

EXTRAORDINARY STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 11 APRIL 2015

Present: Councillor J Loughlin – Chairman
Councillors D Jones and N Hargreaves
Mr D Pearl (Independent Person)

Officers in attendance: J Brucher (ICT Officer), R Dobson (Principal Democratic Services Officer), C Oliva (Solicitor) and M Perry (Assistant Chief Executive – Legal and Monitoring Officer).

SC1 ELECTION OF CHAIRMAN FOR THE MEETING

Councillor Loughlin was elected chairman for the meeting.

SC2 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence.

Councillors Hargreaves and Jones declared a non-pecuniary interest in that Councillor Watson had been a member of each of their respective political groups, and in the case of Councillor Jones, was known personally to him.

SC3 CHAIRMAN'S ANNOUNCEMENT

At the request of the Chairman, since this was the first meeting of the Committee following the recent elections to the Council, all those present introduced themselves.

Mr Pearl explained his role as the Independent Person.

SC4 REPORT INTO AN ALLEGATION OF A BREACH OF THE CODE OF CONDUCT

The hearing had been called to determine an allegation that Councillor David Watson had breached the Code of Conduct of Saffron Walden Town Council.

Councillor Jones said he wished to ask questions about aspects of the report with which he was dissatisfied.

The Chairman asked that the Committee first consider the Monitoring Officer's report.

Report of the Monitoring Officer

The Monitoring Officer referred members to his report, which he said set out in two parts the complaint made by the locum town clerk to Saffron Walden town council. The Monitoring Officer, for the reasons set out in the report, had found that Councillor David Watson of Saffron Walden town council had breached the code of conduct of that council by failing to treat the locum town clerk with respect in breach of paragraph 1 of the town council's code of conduct. Members were asked to determine whether to accept the findings of the Monitoring Officer and what sanction (if any) to impose if those findings were so accepted. Members were referred to additional papers received the previous day from Councillor David Watson, which had been presented to them before the meeting so that these could be considered in addition to the papers supplied with the agenda.

In addition to the comments now received from Councillor Watson, the Monitoring Officer referred members to the summary in his report regarding the circumstances leading to the complaint. He outlined these circumstances briefly, as follows.

The report referred to the meeting of the Town Council's Property, Services, Personnel and Finance Committee on 12 January 2015, at which discussion had taken place on hire rates for lettings of rooms at the Town Hall. The locum town clerk had noted that income had been reduced due to discounted hire rates. The locum town clerk had been reported as having used the term "mates' rates" regarding the previous finance officer's approach to some lettings. Councillor Watson had allegedly responded that the application of the lower, non-commercial, rate to certain hirers which should have been subject to the commercial rate, was untrue and that the clerk was "making things up". The clerk had then sent an email to members, which contained no commentary, but which attached two emails from hirers complaining about rates increases notified to them. Councillor Watson had subsequently replied to all recipients of that email stating that it was distressing when one group was favoured over another, and stating the locum town clerk was making allegations about the previous finance officer.

The Monitoring Officer referred to the findings of fact not in dispute as set out in his report; to the findings in dispute and to the findings of fact. In particular he drew attention to the finding that Councillor Watson was bound by the code of conduct of Saffron Walden town council which had been adopted on 11 December 2014, despite the fact that there was no evidence that the town council had complied with its statutory duty under s. 28(1) of the Localism Act 2011 to secure that its code of conduct when viewed as a whole was consistent with the principles laid out in that sub-section.

The Monitoring Officer said under the new standards regime investigations in relation to breaches of the code of conduct of parish councils should not be disproportionately time-consuming, and consequently such investigations were not conducted. He explained the sanctions under the new regime, which were essentially to censure the member; to seek an apology from the member; or to take no action. The Monitoring Officer advised that given the limited range of sanctions available, the investigation needed to be proportionate.

In the interests of conducting a proportionate investigation, the Monitoring Officer had therefore sent a questionnaire to all those present at the meeting of the town council's finance committee on 12 January 2015. From the responses to those questionnaires, the Committee would see that the majority thought Councillor Watson had been disrespectful to the locum town clerk at that meeting. There had been some question as to whether the remarks had been during the public or private part of the meeting, and the minutes were silent in that regard. There had been a part two discussion, and as nothing about the exchange was recorded in the minutes, the Monitoring Officer had found that the exchange had taken place in private.

The Monitoring Officer referred members to the two emails appended to the locum town clerk's email. Councillor Watson had then sent an email to the locum town clerk, copying in other councillors.

The Monitoring Officer's report stated he had found that Councillor Watson of Saffron Walden town council had breached the code of conduct of that council by failing to treat the locum town clerk with respect, in breach of paragraph 1 of the town council's code. That provision stated that "you must treat others with respect". In October 2012 Uttlesford District Council had issued guidance with regard to the code of conduct, in order to enable councillors (whether district, parish or town councillors) to understand the approach taken by the Standards Committee in dealing with allegations of a breach of the code of conduct. Paragraph 1 of that guidance stated "ideas and policies may be robustly criticised but individuals should not be subject to unreasonable or excessive personal attack. This particularly applies to dealing with the public and officers who do not have a right of reply." The Monitoring Officer had found that whilst it would have been legitimate for Councillor Watson to question what evidence the locum town clerk had to support his statement that council charging rates had not been correctly applied, he had found that in accusing the town clerk of making statements which were "downright untrue" and "of making things up", Councillor Watson had crossed the line of what was acceptable and called into question, unjustly, the integrity of the locum town clerk.

The Monitoring Officer had also found that in his email of 14 January 2015, Councillor Watson had accused the locum town clerk of making

“unfounded allegations” of a very serious nature. However, the town clerk’s allegations had not been unfounded, but were based on evidence in the case of at least two hirers. The Monitoring Officer had therefore found there was no basis upon which Councillor Watson could have accused the locum town clerk of making “unfounded allegations”.

The Monitoring Officer had therefore found that Councillor Watson of Saffron Walden town council had breached the code of conduct of that council by failing to treat the locum town clerk with respect, in breach of paragraph 1 of the town council’s code.

Questions to the Monitoring Officer

Members then asked various questions. Councillor Jones asked whether the emails sent by the former town clerk were evidence.

The Monitoring Officer said the attached emails, which were from two organisations which had hired rooms from the town council, explained why he had reached his conclusions. With regard to the hirings by the teacher of a yoga class, it might be that because the yoga class was a very small venture it was not being charged a commercial rate; with regard to the other hirer, however, this arrangement definitely fell into the commercial rate category, as the booking was for a nationally famous comedian, and 20% of the fee was profit. The Monitoring Officer said whatever version of charging was referred to, it was not possible to reconcile the charge rates being applied with the schedule of the rates provided to the town council. It was clear it was not the council’s policy as evidenced by the minutes of the council’s committee meetings. The Monitoring Officer said he had therefore reached the conclusion that there was evidence there were some organisations being charged a lower rate. For Councillor Watson to have accused the clerk without having satisfied himself as to what the hire charges were amounted to disrespect.

Councillor Hargreaves asked whether it had been established whether the phrase “mates’ rates” had been used.

The Monitoring Officer said it was not part of the complaint as to whether this phrase had been used. The complaint related to the accusation against the finance officer of malpractice.

Councillor Hargreaves said this was a serious allegation, and surely that is what prompted Councillor Watson to stand up. There was obviously confusion surrounding the rates. Was there any evidence of collusion?

The Monitoring Officer said the investigation was not investigating whether there was any collusion, but related to the complaint about Councillor Watson.

Councillor Jones expressed concern that the document regarding the complaint was undated and unsigned.

The Monitoring Officer said he had received that document from the email address townclerk@saffronwalden.gov.uk and with no name given. The complaint document had been attached, alleging that Councillor Watson had failed to treat the locum town clerk with respect. The Monitoring Officer had replied asking who the email was from. The complainant had then responded stating his name, but seeking to remain anonymous pending a decision as to whether an investigation would take place.

