

# Notice of Meeting

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## Governance and Ethics Committee

**Monday, 14th March, 2016 at 10.30 am**  
in Committee Room 1 Council Offices  
Market Street Newbury

Date of despatch of Agenda: Friday, 4 March 2016

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Andy Day/Moira Fraser/Stephen Chard on (01635) 519459/519045/519462

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Further information and Minutes are also available on the Council's website at [www.westberks.gov.uk](http://www.westberks.gov.uk)



**Agenda - Governance and Ethics Committee to be held on Monday, 14 March 2016**  
(continued)

**To:** Councillors Steve Ardagh-Walter, Jeff Beck (Vice-Chairman), Chris Bridges, Graham Bridgman, James Cole, Barry Dickens, Lee Dillon, Rick Jones, Anthony Pick and Quentin Webb (Chairman)

**Substitutes:** Councillors Billy Drummond, Sheila Ellison, Alan Macro and Tim Metcalfe

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# Agenda

## Part I

**Page No.**

- 1 **Apologies**  
To receive apologies for inability to attend the meeting (if any).
- 2 **Declarations of Interest**  
To remind Members of the need to record the existence and nature of any Personal, Disclosable Pecuniary or other interests in items on the agenda, in accordance with Members' [Code of Conduct](#).

## Standards Matters

- 3 **NPC4/15**  
*Purpose: \** 1 - 70

Andy Day  
Head of Strategic Support

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**West Berkshire**  
C O U N C I L

# Agenda Item 3

<b>Complaint Ref:</b>	<b>NPC4/15</b>
<b>Report to be considered by:</b>	<b>Governance and Ethics Committee</b>
<b>Date of Meeting:</b>	14 March 2016
<b>Purpose of Report:</b>	<b>To consider the Investigator's report about a complaint received from Mr Mike Dennett (<i>complainant</i>) in respect of Councillor Christopher Lewis (<i>Subject Member</i>) from Stratfield Mortimer Parish Council (SMPC) submitted on 12 August 2015.</b>
<b>Recommended Action:</b>	<b>The Governance and Ethics Committee is asked to consider:</b> <b>a) Whether or not they agree with the findings of the Investigator in relation to the complaint;</b> <b>b) If they agree with the investigators' report the nature of any sanctions that should be applied.</b> <b>c) If they disagree with the Investigator's conclusions set out the reasons for doing so.</b>
<b>Paragraphs of Stratfield Mortimer Parish Council's Code of Conduct that the complaint might relate to:</b> 3.1. Treat members, officers, members of the public and service providers with courtesy and respect and do not engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation	

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<b>Governance &amp; Ethics Chairman's Details</b>	
<b>Name:</b>	Councillor Quentin Webb
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# Monitoring Officer's Report

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## 1. Introduction

- 1.1 Complaint, NPC4/15 refers to a complaint made by Mr Mike Dennett (Chairman of Stratfield Mortimer Parish Council) which was received by the Monitoring Officer on the 12<sup>th</sup> August 2015. The complaint claimed that Councillor Chris Lewis may have breached Stratfield Mortimer Parish Council's Code of Conduct. The breach related to section 3.1 of the Code of Conduct which required councillors to treat fellow Councillors and Officers with courtesy and respect and prohibited them from engaging in bullying or intimidating behaviour (or behaviour which may be regarded as such). The allegations concerned the content of two letters written by Councillor Lewis dated 10<sup>th</sup> and 12<sup>th</sup> July 2015 respectively.
- 1.2 The complaint was initially assessed on Thursday 10 September 2015 by the Monitoring Officer and Independent Person (Lindsey Appleton). They concluded that, while not making any findings of fact, if the allegations were substantiated they may constitute a breach of the Code of Conduct and therefore the allegation should be referred for investigation. Ms Liz Howlett was appointed to investigate the matter on behalf of West Berkshire Council. Ms Howlett's final report was received by West Berkshire Council on 29 January 2016 and concluded that a breach of the Code of Conduct had occurred.
- 1.3 The Advisory Panel met on the 11 February 2016 to consider if it concurred, based on the information set out in the report, with the Investigator's conclusion. The Advisory Panel were then required to make a recommendation to the Governance and Ethics Committee to make a final determination on the matter.
- 1.4 The Advisory Panel concurred with Ms Howlett's report and believed there to be evidence of a breach in respect of NPC4/15.
- 1.5 The Advisory Panel recommendation is set out in the attached Decision Notice.

## 2. Conclusion

- 2.1 The Governance and Ethics Committee are required to decide:
  - a) If they concur with the Investigator's findings that there was a failure by the Subject Member to comply with Stratfield Mortimer Parish Council's Code of Conduct and whether or not they agree with the recommendation of the Advisory Panel.
  - b) If the Committee agree with the Investigator's conclusions to determine the sanctions to be imposed as regards the Subject Member

or

  - c) If they do not agree with the Investigator's conclusions their reasons for doing so

## Appendices

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Appendix A - Investigator's Report

- Appendix B – Response to the Investigator’s Report by the Subject Member  
Appendix C – Response to the Subject Members Comments of the Investigator’s Report  
by the Complainant  
Appendix D - Advisory Panel Decision Notice  
Appendix E - Sanctions That can Be Applied

### **Additional Information Provided**

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- 1) Stratfield Mortimer Parish Council’s Code of Conduct
- 2) The original complaint form
- 3) and complaint,
- 4) the original response from the subject member
- 5) Letters Dated:
  - a) 10 July 2015
  - b) 12 July 2015
  - c) 24 July 2015
  - d) 28 July 2015
  - e) 22 October 2014
  - f) 04 March 2015
- 6) the Initial Assessment Notice

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# Standards Investigation at Stratfield Mortimer Parish Council

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A report for West Berkshire Council

