

**Committee:** STANDARDS  
**Date:** 14 April 2016 (adjourned from 17 March 2016)  
**Title:** ALLEGATION OF A BREACH OF THE CODE OF CONDUCT OF THE HATFIELD BROAD OAK PARISH COUNCIL  
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Legal 01799 510417

Agenda Item

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## Summary

1. This report is to inform members of the outcome of an investigation into an allegation that Cllr Swainsbury, Cllr Rushton and Cllr Brown of Hatfield Broad Oak Parish Council have breached the Code of Conduct of the Hatfield Broad Oak Parish Council

## Recommendations

2. That members determine whether to accept the finding of Christine Oliva 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 papers set out in paragraph 8 below were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

## Impact

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Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	The investigation has been carried out in accordance with procedures adopted by the council pursuant to the Localism Act 2011
Sustainability	None
Ward-specific impacts	Hatfield Broad Oak only
Workforce/Workplace	None

## Situation

6. On 2 December 2015 the council received a complaint from Cllr Mark Strutt of Hatfield Broad Oak Parish Council that Cllr Swainsbury, Cllr Rushton and Cllr Brown had:

- treated him with disrespect
- bullied and intimidated him
- disclosed information given in confidence
- prevented another person from gaining access to information to which they were entitled
- used or attempted to use their positions improperly for their or another's advantage or disadvantage of others

The above breaches took place when Cllr Swainsbury put forward a motion at the Hatfield Broad Oak Parish Council meeting on 11 November 2015 that:

*Being the subject of a complaint to Uttlesford District Council, and the Charity Commissions, concerning his actions in relation to the village green, Cllr Strutt is hereby suspended from serving on the Village Green Maintenance and Development Committee*

Cllr Brown proposed the motion and Cllr Rushton seconded the motion and the motion was passed by the Parish Councillors.

7. Having discussed the complaint with an independent member of the Standards Committee we agreed that the complaint should be investigated.
8. In conducting this investigation I have considered:

The information supplied by Cllr Strutt when making his complaint

The witness statement of Michael Perry

The Minutes of the Hatfield Broad Oak Parish Council Meeting of 11 November 2015

Statement of Cllr Artus dated 20 January 2016

Statement of Cllr Tracy Brown by e-mail on 27 January 2016

Statement of Cllr Rushton with accompanying documents

Statements of Cllr Swainsbury with accompanying documents

My notes of a meeting with Cllr Swainsbury on 26 January 2016

*Note:* a. Documents included in statements which postdate 11 November 2015 have not been taken into account when making this report.

- b. I received a tape purporting to be a recording of the proceedings at the Hatfield Broad Oak Parish Council meeting on 11 November 2015 and a tape purporting to be extracts from the same meeting. Transcripts were made and circulated. The first tape received was incomplete and I received several comments that both tapes were a recording of the Village Green Maintenance and Development Committee meeting held on 4 November 2015 and not a recording of the Parish Council meeting on 11 November 2015. While I have no reason to doubt that both tapes were believed to be of the Parish Council meeting on 11 November 2015,

because of the doubts about this and the fact that neither tape was complete, I decided to disregard the tapes in my investigation.

### **Facts not in dispute**

9. Cllrs Swainsbury Cllr Rushton and Cllr Brown are elected to Hatfield Broad Oak Parish Council
10. Cllr Strutt is elected to Hatfield Broad Oak Parish Council and he was elected by the Parish Council to serve on the Village Green Maintenance and Development Committee.
11. Hatfield Broad Oak Parish Council has adopted the council's Code of Conduct.
12. Cllr Strutt is one of the Trustee Directors of the HBO Sports and Community Club Limited, company registration no. 07137376 and a registered Charity no. 1135737.
13. On 24 September 2015 Cllr Swainsbury and Cllr Rushton met with the Chief Executive and gave him documents which they stated showed dishonesty on the part of Cllr Strutt in relation to the activities of HBO Sports and Community Club Limited. The documents were passed to the Monitoring Officer and he asked the Manager of the Council's Internal Audit Team to consider the documents to see if there was evidence of dishonesty. On 9 October 2015 the Monitoring Officer and the Manager of the Internal Audit Team had a meeting and decided there was no evidence of dishonesty on the part of Cllr Strutt. This information was passed to the Chief Executive on the same day.
14. On 8 October 2015 the Clerk to Hatfield Broad Oak Parish Council wrote to the Charity Commissioners concerning the activities of Cllr Strutt in relation to the HBO Sports and Community Club Limited; and on the same day sent the same documents to Uttlesford District Council Monitoring Officer stating there had been a breach of the Code of Conduct and making the complaint on behalf of Village Green Maintenance and Development Committee. The Monitoring Officer found that the Village Green Maintenance and Development Committee had no delegated power to make such a complaint and complaints should be brought by individuals and there would be no investigation. The Monitoring Officer informed the Clerk of his decision on 9 October 2015.
15. On 12 October 2015 Cllr Rushton submitted virtually the same documents submitted by the Clerk on 8 October 2015 to the Monitoring officer alleging a breach of the Code of Conduct by Cllr Strutt. The Monitoring Officer and an Independent Person considered the documents and decided that throughout the time the alleged breach took place Cllr Strutt was not conducting the business of Hatfield Broad Oak Parish Council and therefore the Monitoring Officer could not investigate. Cllr Rushton was informed of this decision on 16 October 2015.
16. Following a query by Cllr Swainsbury asking for an up-date on the progress of the investigation relating to the documents given to the Chief Executive on 24 September 2015, the Chief Executive sent an e-mail to him on 13 October 2015 stating: "Thank you for your email: matters are being investigated by our internal audit team and we have not reached a definitive conclusion. I'll be in touch when we have."
17. On 3 November 2015 The Charity Commission informed the Clerk to the parish Council that they did not consider that there had been a breach of Charity Law and they were not going to investigate.

