

EXTRAORDINARY STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2.00 pm on 26 MARCH 2015

Present: Councillors R Lemon – Chairman
Councillors C Cant and J Loughlin
Mrs C Wellingbrook–Doswell (Independent Person)

Officers in attendance:- M Cox (Democratic Services Officer). C Olivia (Solicitor) and M Perry (Assistant Chief Executive – Legal and Monitoring Officer).

Also in attendance: Councillor Artus, Mr D Pearl (Independent person) - attending as an observer.

SC28 APOLOGIES AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

SC29 HEARING INTO AN ALLEGATION OF A BREACH OF THE CODE OF CONDUCT

The hearing had been called to determine an allegation that Councillor Keith Artus had breached the Code of Conduct of Hatfield Broad Oak Parish Council.

Councillor Artus and members of the committee confirmed that they had received the relevant papers –the report of the Monitoring Officer, the subsequent rebuttal of the findings by Councillor Artus and the Monitoring Officer's response to this submission.

The Monitoring Officer presented his report. He said that the allegations had arisen from a meeting of Hatfield Broad Oak Parish Council on 11 February 2015. As background to the complaints, he explained that there had been an ongoing project within the parish for the provision of a playing field and pavilion on land leased by the parish council. The proposals had been very controversial and there were conflicting views from within the village on how the project should progress. This had been the source of a number of previous code of conduct complaints.

The allegations were that

- (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 appeared 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 was living with Cllr Artus.

The Monitoring Officer had been made aware that a recording of this meeting was available, which normally used to assist the parish clerk in preparing the minutes. As all the allegations against Councillor Artus had concerned his conduct at this meeting, the Monitoring Officer had requested a copy of this recording. This was subsequently relied upon in the investigation. The recording was available for the committee to listen to at the meeting

Finding of facts – allegations (a) and (b)

The Monitoring Officer had found the following facts in respect of the investigation.

Agenda item 5.2

The debate, which concerned the village green, had centred on Councillor Artus questioning the authority of a councillor to write a letter on behalf of the parish council. He had not been given an answer so had repeated his question a number of times. Although he spoke forcefully he did not shout, and raised his voice only enough to be heard. He did not refuse to take directions from the chair because none were issued and he complied with the resolution to move to the next business.

Agenda Item 6

During the discussion on the vote of confidence in the Chairman, Councillor Artus had questioned the Chairman’s stance on the future progress of the village green development. The Chairman had declined to answer and other member had criticised Councillor Artus for asking this question. Cllr Artus quite rightly said he was entitled to ask the question to help him to decide how to vote. He did not shout or raise his voice, nor did he refuse to take direction from the chairman, as none was give. When the matter was put to the vote Councillor Artus abstained, all other members voted in favour.

Agenda item 10.2 – approval of payments

There was a short discussion around the approval of payments regarding an administrative error with the clerk’s pay. Councillor Artus

was not initially focused on the item but after he had asked for clarification he said 'yes ok'.

The Monitoring Officer concluded that Councillor Artus had said nothing reprehensible during the meeting and had not made the alleged remark during the discussion on agenda item 10.2. There was no evidence to support the allegations set out in (a) and b) above and he found that Councillor Artus had not breached the code of Conduct in this respect.

The committee would need to decide whether it concurred with the Monitoring officer's conclusion. Members of the Committee then listened to the 3 recorded extracts from the meeting.

Finding of Facts – allegation (c)

The third allegation was whether Councillor Artus had failed to declare an interest at the meeting in relation to discussions on the village green proposals. This concerned his relationship with a trustee of the Village Green Charity ("the Trustee") The Trustee was currently residing with councillor Artus, and in terms of the Code of Conduct he was regarded as having a close association with Councillor Artus.

The next question was whether the Charity was a related person under paragraph 7.5 of the code. The report explained that this included any body of a type described in para 6.1.2 'of which such persons are members or in a position of general control or management'. This definition included bodies directed toward charitable purposes and the village green charity fell within that definition. The reference to 'such persons' related back to para 7.1. As Councillor Artus had a close association with the Trustee who was a member of and/or in a position of general management and control of the charity, the charity was by virtue of para 7.5 of the code a related person to Cllr Artus for the purpose of declaring interests.

In his rebuttal Councillor Artus said that the Monitoring Officer's report had not produced the full paragraph 6.1.2 and had omitted the rider at the end of this section. He said that none of the paragraphs in 6.1.2 applied because he was not a member of or in a position of general control or management of the charity. The Monitoring Officer's further comments had stated that the fact that Councillor Artus was not involved with the charity was irrelevant.

The question of whether there was a pecuniary interest was covered by Paragraph 5 of the Code which provided that " [a member has] a pecuniary interest in any business of [his] authority where ... a decision relating 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, ratepayers or inhabitants of the ward affected by the decision. The "business" of a parish council

included any of the functions of a parish council including the administration of land, the making of grants etc and the fact that the parish council held a lease of the Village Green and has made an offer to the Charity meant that this was covered under the code.

The next consideration was whether there was a pecuniary interest to declare at this meeting. The Monitoring Officer had concluded that the tape made it clear that the discussion at agenda item 5.2 did have the potential to impact upon the financial interest of the Charity as there was a discussion about whether a letter sent by the chairman of a committee withdrawing an offer to the charity had been authorised by the committee.