**Elizabeth Howlett, Solicitor**  
**January 2016**

A report investigating a complaint made by Councillor Dennett, Chairman of Stratfield Mortimer Parish Council. The complaint is about a breach of the Code of Conduct adopted by Stratfield Mortimer Parish Council on 13th September 2012, namely a breach of section 3.1 by failing to treat fellow Councillors and Officers with courtesy and respect and by engaging in bullying or intimidating behavior (or behavior which may be regarded as such). The allegations are made against Councillor Christopher Lewis and concern the contents of two letters written by him dated 10th and 12th July 2015 respectively. There are further communications of October 2014 and March 2015 which give context (but do not form part of the complaint) and two further letters of 24th July and 28th July 2015 which do form part of the complaint

## Background

I have been asked by the Monitoring Officer at West Berkshire Council to investigate the following matters:

1. Did Councillor Lewis use threatening language towards the Chairman (Councillor Dennett) and the Vice-Chairman (Councillor Julian Earl) in his letter of 10<sup>th</sup> July 2015?
2. Did the reference in the letter of 10<sup>th</sup> July 2015 to stating points publicly on Facebook in relation to the cost of clerking amount to harassment of the Council and the Clerk?
3. Did the letter of 12<sup>th</sup> July 2015 compound the issue by repeating the same points but, in addition, also make reference to unsubstantiated claims that the Parish Clerk had acted in a criminal manner?
4. Is there any evidence to justify the allegations of criminal behaviour?

On Thursday 10<sup>th</sup> September 2015 Lindsey Appleton, the Independent Person for West Berkshire Council, considered the assessment of the complaint by West Berkshire Council's Monitoring Officer. The conclusion was that if the allegations were substantiated they may constitute a breach of the Code of Conduct. This was a complex and longstanding issue and an investigation was necessary to establish the facts before deciding if the Code of Conduct had been breached.

In order to undertake this investigation I have looked at a number of documents and interviewed the key people involved. A full list of the documents considered, as well as the people interviewed, is in the appendix to this report. I would like to thank everyone involved for their cooperation.

## The Code of Conduct

Stratfield Mortimer Parish Council adopted a Code of Conduct in 2012 under the provisions of the Localism Act 2011. Under section 28 of the Localism Act 2011 West Berkshire Council has put in place arrangements under which allegations can be investigated and decisions made on such allegations.

My starting point for this investigation is the complaint and identifying the potential breach of the Code of Conduct which is alleged. The relevant paragraph is:

“3.1. Treat members, officers, members of the public and service providers with courtesy and respect and do not engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation”.

The definition in the Code of Conduct is:

“Bullying and intimidating behaviour” means offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim's confidence, capability and health. Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs, (but within the scope of the Code of Conduct).



It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a member will be found guilty of bullying when both parties have contributed to a breakdown in relations.”

## Summary

My conclusion is that this is a breach of section 3.1 of the Code of Conduct. I consider the tone used in the letters of both 10<sup>th</sup> and 12<sup>th</sup> July 2015 to be bullying and intimidating. I do not find that Councillor Lewis breached the requirement for integrity which is referred to in the complaint. Confidentiality is an integral part of integrity within the meaning of section 28 (1) of the Localism Act 2011 but I believe that Councillor Lewis has been scrupulously honest and that he believes he has acted, and is acting, in the public interest and in the best interests of the council. The duty of confidentiality always has to be weighed against the public interest.

I am aware that there is a great deal of background to what happened and I have taken account of this and have noted some of it briefly in the report. The standards regime is very clear that councillors are free to voice their views. An organisation can be called incompetent. If other councillors find this insulting, or upsetting, that is no concern of the standards regime. There is no dispute about this as this is acknowledged by the complainant in the complaint itself.

The tone and language used by Councillor Lewis is the issue here together with the persistent and relentless stream of communication which, in my opinion, does amount to bullying. This is not “a minor isolated incident”.

## The letter of 10<sup>th</sup> July 2015

Councillor Lewis confirmed during the investigation that the 10<sup>th</sup> July letter was sent in error.

Councillor Dennett received the 10<sup>th</sup> July letter. It arrived in his inbox as an attachment to an email at twelve minutes past ten in the morning of 12<sup>th</sup> July 2015 copied to Councillor Earl. It was a Sunday morning and Councillor Dennett remembers reading it on the Sunday morning. He was not surprised that it was dated 10<sup>th</sup> July. He believes (and I agree) that it is common for people to write a letter and then email it within a day or so. I have taken into account that Councillor Lewis did not intend to send the letter.

The first paragraph of the letter ends with the sentence,

“Either both you and Julian can work together with me in a mature manner or alternatively I will raise controversial items and write critical letters to auditors; we have the summer break in front of us and the choice is yours”

Councillor Earl said that he thought the phrase “in a mature manner” was inappropriate and that threatening to write critical letters to auditors was inflammatory. Councillor Dennett accepted that some of the comments and criticisms that were made in the letter were justified and that processes at the council could be improved. However, he strongly believes that the tone used is an inappropriate one between councillors. Regardless of all the background in this matter he says he would have made the same complaint even if the writer

had been a brand new councillor unfamiliar to local government. It is a matter of principle. Councillors should work together in a collegiate fashion rather than threaten each other.

The first sentence of the 10<sup>th</sup> July letter refers to Councillor Lewis being “on his best behaviour” as if this was something which should be commended rather than something which one would expect of a councillor. The fifth sentence manages to be both patronising and threatening. The reference to working “in a mature manner” appears to me to suggest that Councillor Lewis considered himself to be mature and Councillors Dennett and Earl consequently to be immature. There is a clear threat in the final sentence recited above that starts “Either...or...and the choice is yours”. The final sentence refers to discussing it in “a rational manner”. Again the implication is Councillor Lewis considers that he is rational and those to whom the letter is addressed are consequently irrational.

