

STANDARDS COMMITTEE – 17 MARCH ADJOURNED TO 14 APRIL 2016

STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10.00am on 17 MARCH 2016

Present: Councillor T Knight – Chairman
Councillors H Asker and D Jones.
Mrs C Wellingbrook–Doswell (Independent Person)

Officers in attendance:- M Cox (Democratic Services Officer), C Oliva
(Solicitor – Investigating Officer) and C Nicholson (Solicitor).

SC8 APOLOGIES AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

SC9 HEARING INTO AN ALLEGATION OF A BREACH OF THE CODE OF CONDUCT

The hearing had been called to determine an allegation of a breach of the Code of Conduct of Hatfield Broad Oak Parish Council.

Councillor Jones raised concern about the validity of this meeting. He said the recommendation of the Investigating Officer's report gave the wrong impression of the purpose of the meeting. The report said 'that members determine whether they accept the findings of the Solicitor or whether they wish there to be formal hearing'

In the light of this wording he had not expecting this to be a formal hearing. This had the following implications

- For a formal hearing he would have requested additional information ie the minutes of the Village Green Committee on 4 November 2015.
- Members of the public may have chosen to defer attendance until a formal hearing was held.

The Solicitor said this meeting was being recorded, which would give the public the opportunity to listen live or to replay the recording after the meeting. She confirmed that the subject members and the complainants were aware of the nature of the meeting.

In relation to the request for additional papers, the Investigating Officer said she hadn't received the minutes mentioned but in any event they were not relevant to the details of the complaint. The matter to be considered was specific to whether the motion passed at the meeting was disrespectful.

The committee felt that the additional information might be relevant to understanding the background of the complaint and could indicate bias.

The members of the committee and the Independent Person agreed that it would be unwise to proceed today when there was some doubt as to the purpose of this meeting.

RESOLVED that the meeting be adjourned to 2pm on 14 April 2016 to allow for the preparation of a revised report and for members to receive the additional papers requested.

SC10

RECONVENED MEETING HELD AT 2.00PM ON 14 APRIL 2016

Present: Councillor T Knight – Chairman
Councillors H Asker and D Jones.
Mrs C Wellingbrook–Doswell (Independent Person)

Officers in attendance:- M Cox (Democratic Services Officer), C Oliva (Solicitor – Investigating Officer) and C Nicholson (Solicitor).

The hearing had been called to determine an allegation that Cllrs Swainsbury, Rushton and Brown had breached the code of conduct of Hatfield Broad Oak Parish Council.

The Investigating Officer, presented her report. The allegation had been made by Councillor Strutt, of Hatfield Broad Oak Parish Council, that in relation to a motion proposed at the parish council meeting on 11 November 2015, Councillors Swainsbury, Brown and Rushdon 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 motion, set out below, put forward by the Cllr Swainsbury (Chairman) had been proposed by Cllr Brown and seconded by Cllr Rushdon.

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.

The report set out the information that had been taken into account during the investigation. The Investigating Officer explained that she had decided not to consider tapes of a recording of the proceedings of the meeting on 11 November 2015, as there had been concern that they might not be complete.

The following facts were not in dispute.

Cllr Strutt was a parish councillor and had been appointed to serve on the Village Green Maintenance and Development Committee and was one of the Trustee Directors of the HBO Sports and Community Club Limited.

On 24 September 2015, Cllr Swainsbury and Cllr Rushton had given documents to the Chief Executive which they claimed showed dishonesty by Cllr Strutt in relation to the activities of the HBO Sports and Community Club Limited. These were passed to the Monitoring Officer and Internal Audit Team. No evidence of dishonesty had been found on the part of Cllr Strutt and this information had been passed to the Chief Executive on 9 October 2015.

On 8 October 2015, the Clerk to Hatfield Broad Oak Parish Council had written to the Charity Commissioners concerning the activities of Cllr Strutt in relation to the HBO Sports and Community Club Limited.

These same documents were also the subject of code of conduct complaints to the UDC Monitoring Officer. These had not been investigated because the complaint had been made on behalf of the Village Green Committee rather than by an individual, and then because Cllr Strutt had not been acting on behalf of the parish council throughout the time the alleged breach had taken place.

In answer to a question from Cllr Swainsbury about the progress of the dishonesty complaint, the Chief Executive had sent an e-mail 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."

On 3 November 2015, the Charity Commissioner informed the Parish Clerk that there had been no breach of charity law and it was not going to investigate.

On 11 November 2015, Hatfield Broad Oak Parish Council passed the motion set out in italics above and removed Cllr Strutt from the Village Green Maintenance and Development Committee. The motion complied with the procedure rules of the Parish Council. Cllr Strutt was not present at the meeting.