Councillor Artus had argued that he did not need to declare an interest, and his relationship with the Trustee was irrelevant, because at the meeting there had been no proposal, motion, vote or anything that would impact upon the council or public. The discussion had been in relation to an historical event and he understood that he was only required to make a declaration where appropriate. The Monitoring Officer's response had explained that the fact that there was no motion on the table was irrelevant. Para 8.1 of the code applied whenever a matter in respect of a pecuniary interest was being considered.

The report concluded that councillor Artus should have declared a pecuniary interest as provided for in para 9.3 as having an interest 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' He ought to have withdrawn from the meeting as per para 9.3.1 but as the debate was brought to an end he had no opportunity to do so.

The Monitoring Officer said that Councillor Artus had strongly held views about how the village green was being developed and the parishioners would be aware of these. In his rebuttal, Councillor Artus said his judgement in the public interest had not been impaired; in fact he had raised a considerable amount of money to provide the facility in the public interest.

In his rebuttal Councillor Artus had pointed out that the Monitoring Officer had incorrectly quoted the code and included typographical errors which changed the meaning of his report. These had been acknowledged by the Monitoring Officer and corrected but he said they did not affect the content or conclusions of the report.

The Monitoring Officer's report concluded that in respect of allegation (c) Councillor Artus had breached the code of conduct in that he had failed to declare a pecuniary interest.

Statement by Councillor Artus

Councillor Artus then addressed the committee.

He explained that the parish council operated in a dysfunctional way. It held secret committees, it was difficult to get answers to questions and there had been a recent decision not to distribute background papers. The village green continued to be a contentious issue. He had to put in an FOI request just to obtain information. He only had the public interest at heart and had raised significant funds for the playing fields and the sports pavilion that now looked as though it was not going ahead.

He reiterated the points made in his rebuttal of the Monitoring officer's report. He felt that the committee had been given incorrect advice and remained convinced that he did not have a pecuniary interest. The rider to para 6.1.2 had been omitted from the Monitoring officer's report. If this had been included it would be clear that none of the clauses applied because he was not a member or in a position of general control or management of the body.

He said that although the Trustee might be in a position of management he himself was not, so the charity was not a related person to him. The provision in para 5.2 did not apply as the charity did not affect his or the Trustee's financial position. The Trustee was an unpaid trustee of a non-profit charity.

The Monitoring Officer said that Cllr Artus was misconstruing the code of conduct and clause 6.1.2 couldn't be looked at in isolation. Councillor Cant clarified that the word 'you' in the sentence actually meant the 'the Trustee' and that the pecuniary interest arose from the position his friend held as a trustee of the charity. She said she was a trustee of a charity and realising that it was a pecuniary interest she would leave the meeting when the item was discussed. If it had been her husband who was the trustee she would also leave, as she would expect to do the same if it was a friend. Councillor Artus said she was confusing the definitions of 'related' and 'relevant' person.

Councillor Artus accepted that the Trustee was a friend, and if he had been accused of not declaring a non-pecuniary interest because of this friendship he would have accepted this. However, he would not accept the argument that he had a pecuniary interest.

He said that the Code was badly drafted and not fit for purpose as it appeared powerless against the behaviour of the parish council. It should reflect the ideals of the Localism Act

Cllr Loughlin said Full Council had agreed the code of conduct and all members had signed up to it. The Monitoring Officer said that the code was identical to the code previous to the Localism Act and all clauses had been checked to ensure they complied with the standards in public life.

Decision

Councillor Artus and the Monitoring Officer left the room and returned when the committee announced its decision, as follows

- 1 The facts of the complaints relating to the behaviour of Councillor Artus are agreed as set out in the Monitoring Officer's report and reinforced by the recordings listened to by the committee. The Committee wish to associate themselves with the comments made by the Monitoring Officer on the measured and appropriate responses of Councillor Artus at the parish council meeting. Therefore Councillor Artus has not breached the Code of Conduct in respect of the complaints set out in paragraphs 2 a) and b) of the report.
- 2 The Committee's understanding of the Code of Conduct concurs with the explanation given by the Monitoring officer in his report. Councillor Artus is incorrect in his interpretation of the Code of Conduct and he should have declared a pecuniary interest at the parish council meeting. Therefore Councillor Artus has breached the code of conduct in respect of the complaint set out in paragraph 2 c) of the report.

Sanction

The Solicitor reported that during their deliberations the committee had asked whether she agreed with the Monitoring Officer's reading of the code, and she replied that she did.

In respect of an appropriate sanction the Monitoring Officer said that a previous breach of the code in 2010 was not relevant to this case and should not be taken into account.

Councillor Artus said the Committee had been incorrectly advised and had made a fundamental error in determining on the bases that the village green charity was a related person. He said twice that if a sanction were imposed he would make a formal complaint that the Committee had been misled by the Monitoring Officer and the Solicitor. The Monitoring Officer and Councillor Artus left the room. The committee returned and announced the following sanction

Councillor Artus should undertake training on the Code of Conduct before 1 June 2015. There would be opportunity to do this as part of the new member induction and he would be advised of the dates in due course.

The meeting ended at 4.30pm