I have reviewed the tone of the letter here. Criticisms of process are accepted and acceptable. Councillor Dennett clearly understood this when submitting the complaint. He makes clear it is the tone and approach that he has issues with.

### **The letter of 12<sup>th</sup> July 2015**

This letter was sent intentionally. This was not a mistake. One could argue that, given the 10<sup>th</sup> July letter was not intentionally sent, the harm it caused was equally not intended. The letter of 12<sup>th</sup> July was picked up from Mortimer library by Councillor Dennett. The library was closed until 1300 on Monday 13<sup>th</sup>. Councillor Dennett therefore received the two letters on different days, with different references and different dates. He therefore had no reason to doubt he had received two separate letters.

The 12<sup>th</sup> July letter does not have the same personal and emotional language as the 10<sup>th</sup>. However, it does have three specific “threats”. There is the threat to go to the auditor, the threat to “proceed independently” and the threat to place statements on the Mortimer Village Partnership page (which appears to me to be a threat to make allegations about people in public). There is also the comment to “let matters drop if [Councillor Lewis is] happy” with how the situation is resolved.

There is no semblance of collective responsibility here and no sense of working with other councillors to resolve issues. I am very conscious that everyone works differently. I believe that Councillor Lewis thinks he is acting in the best interests of the council. The problem is that the language used together with his abrasive attitude (as others perceive it) does not provide other councillors with that reassurance.

The language is threatening. The attitude is that allegations or statements must be dealt with fully and promptly no matter how frequent and no matter how aggressively put forward. If they are not dealt with immediately, in the absence of an answer, Councillor Lewis believes that allegation is true. This is very wearing for those at the receiving end of what feels to them like an endless stream of aggressively worded demands for information and suppositions based on very little factual information. The Council's accounts for 2014/2015 have been signed off by internal and external auditors without qualification. This would indicate the auditors have no concern about salary, pension or sick pay arrangements in place at that time but this fact does not seem to have any effect on Councillor Lewis.

In Councillor Lewis's response to the complaint dated 12<sup>th</sup> August 2015 he claims that the bulk of the complaint by Councillor Dennett refers to "unsubstantiated allegations" "where no attempt has been made to prove them; as such they should be ignored". In that one sentence Councillor Lewis has encapsulated the weakness of his own case. West Berkshire is advised by Councillor Lewis [at point 6 of his statement of 26<sup>th</sup> August 2015] to "ignore all unsubstantiated allegations when it considers the way forward".

## **Unsubstantiated claims of criminal behaviour**

The council considered it important to take appropriate action to protect the clerk from what could have been perceived as harassment by Councillor Lewis.

I did not meet with the clerk. She is a very experienced clerk and, with a high turnover of chairmen in recent years, she did have to ensure the council continued to operate effectively with relatively little supervision.

**Criminal allegations - Licensing query:** One of the allegations of criminal behaviour concerns the failure to apply for a licence to sell alcohol on behalf of the council. The licence was originally sought in 2012 but a summer event has continued each year since then. I am told the local pub had the licence for the sale of alcohol. Councillor Lewis maintains this is not the case based on a casual conversation with the landlord of the pub in the summer of 2014. It is important that a council acts within the law otherwise it is ultra vires. If the council did not apply for a licence to sell alcohol then I am in no doubt that the intention was that the pub would do this. I have not checked the terms of the licences partly because I have found it very hard to pin down the exact event and year about which the allegation is being made and partly because it is beyond the remit of this investigation.

**Declaration of disclosable pecuniary interest:** the Localism Act 2011 introduced the criminal offence of failing to declare a disclosable pecuniary interest. Councillor Lewis maintains that a councillor failed to make such a declaration when the council agreed to support the superfast broadband project and allocate money to West Berkshire Council towards the project in February 2013. A councillor, who was an employee of BT, voted in favour and Councillor Lewis maintains that was a disclosable pecuniary interest which he failed to declare and that the clerk granted a dispensation which she had no right to do and therefore aided and abetted the crime. Councillor Lewis is not alleging that the project was unpopular. He was in favour of the proposal. My understanding is a public meeting in the village strongly supported the proposal. Councillor Lewis believes a declaration should have been made and that no dispensation should have been granted. The money was agreed to be paid over to West Berkshire Council. It was not a payment to BT. There is a debate nationally about how far BT have carved out a monopoly over the infrastructure for broadband and therefore whether, in effect, any vote in favour of securing broadband for the village inevitably would mean money being paid to BT. It is stretching a point though, in the context of declarations of interests, if the money is not going to BT directly under a contract but to West Berkshire. Equally, Councillor Lewis suggested that the clerk had aided and abetted the crime and might also be liable to the maximum £5k fine. This is incorrect. The Localism Act makes very clear it is the personal responsibility of the councillor. The clerk can advise but no culpability at all lies with the clerk.

Councillor Lewis tends not to ascertain the facts before making allegations of criminal behaviour. He appears to believe that he can make an allegation based on very little information and that it is incumbent on those accused to prove their innocence rather than incumbent on him to put together the evidence to prove what has happened. This is contrary to the approach he expects others to take set out clearly in his response of 26<sup>th</sup> August 2015 to the complaint.

### **24<sup>th</sup> July 2015 Letter**

There is a similar lack of care in the points made in this letter. By way of example, Councillor Lewis says "I think the Standards Board was wound up in 2008". It was in fact abolished under the Localism Act 2011. Councillor Lewis refers to "possible errors in NALC recommendations". I am bearing in mind throughout that these communications are to a volunteer with no background in local government from someone with legal knowledge.

### **28<sup>th</sup> July 2015 Email**

The complaint refers to statements "based on supposition rather than fact" and it is hard to disagree with this. Councillor Lewis says in his 28<sup>th</sup> July email "I have openly stated it is a guess" and "I have just relooked.....and have to admit that they do not support my contention".

Taken alone this would not be a problem. Everyone makes mistakes and it is helpful to admit this. The issue is it evidences the ongoing pattern of behaviour.

### **Earlier communication dated October 2014 and March 2015**

I must make clear that these communications were written when Councillor Lewis was a member of the public and not a councillor and therefore are not subject to the Code of Conduct. They were written by someone keen to be on the council though and make clear that Mr Lewis intended to stand for election. The final paragraph of the 4<sup>th</sup> March letter is a threat. I should say again that criticism of process is not a problem nor is challenging expenditure.

### **Conclusion**

To address the specific questions asked by West Berkshire Council:

- 1. Did Councillor Lewis use threatening language towards the Chairman (Councillor Dennett) and the Vice-Chairman (Councillor Julian Earl) in his letter of 10<sup>th</sup> July 2015?** Yes. Councillor Dennett and Councillor Earl both considered the language threatening and I agree with them.
- 2. Did the reference in the letter of 10<sup>th</sup> July 2015 to stating points publicly on Facebook in relation to the cost of clerking amount to harassment of the Council and the Clerk?** No. An organisation cannot be harassed and I do not believe this specific threat alone amounted to harassment of the clerk. There is an issue about the confidentiality of the information at that time. It is legitimate for both the public (and councillors) to challenge costs. The problem here is the manner and timing of that challenge. The threat to go public on Facebook does fall within the

definition of bullying under the Code of Conduct but it has to be taken in context with everything else. This one threat would not in itself amount to harassment.

3. **Did the letter of 12<sup>th</sup> July 2015 compound the issue by repeating the same points but, in addition, also make reference to unsubstantiated claims that the Parish Clerk had acted in a criminal manner?** Yes. The language is threatening. The reference to stating views on Facebook is made again. There are allegations with no facts put forward to prove the substance of the allegations.
4. **Is there any evidence to justify the allegations of criminal behaviour?** No. It is interesting that Councillor Lewis is prepared to "let the matters drop" if the situation resolves itself satisfactorily. This approach has continued throughout the investigation. This implies an attempt to secure a bargaining position which is unacceptable and wholly inappropriate. The willingness to compromise suggests to me that Councillor Lewis is well aware that the allegations are not of any substance. Councillor Lewis has also challenged why the question of whether the allegations were justified were part of a Code of Conduct investigation. To be clear, the allegations were a key reason the complaint was made. It was therefore necessary to establish the background to these allegations.

I am very aware that the letter of 10<sup>th</sup> July was sent by mistake. I am also conscious that it is possible that Councillor Lewis does not mean to threaten or intimidate. He has explicitly said this. He is very concerned that processes and procedures are correct and this is to be commended.

However, Councillor Lewis needs to reflect and consider carefully the impact that the language and tone he uses actually has on people. Councillor Lewis has said that he sees no evidence that people are upset by the language and tone that he uses. Unfortunately that is the problem. People (not just the complainant) are upset by his tone and they do become worn down by his constant barrage of questions. This is why his questions remain unanswered which then causes his frustration.

Three letters of March 2015 from the council to Mr Lewis were supplied to me by Councillor Lewis. All three evidence the council having carefully considered Mr Lewis's correspondence but refer to deciding at a meeting in confidential session on 12<sup>th</sup> February 2015 that

"Its response to further correspondence from the complainant on the same or similar matters already raised will be acknowledged but no detailed correspondence will be entered into with the individual."

In my view this evidence shows the impact at that point that Councillor Lewis's approach was having. I am aware there is even more history to the volume of correspondence the council has received from Mr Lewis as a member of the public but that is beyond the scope of this investigation and any action taken by Councillor Lewis as a member of the public is not subject to the Code of Conduct regime. This does not mean that Councillor Lewis does not raise very useful points and that the council could not benefit from his enthusiasm to follow correct processes and procedures. It does mean he needs to temper what he writes by considering more carefully how he says things and the way he says them. He is dealing with volunteers who are giving up a significant amount of time to improve the life of the village. They do not want, or need, to be lectured or threatened.

Councillor Lewis has suggested it cannot be bullying because both parties have contributed to the breakdown in relations. I cannot agree with this. My impression is that relations have not broken down (which is to the credit of both parties). I understand Councillor Lewis is serving on three committees and two working groups which indicates that this issue is not preventing the council continuing with the work of serving the community which is to be welcomed.

In considering this case I have had regard to the case of **Patrick Heesom v the Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)**. Although the case was determined on the Welsh standards regime, which remains as it was in England before the Localism Act of 2011, it is nevertheless a very helpful case. It deals with a number of points which Councillor Lewis has raised during this investigation and which I therefore want to deal with in this report.

Hickinbottom J gave a 54 page judgement in the case and set out the scope of freedom of expression under Article 10 of the European Convention on Human Rights and the degree to which enhanced protection for freedom of expression applies at all levels of politics. A degree of immoderate, provocative, even offensive, language is acceptable and politicians are expected to have thicker skins than individuals. The burden of proof in standards cases is a civil burden of proof. Councillor Heesom was accused of 14 breaches of the Code of Conduct and on appeal was found guilty in all but 2. The key issue for the court was the lack of insight into the adverse effect of his conduct on others. I believe this is the key issue here. Councillor Lewis has not appreciated the impact he is having. I hope that this investigation might help him to reflect on his actions and the impact that they have.

## Appendix

I would like to thank all those who have helped with this investigation. I have interviewed:

Councillor Michael Dennett – Chairman of Stratfield Mortimer Parish Council and the complainant

Councillor Christopher Lewis – a member of Stratfield Mortimer Parish Council about whom the complaint is made

Councillor Julian Earl – Vice-Chairman of Stratfield Mortimer Parish Council who was named in the complaint but was not a party to the complaint

Councillor Tony Butcher – a member of Stratfield Mortimer Parish Council and the person who chaired the grievance panel to deal with the grievance lodged by the clerk

### **The documents considered in the context of this complaint are:**

Stratfield Mortimer Parish Council Code of Conduct 2012

### **Minutes of the following Council meetings:**

Finance and General Purposes Committee Part 2 confidential minutes 08.09.2015

Finance and General Purposes Committee Minutes 02.11.2015

Finance and General Purposes Committee Part 2 confidential minutes 02.11.2015

**Letters/Emails relevant to this complaint:**

Letter of 22<sup>nd</sup> October 2014 from Mr Lewis to Councillor Dennett

Letter of 30<sup>th</sup> January 2015 from Mr Lewis to Councillor Dennett

Letter of 4<sup>th</sup> March 2015 from Mr Lewis to Councillor Dennett

Letter of 6<sup>th</sup> March 2015 from SMPC to Mr Lewis

Letter of 9<sup>th</sup> March 2015 from SMPC to Mr Lewis

Letter of 30<sup>th</sup> March 2015 from SMPC to Mr Lewis

Letter of 10<sup>th</sup> July 2015 attached to email dated 12<sup>th</sup> July 2015 from Councillor Lewis to Councillor Dennett

Letter of 12<sup>th</sup> July 2015 from Councillor Lewis to Councillor Dennett

Letter of 24<sup>th</sup> July 2015 from Councillor Lewis to Councillor Dennett

Email of 28<sup>th</sup> July 2015 from Councillor Lewis to Councillor Dennett

Letter of 25<sup>th</sup> September 2015 from Councillor Lewis to West Berkshire Council

Letter of 2<sup>nd</sup> December 2015 from Councillor Lewis to West Berkshire Council

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**Subject member's comments on:**

**Standards Investigation at Stratfield Mortimer Parish Council – A Confidential draft report for West Berkshire Council dated January 2016.**

- 44 I have received the above Report and have been asked to make comments within ten working days. With other commitments this is not sufficient time. With another day I could have shortened and rationalised the document.
- 45 There is a housekeeping point to be made. I spend significant periods over the winter out of the country. The problem is compounded because I do not like sending important e-mails from my phone. I have a right that my case is not prejudiced because of these periods away.
- 46 I thought it was for the Investigator merely to look at the evidence of a breach of the Code (see flow chart) and for elected members to come to a conclusion; this Report comes to a conclusion. I have looked at the procedure that applies for complaints such as this; it is in part 13, Appendix E of the Constitution. There are things within it that I do not like. These include private meetings with West Berks employees where I am not allowed to be present. This seems to me to be contrary to the Human Rights Act and the concept of natural justice. Clearly I need to do a great deal of further research and therefore I reserve my position in this respect.
- 47 I am unimpressed by the Report which:
1. Takes cognisance of unproven generalisations.
  2. Includes evidence that I have not seen.
  3. Glosses over statements that I have made with no explanation.
  4. Includes alleged actions by me in the period prior to me becoming a councillor; the Code does not apply during this period.
  5. On some issues looks only at the tone and not the content of the letters. On others it looks at the tone and the content. This works to my disadvantage.
- 48 I am aware that it is not an arbitration award but in my view some of the same underlying principles apply. Significantly it should be written in such a manner that the losing party clearly understands why it has lost. I am the losing party and I have no idea why I have lost. To me the Report looks like Cllr. Dennett's initial complaint reworked into a more logical form.
- 49 When I read the original complaint I had no idea how the alleged claims tied back to the alleged breaches within the Code. At paragraph 14, I provided an explanation of the four phrases that I thought that I was accused of. I accept that I did not include an explanation of 'threatening language'. The Code refers to 'behaving in a threatening way' and makes no mention of 'language'. The Report makes no attempt to define 'threatening' or 'threatening language'. The Concise Oxford Dictionary describes 'threat' as:
- 1 A statement of an intention to inflict injury, damage, or other hostile action as retribution. 2 A person or thing likely to cause damage or danger.
- 'Threatening' is a derivative. The definition relates to physical activity but there is no evidence whatsoever to support this; I submit that as a matter of plain English any finding under this head must therefore fail.
- 50 The report states 'I have reviewed the tone of the letter rather than the content.' (EJH 3/2). Cllr. Dennett has made payments to the Clerk that are not in accordance with the Financial Regulations; I have also queried the correctness of the figures. In May I have verbally asked

the basis on which she was paid while on sick leave and which I am entitled to know; I have not had an answer. I then gave two months' written notice of some action that I intended to take. It is the wording of the notice that is causing the difficulty. It is simply unfair for the report to merely consider the tone of the letter without including an investigation into the preceding factual matrix surrounding it. It is also inconsistent with the approach taken on other issues.

- 51 In paragraph 26 of my initial statement I made the point that I did not see how West Berks could properly investigate the complaint without looking at the correctness of some payments ("the paragraph 26 point") and this remains the case. This has not been investigated and there is no proper explanation as to why not.
- 52 For ease of reference I have numbered the paragraphs of the Report with the page number and an EJM prefix; thus on page 1 there is EJM 1/ 1 to 5, on page 2 EJM 2/ 1 to 7 and so on. Paragraphs 53 to 88 deal with the report broadly in the order that it is written and in paragraphs 89 to 96, I endeavour to provide a logical summary of my case.
- 53 **EJM 1/2 Background:** I note that the investigation is to establish the facts and this is as it should be. In my view the Report goes beyond this remit and includes a great deal of opinion together with a judgement.
- 54 **EJM 2/1 to 3 – Summary.** I dispute that my letters are bullying and intimidating.
- 55 The report refers to a 'persistent and relentless stream of communication which in my opinion, does amount to bullying. This is not a minor isolated incident.' With respect there is not a shred of primary evidence before the Investigator to prove this insulting assertion. I believe that she is relying on generalised assertions from witnesses. If the Investigator interviews witnesses in a case against me, they are witnesses of fact and not opinion; their opinions should not be included within the Report. My primary case is that apart from giving essential background information all correspondence prior to May 2015 should be ignored as I was not a Councillor at the time; West Berks has no business whatsoever in considering my alleged conduct before this time. If this is the case the letters under investigation become a minor isolated incident. My secondary case is that if the assertion is to stand every letter, together with the evasive responses, should be analysed in detail. As I see the current statement it is an unsubstantiated generalisation. The use of the word 'opinion' should be noted with regard to paragraph 50 above.
- 56 With regard to the Code, threatening behaviour is effectively a subset of bullying. The Report fails to mention that 'It is unlikely that a member will be found guilty of bullying when both parties have contributed to a breakdown in relations'. In May I had previously asked Cllr. Dennett about the first part of the paragraph 26 point. The main reason that I wrote the letters was because he has failed to give any answer. The letter clearly demonstrates that there is a breakdown in communications which he has contributed to. The complaint must therefore fail.
- 57 **EJM 2/4 – 3/2:** Contrary to the Investigator's assertion, there is no confusion as to how the letter of 10<sup>th</sup> July came into Cllr. Dennett's possession. The letter has the word process reference pc202 clearly written on it and the subsequent letter of 12<sup>th</sup> July has the reference pc203. The first letter is a draft which I subsequently decided to soften and split into two. On the 12<sup>th</sup> July I sent Cllr. Dennett an e-mail. The conciliatory words of the e-mail should be noted and included in the Report:
- Mike  
Herewith a copy of a letter that I will drop off at the office today.

I came across the bit about the pension scheme a week or so ago but did not think it fair to burden you with it before the main meeting. Rest assured that my overriding aim is to resolve the issues as effectively as possible.

Regards

Chris

Attached to the e-mail is a document pc202. Clearly I attached the incorrect document to the e-mail. Cllr. Dennett should be asked why he did not comment on the fact that on the 12<sup>th</sup> July he received an advance copy of a letter dated 10<sup>th</sup> July and a hard copy of a letter dated 12<sup>th</sup> July. There was no intent to send the former letter and this should be born in mind by West Berks when it considers the allegations.

58 The Investigator states that 'Cllr. Lewis says that he did not intend to send the letter'. I have given reasonable proof that I did not intend to send the document. Everything that I did intend to say is in my letters of 12<sup>th</sup> July and 24<sup>th</sup> July.

59 The statement that I intended to write a letter to the auditor cannot be regarded as a threat; it is a fact. I remain concerned that:

1. Payments have been made to the Clerk and to her pension that are not in accordance with the Financial Regulations. This is a fact and cannot be disregarded. Under the current circumstances I believe that I have a duty to report this.
2. I am concerned that while on sick leave the Clerk may have been paid for more hours than are in her contract of employment.
3. If the above is correct then I believe that incorrect contributions may have been paid into her pension fund.
4. If this is correct then it would seem to have been going on for at least 10 years and this will amount to a substantial sum of money.

I have been verbally advised that the pension is as it was as it was in 2004. With respect I do not see how this can be the case. I have all the payment details for 2006. The monthly pension payments vary from £214.26 to £433.43; the format indicates that payments have been made in respect of non-contractual overtime. I saw a payment for her pension at the meeting of 9<sup>th</sup> July 2015 for £578 which is inconsistent with the 2004 pension scheme. I accept that there is a lot of assumption in this and that I may have gone off on a complete tangent. If all the paperwork is in place and everything is correct it would take an hour of Cllr. Dennett's time to substantiate the correctness of the figures. He has declined to do so and instead made a formal complaint against me. I remain very suspicious that everything is in order.

60 From the wording of my 12<sup>th</sup> July e-mail it should be noted that I had become aware of some worrying facts about local government pension schemes. Some of these facts are neatly summarised in a leader in The Times dates 9<sup>th</sup> January 2016. Whilst there is general reference to the Local Government Pension Scheme there are actually 99 funds and they have a combined deficit of £47 billion. It is my understanding that the individual employers have to pay for this deficit at some stage in the future. I have looked at one of the schemes and it clearly states that contributions should not be paid on non-contractual overtime; I have no idea whether there is a similar clause in the one that the Clerk was employed under. From the figures that I have it can clearly be seen that in 2006 contributions were paid on non-contractual overtime. The matter needs to be investigated.

61 Cllr. Dennett makes reference to working in a 'collegiate fashion'. I assume that this means working with shared responsibility and I agree. It is impossible to do so when he refuses to answer simple questions to which I am entitled to an answer. It is actually him that is failing to work in this way. West Berks should consider the wording of the covering e-mail as this

clearly demonstrates that I want to work in a collegiate manner but he is refusing to allow this to be the case.