The following facts were not agreed

When the motion was put to suspend Cllr Strutt from the Village Green Maintenance and Development Committee, the councillors concerned believed Cllr Strutt was under investigation by Uttlesford District Council and the Charity Commissioners.

The councillors said they had declined to give details of the investigations to the meeting as they did not wish to put the details of wrongdoing by Cllr

Strutt into the public domain. They all stated they had wished to protect Cllr Strutt from public knowledge but felt they couldn't allow him to serve on the Committee while investigations continued.

The Investigating Officer's Findings of Fact

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 at the meeting on 11 November 2015.

On 16 October 2015, the Monitoring Officer had informed Cllr Rushton that Cllr Strutt would not 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.

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 at the meeting on 11 November 2015.

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

The Investigating Officer set out her findings on the paragraphs where there had allegations of a breach of the Code.

Allegations under 3.3 General Obligations

Para 3.3.2 – Bullying

The passing of a motion to suspend Cllr Strutt from the Village Green Maintenance and Development Committee was properly passed and the parish council, having control of the membership of the Committee, could not be seen as bullying or intimidation.

Para 3.3.5 disclosure of confidential information

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 it could not be considered to be disclosure of confidential information, if the belief by the three councillors was honestly held.

Para 3.3.6 - Preventing access to information to which he was entitled

There was no evidence that the councillors withheld information from Cllr Strutt.

Para 3.3.8 Bringing their office into disrepute

The councillors did not bring their office into disrepute, the motion was tabled correctly and the parish council controlled the membership of the committee.

Para 3.3.8 Improperly attempting to secure for themselves an advantage or a disadvantage for others.

There was no evidence of the councillors seeking any advantage for themselves. Cllr Strutt may have felt disadvantaged by being suspended from the committee, but the parish council validly determined the membership of the committee.

The Investigating Officer did not consider that any of the allegations under para 3.3 were justified.

Para 3.1 Failure to treat with respect

The councillors were entitled to propose a 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.

It was found that the councillors could not have had an honest belief that Cllr Strutt was being investigated by the Charity Commissioners. In fact on 26 January, Cllr Swainsbury had admitted to the Investigating Officer that he was aware of this fact at the meeting on 11 November 2015. The councillors did however have an honest, although mistaken, belief that Cllr Strutt was being investigated by the council.

The Investigating Officer found that tabling the motion at the parish council meeting of 11 November 2015 to suspend Cllr Strutt from the Village Green Maintenance and Development was not disrespectful. However, 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 by the Council and the Charity Commission was more serious than investigation by the Council alone.

The Investigation Officer found that on the particular point, set out in the paragraph above, the councillors had treated Cllr Strutt with disrespect.

Since writing the report, further representations had been received from Cllrs Brown, Rushdon and Swainsbury and from Cllr Strutt. These had been circulated to the panel members. The Investigating Officer said that no additional points had been raised and therefore no further amendments were required to her report.

Members questions to the Investigating officer

Members asked whether the parish council had the authority to exclude Cllr Strutt from the Village Green Committee and whether this was this normal practice for someone who was under investigation. The Investigating Officer confirmed that the parish council had the right to do this, although it probably wasn't common practise.

Members said they would have liked to see details of the procedure for appointing councillors to the Village Green Committee, as this wasn't mentioned in the terms of reference. They were advised that the appointments had been made in June 2015, and would have been made under the parish council constitution, which was not considered during this investigation.

In explaining the various allegations, the Investigating Officer said that in relation to the dishonesty complaint, the council's Audit section had found no evidence of dishonesty. Unfortunately, this information given to the Chief Executive had not been passed to the two councillors, so they would not have been aware of this fact at the meeting on 11th November.

In relation to the allegation to the Charity Commissioner, the clerk had been informed on 3 November that this wouldn't be investigated, but it was still included in the motion raised on 11 November. The other complaints to the Monitoring Officer had not been considered.

Cllr Asker said that these events exposed poor lines of communication. She said that just mentioning that Cllr Strutt was the subject of a complaint was already casting aspersions. She asked whether the motion had been proposed without first clarifying the facts and would have expected some public correction when the parish clerk had been informed of the Charity Commission's decision prior to the meeting.

Members asked whether this parish council could have discussed this matter in private session. The Investigation Officer said that although this might have been possible, the item was discussing appointments to a public meeting.

Statement by Councillor Strutt

Councillor Strutt said this was the first time he had reported a colleague but he felt his reputation had been attacked. He said he had lived in Hatfield Broad Oak all his life, ran a business in the village where he was trusted with

confidential information. He was also an active in the community and a member of sports clubs and the church.