18. On 11 November 2015 the Hatfield Broad Oak Parish Council passed the motion set out in paragraph 6. Above and removed Cllr Strutt from the Village Green Maintenance and Development Committee. There has been no allegation that this motion was put forward in breach of the rules of procedure or that the Parish Council did not have the authority to pass such a resolution. It appears to me there was no irregularity. Cllr Strutt was not present at the meeting.

### **Facts which are not agreed**

19. Cllr Swainsbury as Chairman of the Parish Council meeting Cllr Brown as proposer of the motion and Cllr Rushton as seconder of the motion believed Cllr Strutt was under investigation by Uttlesford District Council and the Charity Commissioners on 11 November 2015 when they voted to suspend Cllr Strutt from the Village Green Maintenance and Development Committee.
20. The Councillors declined to give details of the investigations to the Parish Council Meeting as they did not wish to put the details of what they believed to be wrongdoing by Cllr Strutt into the public domain. They all stated they had wished to protect Cllr Strutt from public knowledge but felt they could no longer allow him to serve on the Committee while investigations continued.

### **Findings of Fact**

21. On 3 November 2015 the Charity Commissioners had informed the Clerk that they were not investigating Cllr Strutt or the HBO Sport and Community Club Limited. The Councillors could not have had an honest belief that Cllr Strutt was under investigation by the Charity Commissioners on 11 November 2015.
22. On 16 October 2015 the Monitoring Officer had informed Cllr Rushton that Cllr Strutt was not to be investigated for a breach of the Code of Conduct. The Councillors could not have had an honest belief that Cllr Strutt was under investigation by the council for a breach of the Code of Conduct on 11 November 2015.
23. On 13 October 2015 the Chief Executive had e-mailed Cllr Swainsbury stating that an investigation into the activities of the Charity was ongoing. This was incorrect but the Councillors could not have known, therefore they did have an honest belief that Cllr Strutt was being investigated by the council for possible dishonesty on 11 November 2015.

### **Reasoning as to whether there have been failures to comply with the Code of Conduct**

24. Cllr Strutt alleges a failure by the three Councillors to treat him with respect which is a breach of the Code of Conduct under general obligations 3.1. He goes on to allege under obligation 3.3. bullying, intimidation, disclosure of confidential information, preventing access to information to which he was entitled, bringing their office into disrepute and improperly attempting to secure for themselves an advantage or a disadvantage for others. I do not consider that any of the allegations under 3.3. can be justified.
- The passing of a motion to suspend Cllr Strutt from the Village Green Maintenance and Development Committee, properly passed and the Parish Council having control of the membership of the Committee cannot be bullying or intimidation.
  - Cllr Swainsbury refused to give details of the alleged investigations to the Parish Council in the presence of the public. The motion disclosed that an investigation was taking place. As Cllr Strutt was performing a function on

behalf of the Parish Council in being a member of the Committee, on balance I do not think this can be considered disclosure of confidential information if the belief by the three Councillors was honestly held.

- There is no evidence that the Councillors withheld information from Cllr Strutt.
- The Councillors did not bring their office into disrepute, the motion was correctly tabled and the Parish Council controlled the membership of the Committee.
- There is no evidence of the Councillors seeking any advantage for themselves. Cllr Strutt may feel disadvantaged by being suspended from the Committee, but the membership of the Committee was validly determined by the Parish Council.

25. The Councillors were entitled to propose to change the membership of the Village Green Maintenance and Development Committee and to suspend members. To table that proposal was not disrespectful. It would be disrespectful to Cllr Strutt to give reasons to support a motion that they believed to be untrue. I find that the Councillors could not have had an honest belief that Cllr Strutt was being investigated by the Charity Commissioners; but they did have an honest, although mistaken, belief that Cllr Strutt was being investigated by the council. In particular Cllr Swainsbury admitted to me on 26 January 2016 that on 11 November 2015 he knew Cllr Strutt was not being investigated by the Charity Commissioners.

26. I find that the tabling of the motion at the parish Council meeting of 11 November 2015 to suspend Cllr Strutt from the Village Green Maintenance and Development Committee by Cllr Swainsbury, Cllr Brown and Cllr Rushton was not disrespectful. When stating the reasons for the motion they were disrespectful in stating that Cllr Strutt was being investigated by the Charity Commissioners as they could not have had an honest belief that this was the case. They did believe Cllr Strutt was being investigated by the council. It would be reasonable for a member of the public present at that meeting and anyone reading the minutes to consider that investigation for the same reasons by the council and the Charity Commission was more serious than investigation by the council alone. In this limited case I find the Councillors did not treat Cllr Strutt with respect.

### Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Any 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 would embark on this course	2 – the council is likely to win any application for a judicial review with a costs award in its favour but some resources would be required in its defence and some expense would not be covered by an award of costs	None

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.