- 62 Regarding 'mature manner' and 'rational manner' I do not believe that Cllr. Dennett is 'irrational' and I have never said this. We have a Council which does not pay its employees in accordance with its Financial Regulations and continued to do so after it had been pointed out. In addition there are seven errors in the way that it conducts its confidential meetings; I believe that I am capable of resolving these issues yet most of them have still not been dealt with.
- 63 See paragraph 50 above. It is unjust for the investigator to consider merely the tone without considering the surrounding factual matrix.
- 63a In paragraph EJH 3/1 there are two references to the Investigator's opinion.
- 64 **EJH 3/3 to 3/7:** I do not understand the first paragraph.
- 65 If one reads my letters I am desperately keen to work with Cllr. Dennett; it is him who refuses to work with me. Writing to the auditor is a fact and not a threat. Given the massive overpayment of the Clerk when compared to other similar sized councils is, in my view, a matter that should be aired in public; providing precise figures are not mentioned, I believe that this is the view of the Information Commissioners Office.
- 66 My strong view is that any unsubstantiated allegation should be ignored. I fail to see how this is a weakness. If the final report includes unsubstantiated allegations, then I must reserve my position; it is almost certain that I will not accept it.
- 67 I have stated that an undisputed assertion is a fact and I believe that there is common law authority for this statement. I made several assertions prior to the May election which were not disputed. I find it objectionable that Cllr. Dennett now disputes the facts. In my view it comes down to weight of evidence. If hypothetically I were to rely on the statement in a case against Cllr. Dennett it would carry less weight that it would when he brings a case against me. The statement cannot be disregarded as the Investigator has done.
- 68 **EJH 4/1 -2: Contrary to the Report the claims are substantiated:** The evidence of a personal campaign is alleged and disputed evidence. As I understand the position, it is not for a council to supervise an officer of the council. I think that the Report would be fairer if the first two paragraphs are deleted. They are unproven and I dispute them. They should not be relevant to the conclusion and their inclusion unnecessarily widens the complaint.
- 69 Associated with this is the fact that both the complaint and the Report make reference to something that is properly confidential and which should not be known by people who are not councillors. I dispute some of the associated facts and therefore the confidentiality will be lost. If this is the case then SMPC will be in breach of an express obligation. Cllr. Dennett may wish to consider this, if he decides to continue with the complaint.
- 70 The dictionary definition of 'unsubstantiated' is not supported or proven by evidence. In the case of criminal activity it is inappropriate to prove accusations. 'Evidence' is information indicating whether a belief or proposition is true or valid. I submit that if the allegation is supported by any reasonable evidence it is substantiated. The Report does not mention how alleged unsubstantiated claims amount to a breach of the Code.

- 71 **EJH 4/3 Licencing query:** There is an inconsistency. On the one hand the Report says that it is hard to pin down the facts and that it is beyond the remit of the Report. The Report then says that the allegation is unsubstantiated. The facts are clearly given in my statements; paragraph 40 should be noted. I have seen no considered response to my statements. I fail to see how the Investigator can come to the conclusion that there is no evidence of criminal behaviour.
- 72 On this and the next point the underlying issue is as follows. Prior to me becoming a councillor I made two substantiated allegations of criminal behaviour; at the time I was not subject to the Code of Conduct. This should be outside the remit of the Report. Prior to this complaint being made, for a variety of reasons I had decided not to pursue the matters. I wrote saying this. Unfortunately I put in an unwise qualification at the end of the letter. In my view it is this qualification that should be the only matter under investigation in the Report. Because the Report has incorrectly widened the issue it is now necessary to turn the clock back and to look at the merits of the withdrawn allegations.
- 73 The Report makes the point that the Clerk cannot be liable under the Localism Act as though that is the point that I was making. I am not a criminal lawyer and am therefore wary of getting involved in technical terms. The offence that I was thinking about when I wrote the original letter was one of aiding and abetting the crime of failing to declare an interest under the Localism Act. It is a fact that the Clerk granted a dispensation when under s33(2) of the act it is for the council to do so. It is a fact that the correct procedures with regard to an application was not followed. It is now a point stretching issue whether there was a pecuniary interest. In coming to the conclusion that there is no evidence of criminal conduct the Investigator has not considered the correct charge.
- 74 I take exception to the paragraph about not ascertaining the facts. I ascertain the facts as best as I can but I do not have access to the Council's records. I have never asked the Council to prove anything under this head; I have merely asked them to confirm whether the facts that I have given are correct or not.
- 75 **EJH 5/1: 24<sup>th</sup> July 2015 letter:** I find this statement unfair. It is outside the scope of the complaint. Standing Order 14.5 states:  
If a member reasonably believes another member is in breach of the Code of Conduct, that member is under a duty to report the breach to the Standards Board.  
The obligation to examine breaches of this nature passed from the Standards Board to the district council around this 2008. The point that I was making was the Standing Orders were at least seven years out of date. My letter would have been clearer if after 'wound up' I had added 'in this respect'.
- 76 **EJH 5/2 28<sup>th</sup> July 2015 e-mail:** Regarding the pension, I had a discussion with Cllrs. Dennett and Butcher. I was advised of something that I was not aware of previously. I looked my information and realised that I had made a mistake and apologised. I fail to see how this can be regarded as any failing on my part whatsoever; if anything it demonstrates my honesty and integrity.
- 77 **EJH 5/3 Prior correspondence:** The Report states that the final paragraph of my letter of 4<sup>th</sup> March 2015 is a threat. This is simply not true for the reasons mentioned above. I have asked the Council to agree or disagree with the assertions that I have made and whether there is any reason why I do not make them publically. In the absence of a response I would feel free to mention my concerns publically. In the run up to the May 2015 election I intended to do some canvassing. I had been openly critical of the Council for a number of

years so I knew that what I said had to be hard hitting. There was no response so I felt free to put my controversial view on the local Facebook site.

