has not breached the Code of Conduct in this respect.

33. I find that Cllr Artus did have a pecuniary interest (other than a disclosable pecuniary interest) in the discussions regarding the village green. He ought therefore to have declared the nature and existence of that interest but he failed to do so. I therefore find that he has breached the Code of Conduct in this respect.



COMPLAINT FORM

Your details

1. Please provide us with your name and contact details

Title:	Prof
First name:	David
Last name:	Smith
Address:	4 Dunmow Road, Hatfield Broad Oak, Bishop's Stortford, CM22 7JJ
Daytime telephone:	01279718482
Evening telephone:	01279718482
Mobile telephone:	07879 485573
Email address:	davidsmithhbo@hotmail.com

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the member(s) you are complaining about
- the monitoring officer of the authority
- the parish or town clerk (if applicable)

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete section 5 of this form.

2. Are you a:

- Member of the public
- An elected or co-opted member of an authority
- An independent member of the standards committee
- Member of Parliament
- Local authority monitoring officer
- Other council officer or authority employee
- Other ()

3. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of their authority:

Title	First name	Last name	Council or authority name
Cllr	Keith	Artus	Hatfield Broad Oak Parish Council

4. Please explain in this section (or on separate sheets) what the member has done that you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the monitoring officer and independent person when they decide whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.

- You should say whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

I wish to make 3 complaints about Cllr Artus relating to his actions at the HBO PC meeting held on 11th February 2015.

a) I believe that he contravened 3.1 of the code by frequently interfering in the conduct of the business of the meeting, and especially under agenda items 5.2 and 6.00, shouting and refusing to take directions from the chair.

b) I believe that he contravened 3.3.2 of the code in making a reference to the Parish Clerk which was bullying. Under agenda item 10.2 when an administrative error in paying the clerk's wages was being discussed he asked: 'Is she worth it?'

c) I believe that he contravened 6.11/6.1.2.2 by not declaring a non-pecuniary interest in a charity discussed when the main trustee of the charity is living with him.

Evidence is available from my own notes which I can send as evidence. In this case I was attending to present a report on Community Speed Watch.

ALSO the Parish Clerk makes an audio recording of the meetings to assist with minute taking. This is normally destroyed once the minutes are signed but I request that you ask the Clerk before next Wednesday to retain this as evidence.

Only complete this next section if you are requesting that your identity is kept confidential

5. In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason to believe that:

- Disclosure of your identity or the details of your complaint may prejudice the conduct of an investigation
- There is a real threat of reprisals against you or members of your family

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The monitoring officer

and independent person will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please also be aware that once an investigation has been carried out if a hearing is required to determine whether there has been a breach of the Code such hearing would normally be held in public and the investigators report (which will contain details of your complaint) is almost certain to be a public document.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

Additional Help

- 6.** Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible.