

**STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON
ROAD SAFFRON WALDEN at 10.00 am on 5 AUGUST 2014**

Present:- Councillors R Lemon – Chairman
Councillors K Eden and J Loughlin
Mrs G Butcher-Doulton (Independent Member)

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

Also present: Andrew Blatt (Solicitor representing Mr Luck)

Members of public present: Richard Simmons, Sue Shepherd, Mike
Fairchild and Chris Ward

SC7 APOLOGIES AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

SC8 CHAIRMAN'S ANNOUNCEMENT

The Chairman opened the meeting and asked all the parties present to introduce themselves.

Councillor Luck confirmed that he had received all the paperwork and understood the procedure to be followed.

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

The hearing had been called to determine an allegation that Councillor Stewart Luck from Debden Parish Council had breached the Code of Conduct of Debden Parish Council.

The allegations arose from the meeting of Debden Parish Council on the 13 February 2014. This was an extraordinary meeting, which had been called to enable the parish council to fix the precept for the financial year 2014-2015. At the same meeting the parish council was to consider increasing the precept by a sum sufficient to enable the parish council to service a Public Works Board loan to fund the costs of constructing a new village hall. This was a controversial issue, which attracted a great deal of local attention and 62 members of the public attended the meeting. Councillor Luck was Chairman of the new village hall group, which was promoting the project.

Following the meeting a complaint had been made by District Councillor Tina Knight that Councillor Luck had

- Showed disrespect to the Parish Clerk of Debden Parish Council, the Chairman of Debden Parish Council and the Monitoring Officer of Uttlesford District Council.
- Had refused to observe the protocols or codes of practice adopted by the authority
- Had bullied the Parish Clerk.
- Had sworn at members of the public.
- By virtue of his conduct he caused a meeting to be closed before the business of that meeting had been concluded

Procedural Issues

Mr Blatt, Councillor Luck's legal representative raised the following legal points.

He had initially considered the Monitoring Officer's report to be flawed because it did not appear to take account of the witness statements submitted on behalf of Councillor Luck. He had discussed this issue with the Monitoring Officer prior to the meeting and he confirmed that he had taken the witness statements into account although he had given them little weight. Mr Blatt said that on this basis he would not pursue this point.

The second point was the right of Councillor Luck to give and call evidence, which he felt was being denied at this hearing. In order for all evidence to be properly tested and considered by the Committee he asked members to take and accept the written evidence at face value or if they wanted to weigh up the evidence then the witnesses should be heard. He quoted the Committee's procedure rules which stated that the subject member 'will' have the opportunity to attend, address the meeting and call evidence.

Mr Blatt then referred to a story in the local press that had been based on the report for this meeting which was available on the council's website. This inferred that Councillor Luck had already been found guilty of breaching the code and this meeting was just to determine the appropriate sanction. This was an unacceptable slur on the character of Mr Luck. In order for there to be a fair hearing he asked at the very least that the committee give significant weight to the written evidence.

The Monitoring Officer replied that these were not court proceedings and as such the process was more informal and proportionate. However, even courts controlled the evidence they would admit. For example in the county court evidence was in writing in the first instance and oral evidence only arose from cross and re-examination. He had formed a view of the statements but felt there was nothing to be gained

by hearing verbal statements by the witnesses, as if they were called to give evidence they were likely to stick to their stories.

In relation to the press article the Monitoring Officer said that the recommendation (para 2) in his report clearly stated that members were to determine whether or not they accepted his findings. He very much regretted the miss reporting in the press but unfortunately the council had no control over this.

The Monitoring Officer then updated the committee on the complaint that Councillor Luck had sworn at members of the public. At the time of writing his report he had decided on the balance of probability that Councillor Luck had not apologised for this profanity. This was because at the meeting following the EGM there had be no record that Councillor Luck had challenged the accuracy of the minutes and the Monitoring Officer believed that if he had made an apology he would have been keen for this to be recorded.

However further information had since come to light in the form of a statement by Councillors Simmonds and Watson. They confirmed that Councillor Luck had asked for his apology to be recorded at the following meeting but the council did not agree. The Monitoring Officer now accepted that Councillor Luck had made an audible apology at the meeting.

The members of the committee, the legal advisor and the democratic services officer left the room at 10.30am to consider the legal points raised and returned at 10.40am and made the following statement.

The meeting today is a hearing and not a trial and the proceedings should therefore be proportionate. Members are content to follow the committee's agreed procedure. The committee will consider the written evidence as submitted and Councillor Luck will have the opportunity to put his case.

Report of the Monitoring Officer

The Monitoring Officer presented his report and explained the findings of fact and reasons as to whether the facts as found constituted a breach of the Code.

His report concluded that he had found no breach of the code in a number of areas:-

Councillor Luck did not show disrespect to the Chairman of the Parish Council or to the Monitoring Officer. His conduct towards the parish clerk was not considered sufficient to constitute bullying. As no vote was taken at the meeting he had not breached the codes and protocols of the council. Although his behaviour may have contributed to the meeting being closed, the decision to close the meeting was premature

and Councillor Luck was not to blame for the meeting being closed early.

Members confirmed that they AGREED with these findings and accepted that was no breach of the code of conduct in these areas.

The Monitoring Officer explained that he had found the following two breaches of the Code.

- 1 In shouting down the Parish Clerk, Councillor Luck did fail to treat the parish clerk with disrespect.
- 2 Councillor Luck did swear at the members of the public present and in doing so found that he had failed to treat those members of the public with respect.

In reaching this conclusion the Monitoring Officer had taken account of a recent decision of the High Court in R (on the application of Dennehy) v London Borough of Ealing, which concluded that comments directed at residents of part of the borough amounted to treating those residents with disrespect. When applied to this case, he concluded that Cllr Luck's remarks were directed at an identifiable section of the public and that the remarks were offensive not only by his use of bad language but also by his inference that the persons to whom his remarks were directed did little or nothing for the benefit of the village.

He said that if the committee did not wish to accept this conclusion it could alternatively apply section 3.3.7 of the Code that Councillor Luck behaved in a manner that could reasonably be regarded as bringing his office into disrepute.

In considering the breach and the appropriate sanction, Members should take account of the new evidence in which it was now accepted that Councillor Luck had made an audible apology.

Questions to the Monitoring Officer

In relation to the treatment of the parish clerk, Mrs Butcher–Doulton questioned the different tone of words between the claim that the clerk had been 'shouted down' and the parish clerk's statement which said that Councillor Luck had been 'forceful and uptight'. The Monitoring Officer said this reflected different versions of events and it was up to the committee members to make a judgement on this matter.

The Monitoring Officer explained the background to the incident at the meeting concerning Councillor Luck's intention to vote. Members of the parish council who were also members of the new village hall group had been given dispensation to speak at parish council meetings where

this item was discussed. However, as the members had been appointed to that body he had advised that they should not vote at that meeting. Not all members had accepted this advice, including Councillor Luck who declared at the meeting that he still intended to vote. However, this was a pecuniary rather than a disclosable pecuniary interest, which could result in a breach of the code of conduct. The Chairman and the parish clerk had wrongly advised him that the consequences would be to be struck off or to face a substantial fine of up to £5,000. The Monitoring Officer also pointed out that there was no obligation on the member to accept his advice.

Mrs Butcher-Doulton commented that the minutes of the meeting were very light and appeared not to include a number of key issues. This meant there was no independent evidence to support the fact that Councillor Luck had asked for his apology to be recorded. The Monitoring Officer said he accepted the statement by Councillors Richard Simmons and Councillor Stephanie Watson and this supported the fact that an apology had been made.

Evidence by Councillor Luck and questions by the Committee

The Committee asked a number of questions on the evidence submitted by Councillor Luck.

Members asked him to explain the background to the new village hall project and the relationship with the parish council. Councillor Luck said a new village hall had been an ongoing project for 20 years but had consistently failed due to lack of funding, and even grants which had been obtained were often only for a year. In order to progress the project he had asked the advice of Uttlesford's Chief Financial Officer who had suggested the possibility of asking the parish council to take out a loan with the Public Works Board to be funded through the Parish precept. This would require a tri- party arrangement between the new village hall project, the trustees of the village hall and the parish council.

The most recent scheme had been the subject of a village questionnaire and been put to a public meeting. From the 86 attendees there had been support from 43 people, 13 had been against and the rest abstained. The project was at a stage where funding was required to take it forward.

Councillor Luck had asked for this funding request to be put on the parish council agenda, but as there was no support he called an extraordinary meeting. The recommendation was for the parish council to take out a loan of up to £400K with the likely scenario that it would be paid back if grants for the project were obtained in subsequent years. At the meeting 5 of the 7 parish councillors were compromised, which is why he wished to vote on this matter.

In answer to questions from Councillor Eden, it was confirmed that the vote on the additional precept was not taken. The council voted only on the precept to cover the council's budget, the meeting was closed before the second vote could take place.

Mrs Butcher-Doulton commented on the number of people supporting the proposal relative to the population of the village. Councillor Luck said he had been advised that the response to the public meeting was a typical turnout and the number of replies to the questionnaire was above average.

Members asked why Councillor Luck had answered 'no' regarding his swearing to the Monitoring Officer's questions sent on 28 March 2014. He replied that the word quoted were not the exact words used. He clarified that these were 'you at the back of the room have done shit towards the village Hall'. He confirmed that he had only used this one swear word and had not meant to be derogative. He knew most of the people at the meeting and was on good terms with the majority of them.

Councillor Luck was asked to comment on the parish clerk words that he was 'forceful and uptight' when speaking to her. Mr Blatt pointed out this this was a reported extract of telephone conversation with the Monitoring Officer so were not her own words.

Councillor Luck confirmed that he had been forceful but this was in response to the untrue statements about the consequences of him voting. It felt like harassment and intimidation. He said he did not shout at people but would put a forceful debate. There was no evidence that he had 'shouted down' the clerk.

In answer to a question by Councillor Loughlin it was confirmed that Councillor Watson had not attended the extraordinary meeting so did not know whether or not Councillor Luck had apologised. Nevertheless, the Monitoring Officer said that this evidence added weight to the fact that he had challenged the accuracy of the minutes.

Mr Blatt asked Councillor Luck to explain why he had used the swear word. Councillor Luck said he had worked for an American company for the last 40 years when the word 'shit' was an acceptable word when emphasising a point. He realised that it was not appropriate but in the charged situation he had gone back to his roots. He should have instead used the word 'nothing'.

In mitigation he said some of the remarks made to him had been nasty and cutting. The public speaking went on past the 15 minutes period and the meeting became more emotive. He confirmed that he was responding to the hostility of the meeting, particularly as the new village hall group had committed a lot of time and effort to the project which was at a good point only to fail again. However he was prepared to give a written apology if required.

Cllr Loughlin commented that if the meeting was in disarray it should have been adjourned at an earlier stage.

Questions from the Monitoring Officer

The Monitoring Officer asked if the new village hall project had been controversial before the suggestion of it being funded by the tax payer. He noted that the annual parish precept was £16k whilst the additional proposal to take out the loan would add an additional £18k. Councillor Luck confirmed these amounts but said it was likely that the loan would be paid off earlier if other external grants became available. The actual increase in the weekly precept for the village residents would actually be very small. He also confirmed that although the issue of the precept was controversial there was also heated discussion around the design of the hall.

The Monitoring Officer asked about the usual public speaking arrangements for the parish council meetings and what was different at this meeting. Councillor Luck said there was usually a 15 minute public speaking session at the beginning of the meeting but on this occasion the Chairman had allowed the public to take part in the meeting and it had become highly charged. He had made his remark just after a member of the public had spoken.

The Monitoring Officer gave his opinion of the matters before the committee.

1. Treating the parish clerk with disrespect - if the committee accepted his findings on this issue an apology would be appropriate.
2. Treating members of the public with disrespect. This breach had been accepted by Councillor Luck and it was now accepted that an apology had been made. He concluded that it might be sufficient to take no further action.

Councillor Luck's closing statement

Mr Blatt commented on the two areas where the Monitoring Officer had found a breach of the Code

1. Treating the Parish Clerk with disrespect

There was no corroborative evidence that Councillor Luck had shouted down the parish clerk. The key point was that the parish clerk herself had not made a complaint and the witness statement had backed up this point. He considered that on the balance of probability the parish clerk had not been treated with disrespect and no further action should be taken.

2. Treating the Members of the Public with disrespect.

Mr Blatt accepted the Monitoring Officer's conclusion that Councillor Luck's remark had been made to an identifiable group of people. In mitigation he pointed out that Councillor Luck had admitted the use of the word and that the language had been inappropriate. It was now accepted that he had made an audible apology and he submitted that no further sanction was required.

The Committee left the room at 12.15 and returned at 1.00pm to announce the following decision

Decision

1. The Committee find that Councillor Luck did not treat the parish clerk with disrespect as there is no evidence to suggest that he was no more than forceful in his language.
2. Councillor Luck admitted he swore at a group of residents at a parish council meeting. The Committee find that he did apologise for this but nevertheless we find that he treated this group with disrespect which is not acceptable behaviour by any person in public office.

The meeting ended at 1.00pm.