

# 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.