Councillor Jones asked what would be the significance as to whether the meeting had been in private or public at the point when the comments which were the subject of the complaint were alleged to have taken place. The Monitoring Officer said in terms of whether the comments had taken place there was no significance, but in terms of the severity of the complaint if upheld, a great deal of significance.

The Monitoring Officer left the meeting briefly in order to obtain for members copies of the email dated 26 January 2015 which he had sent to the complainant seeking confirmation of the complainant's name, and seeking his justification for wishing to remain anonymous.

The Monitoring Officer then invited members to consider whether they found a breach or no breach of the code of conduct in respect of whether the debate concerning the hall hire rates took place in public or private session, and whether the words used by Councillor Watson in his challenge to the locum town clerk amounted to treating him with disrespect. It was open to members to find a breach or no breach in respect of either or both of these points of dispute.

The chairman asked whether the Saffron Walden town council's code of conduct was similar to that of the district council.

The Monitoring Officer said the code had been changed at the request of the locum town clerk, and differed in that it omitted reference to the protocols.

Mr Pearl said the principle that members should treat others with respect was the same in both codes.

Members felt they should have been supplied with a copy of the code of conduct.

The Chairman said in relation to whether the breach had taken place in private or in public that there was no formal movement to go to part two, because no member of public had been present. There was a great deal that was unclear, however and she was not sure that a fair

process had been followed.

The Monitoring Officer said he hoped he could answer any direct questions that members might have.

Councillor Jones asked why if there had been seven councillors present at the meeting there were only four statements in response to the questionnaire.

The Monitoring Officer said the questionnaire had been sent to all, but only four had responded.

Councillor Jones questioned the format of the questionnaire, and why those to whom it had been sent had not been asked simply to make a statement.

The Monitoring Officer said he had needed the responses to be targeted; this was one of the reasons why it was not proportionate for him to conduct an investigation. There would always be differences in recollection, so it was important for him to target the subject matter of the complaint by way of questions, to enable a conclusion to be drawn about whether there had been a breach of the code.

Councillor Jones said the locum town clerk when attending the finance committee meeting to address the issues of the different hire rates, should have taken his evidence with him. However he had not had his evidence at the meeting but had circulated it the next day. It was this action to which Councillor Watson had reacted. He accepted there was something not right with the charge rates, but perception was a key issue. The evidence which was the foundation for the statement was only circulated after the meeting, so Councillor Watson's response was tempered by what he heard.

The Monitoring Officer said had Councillor Watson asked the locum town clerk for evidence rather than reacting, the question of a breach of the code might not have arisen.

The Chairman said members had to consider whether Councillor Watson had breached the code of conduct through failing to treat the locum town clerk with respect.

Councillor Jones said the response that had been elicited might have been very different had the locum town clerk presented the evidence at the same time he made his statement.

The Chairman said whilst this might be true, the Committee was here to see if Councillor Watson had behaved with respect toward the locum town clerk.

Councillor Hargreaves said the phrase “mates’ rates” was a very serious accusation, and the severity of that accusation could trigger a correspondingly vehement response.

The Chairman said if all members present at the committee meeting had responded to the survey which the Monitoring Officer had sent, this would have demonstrated all members’ concern.

Members considered responses to the questionnaire in detail. Councillor Jones referred to question 4, and asked why the wording “downright untrue” and “making things up” was stated there.

The Monitoring Officer said this wording was how the locum town clerk had subsequently stated he recollected Councillor Watson’s accusation; he had not had Councillor Watson’s comments at the time he had prepared his report.

Councillor Jones said he was concerned at some of the responses, as there were different gradations of views. He had himself witnessed Councillor Watson’s contribution to meetings, and he was sometimes fairly uncompromising when making a point. Councillor Jones referred to various responses to the survey and said he had the impression that some of the replies only came about by virtue of the construction of the questionnaire.

Councillor Hargreaves said some of the questions were what in a court of law would be termed leading questions.

Councillor Jones said the responses indicated to him that what was occurring at the committee meeting in question had been “robust debate” which was quite often the case in committee meetings.

Councillor Hargreaves said there was lack of solid evidence as to what was actually said. Members would never really find out if there was sufficient information to uphold a complaint.