He explained that his problems with the parish council came to a head at the 11 November meeting. The clerk had known he was not being investigated by the Charity Commissioners 6 days before the meeting, this should have been confirmed but there had been no correspondence on this matter. There had been failure to check the truth before the meeting, he had been cleared of all allegations and had done nothing wrong.

There had been ongoing difficulties with his relationship with the parish council. He had been denied the right to table agenda items and had received rude emails. As far as he was aware, no other councillor had ever been suspended from a parish council committee. He said the parish council was unable to deal properly with councillors that held a different view and there had been a vindictive vendetta against him.

In answer to a question from Councillor Knight, Cllr Strutt confirmed that he hadn't been reinstated on Village Green Committee. It had been reconstituted the previous evening and he hadn't been appointed.

Councillor Jones asked if there were any outstanding allegations in relation to the Charity Commission. Cllr Strutt said he was still in contact on issues around terms of reference and regulation but there had been no further complaints.

In answer to a question, he said the parish councillors hadn't yet been informed of the status of the allegations.

Statement by Councillor Swainsbury

Councillor Swainsbury clarified that at the meeting on 11 November he had stated that Councillor Strutt was the subject of a complaint, not that he was under investigation, and these had very different meanings.

Councillor Knight asked him why he had proposed the motion. Councillor Swainsbury replied that he needed justification to suspend Councillor Strutt but thought it was fairer not to mention details of the complaints

The Chairman asked whether any other parish council members had been suspended in this way. He replied that the parish council had only this one committee so this situation hadn't arisen before.

Councillor Swainsbury said the action had to be taken because the complaints were of a serious nature. In answer to questions from Cllr Knight, he said that although the complaints had been upheld, he didn't accept this was the end of the matter as there were still things going on in the background. He had instructed his own barrister on this issue.

Statement by Councillor Rushdon

Councillor Rushdon confirmed that he had seconded the motion. He said the wording of the Investigating Officer's report was not correct. The motion had not stated that Cllr Strutt was being investigated but rather that he was the subject of a complaint. At the time he had held an honest view that Councillor Strutt was the subject to two complaints. He thought that the complaint to Mr Mitchell had not been resolved, and also the tone of the letter from the Charity Commissioner led him to believe that his was an initial response, and the complaint was still going to be pursued.

He had supported the motion because he wanted to Cllr Strutt to realise the errors of his action in respect of the village green. There was good reason behind the complaint as the village green had been dug up without any authority or notification. A considerable amount of money had been spent on this work and it would cost more to put right the damage.

He felt there was a conflict of interest as Cllr Strutt was a trustee of the HBO Sports and Community Club Limited at the same as being a member of the Village Green and Maintenance Committee.

Comment from the Investigating Officer

The Investigating Officer said that in terms of perception there was no difference in using the phrase 'subject of a complaint' or 'under investigation'. Cllr Jones however said that an investigation was more serious as it was the start of a formal process with the possibility of sanctions.

Cllrs Swainsbury, Rushdon and Strutt left the room while the Panel considered its decision.

DECISION

Members would like to thank Mrs Oliva for her full and diligent report.

In the first instance, they accept the Investigating Officer's findings that Councillors Swainsbury, Rushton and Brown have treated Cllr Strutt with disrespect for the reasons set out in her report.

With respect to the allegation of bullying and intimidation, Members do not agree with the finding of Mrs Oliva. Members consider that by proposing the motion in the terms that they did, at a time when they knew the complaint to the Charity Commission had not been accepted by the Commission, it was done with the intention to publically highlight the perceived wrongdoing of Councillor Strutt, and discredit him. It was reasonable to believe that members of public would perceive from the terms of the motion that there

was a serious wrongdoing on behalf of Councillor Strutt, and that amounted to bullying and intimidation.

With regard to the allegations of the disclosure of confidential information or preventing access to information, Members do not consider they have enough detail to find there was a breach of the code of conduct and therefore accept Mrs Oliva's findings.

Members accept the findings of Mrs Oliva that Councillors Swainsbury, Rushton and Brown did not attempt to use their positions improperly for their or another's advantage or disadvantage.

In terms of sanctions, Members recommend the following:

1. That Councillors Swainsbury, Rushton and Brown make a written apology to Councillor Strutt for treating him with disrespect, and bullying and intimidating him, the apology to be made on or before the next meeting of the Hatfield Broad Oak parish Council
2. That Councillors Swainsbury, Rushton and Brown undertake training in respect of the requirements of the code of conduct.

Members have noted that many of the issues raised during the course of this investigation and hearing could have been resolved if the Parish Council had recognised the importance of sound training specifically in respect of the code of conduct and the standards expected in public life.