The Chairman invited the independent person to speak. The Monitoring Officer reminded members they were obliged to take into account the view of the independent person.

View of the independent person

Mr Pearl said he had not been involved in the discussions which the Monitoring Officer had had with the other independent person. He returned to the code of conduct which seemed exactly the same as this council’s code, with regard to treating others with respect. Members at this meeting today had to decide on the basis of limited evidence which was not comprehensive for the reason that the Monitoring Officer had said: the investigation must be proportionate. The investigation which had been carried out was appropriate to the circumstances, which were

not a criminal context. Members had to form a view on the evidence. Members had seen the Monitoring Officer's view which had been formed on the balance of probabilities that there was sufficient evidence that Councillor Watson had treated the locum town clerk in a way which was not with respect. Three of the four responses to the questionnaire had taken the view there was a lack of respect. The question was whether, on the balance of probabilities, there had been a lack of respect. Mr Pearl said, if he were asked, given that three of the four replies had confirmed there was a lack of respect, that he would support the Monitoring Officer's conclusion.

The Chairman said this view reflected her own thinking.

Mr Pearl said the response of the chairman at the committee meeting in question was the one which swayed him.

Further comments by members

Councillor Jones said he was in doubt in his mind as to whether or not there was a lack of respect in a situation where there was robust argument, and where participants could have a personal interpretation. In the words of the Chairman of the finance committee meeting, it had been a difficult meeting to chair. He had also confirmed that the meeting had been in part two at the time. Councillor Jones referred in further detail to the responses of the chairman to the questionnaire. He said whilst the response referred to Councillor Watson having been intimidating and rude, he found it difficult to judge. He could accept both those assertions but questioned whether that meant the behaviour was disrespectful. He had heard plenty of things said which could have been interpreted in that way, depending on the subjective response of the target. The locum town clerk had 40 years' experience in local government, and must have on many occasions been challenged. There was a reference later to whistle blowing.

The Monitoring Officer reminded members there was a difference between the codes of conduct of the town council and the district council, as the town council's adopted code omitted the protocols.

The Chairman said there were references in the responses to the questionnaire to Councillor Watson having to be warned about his conduct.

Councillor Hargreaves said whilst the chairman at the meeting had said Councillor Watson's behaviour was "bordering on threatening, rude and intimidating", although invited to say so, the chairman did not say it was disrespectful.

The Chairman noted there was a reference to the next meeting of the town council at which Councillor Watson was voted down on a number of issues. She personally did not believe he behaved well, as whilst

discussion in council or committee meetings could become heated, there was a difference if it was disrespectful.

Councillor Jones said there had been a robust exchange between the locum town clerk and Councillor Watson. He did not think it was disrespectful, and that one party took affront.

The Chairman said the meeting needed to reach a conclusion and asked both members if they had had a fair say.

Councillor Jones agreed. Councillor Hargreaves said in his view there was not enough information to come to a conclusion; the matter had a long history and it had been a difficult meeting. There was not enough evidence for disrespect, and it seemed 50-50.

The Chairman said from her experience on the Licensing and Environmental Health Committee, written evidence was acceptable at a hearing.

The Monitoring Officer said any evidence was admissible before a Standards Committee, and such evidence was usually accepted in a court.

Decision

Members considered the two allegations of breach of the code of conduct, of failing to treat the town clerk with respect at the meeting on 12 January 2015, and of failing to treat the locum town clerk with respect in the subsequent email of 14 January 2015.

Members resolved that there was no breach in relation to either allegation.

The Monitoring Officer advised the committee would need to give reasons if its conclusion varied from the conclusion in the report.

Reasons for departing from the finding in the Monitoring Officer's report

Members stated that statements to the effect that the locum town clerk was making untrue statements and unfounded allegations was not a reference to the fact that incorrect charging rates were being applied but were a rebuttal of the statement that the former finance officer was charging "mates rates" by colluding with hirers. Members considered that there was no evidence to support that allegation by the locum town clerk and accordingly Cllr Watson was entitled to make the statements he did. In doing so he did not treat the locum town clerk disrespectfully.

The meeting ended at 12 noon.