- 78 **EJH 5/4 to 5/6 Conclusion:** For reasons previously stated I disagree with conclusion 1, 3 and 4. [1] One of the letters was not intended to be sent. [2] There is no thought of violence. [3] It is an isolated incident [4] Relations between us had broken down. These facts have been put forward previously and the Report has failed to deal them.
- 79 The Report does not detail how question 4 is a breach of the Code.
- 80 The Report indicates that the test for a breach of this nature is subjective. This has not been stated previously. I would assume that the test should be objective.
- 81 **6/3** I have seen no evidence that people are upset by the language and tone that I use. Similarly if this is evidence of a constant barrage of questions then I am entitled to see it. To me this an unsubstantiated and disputed assertion. A difficulty is that the Council has continuously failed to deal with the points that I have raised.
- 82 **6/4 and 5:** The fact remains that the upsetting points were clearly stated in advance. They have not been responded to and it is unjust that Cllr. Dennett can now query their accuracy. I fail to see how the quoted minute can provide any evidence of careful of consideration.
- 83 **EJH 6/6:** The Investigator makes the point that correspondence sent when I was member of the public is beyond the scope of this investigation. It begs the question why she has considered and included so much of it in such a damaging indictment of my conduct.
- 84 **EJH 6/7:** I have yet to fully enjoy the pleasure of reading Hickinbottom J's 54 page judgement but I have glanced at some of the articles on it. I fail to see that it helps Cllr. Dennett's case at all; if anything, it helps mine. The recipient of Heesom's conduct was an employee and not a fellow councillor. The judgement states that politicians such as Cllr. Dennett are expected to have wider limits of acceptable conduct than members of the public or employees.
- 85 I found some articles on the judgement interesting and surprising. There seem to be three standards of criticism: [1] public and employees (possibly these should be split), [2] employees who are also officers and the [3] politicians. It follows that a clerk, as an officer, has less entitlement to protection from criticism than an ordinary employee.
- 86 I was amazed by a quote in one of the articles that 'comments in a political context were tolerated even if untrue'. The comments that I made prior to the May 2015 election were clearly political and as I see it, there is less than a requirement on total honesty than I had thought previously. I imagine that this destroys some of the logic within the Report. It is a pity that I left reading these articles until fairly late in the process.
- 87 **EJH 7 Appendix:** There are documents that I have not seen. I am being tried in secret which is simply unjust. I have not seen any notes from meetings with Cllrs. Dennett, Earl and Butcher. Cllr. Butcher's alleged relevance is because he chaired the grievance panel; the grievance was submitted prior to the election and so I fail to see how it can have any relevance to the complaint against me under the Code.
- 88 Similarly I have not seen any of the confidential minutes. In breach of proper practice the alleged contents of these minutes are just read out to us.

### **My Conclusion:**

- 89 As I understand it there are two breaches of the Code that I am accused of. Firstly there is that of 'behaving in a threatening way'. Threatening is a subset of bullying. There can be no bullying if there are only minor isolated incidents. Similarly there can be no bullying if both parties have contributed to a breakdown in relations.
- 90 I dispute that I have been involved in acting in a threatening way for the following reasons:
1. There is no intention to inflict injury, damage, or other hostile action as retribution.
  2. If one considers intent there is a single isolated incident. It is not correct to include unsubstantiated allegations prior to me becoming a councillor to get around the isolated incident point.
  3. There is clear evidence to demonstrate a breakdown in relations.
- 91 In my view the only items which should be considered by West Berks are those set out in paragraph 27 of my original statement.
- 92 Secondly the Report also attempts to answer the question as to whether there is any evidence to justify the allegations of criminal behaviour. I do not know which part of the Code I am accused of breaching.
- 93 With regard to the licensing matter the Investigator admits her confusion on the dates and then says it is beyond the remit of the investigation. On this basis the Investigator cannot possibly come to the conclusion that there is no evidence to justify the allegation.
- 94 On the disclosable pecuniary interest point the Investigator has considered the incorrect charge. I am now aware that there may not have been criminal activity but it is not for the reason stated in the report. At the time that the letter was written there was evidence which was not disputed.
- 95 I made the references to criminal activity prior to becoming a councillor and the Code does not therefore apply to me. After becoming a councillor I withdrew the claims. Unfortunately with this withdrawal I made a qualification. In my view it is only the wording of this qualification that should concern West Berks.
- 96 It seems to me that if this complaint runs its course it will be well into the summer of 2016 before it is concluded. If the conclusion is based on the Report then it is almost certain that I will not accept the result and this will take us into 2017. The Council has carried out some good work since May 2015. The report is right in pointing out that the appointment of a new clerk will be an opportunity for improved relationships. With this in mind Cllr. Dennett could consider either withdrawing the complaint or some form of mediation.
- 97 I believe that the facts stated in this statement are true.

**C. D. Lewis**

**22<sup>nd</sup> January 2016**

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## Standards Investigation at Stratfield Mortimer Parish Council (NPC4/15)

### Complainant's comments on the subject members comments on the Draft Report of January 2016.

I have received Cllr Lewis's comments (labelled 44 to 97). I start with two general points and then comment on specific points he has made.

1. Some of Cllr Lewis comments refer to aspects such as definitions of terms and the timing, procedure and scope of the investigation. I feel it is not appropriate for me to comment on these.
2. Quite correctly, I have not seen Cllr Lewis' statement on the draft report which I assume has paragraphs numbered 1 to 43. Thus it is difficult for me to comment where he specifically refers to these paragraphs.
3. **I comment on Cllr Lewis's point 57.** I received the letter pc202 by email at 10:12 am on 12th July which was a Sunday and I do remember reading it that morning. The fact that it was dated 10th July did not surprise me; it seems to me common for people to write a letter and then email the letter within the next day or so. The letter pc203 was dated the 12<sup>th</sup> July and I must have picked it up from Mortimer library on the afternoon of Monday 13<sup>th</sup> (or possibly the day after). For information, post or physical communications to Parish Council office are put in the library post box which I had no access to and I obtained mail from the library staff. The library was closed until 1300 on Monday 13<sup>th</sup>. I therefore received the letters on different days, the letters had two different references, were written on different dates and both referred to the pension issue. Thus I had no reason to doubt that I had received two separate letters.
4. **I comment on Cllr Lewis's point 59.** I start with the last three sentences (*'If all the paperwork..... everything is in order'*). I cannot *'substantiate the correctness of the figures'* to Cllr Lewis as doing so would mean that I would reveal an employee's salary details to an individual contrary to employment law. As a result of Cllr Lewis's letters, information about the Clerk's pension was considered in a Part II confidential meeting of Finance and General Purposes Committee on 8<sup>th</sup> September and reported to Full Council in the Confidential Part II meeting of 8<sup>th</sup> October at which Cllr Lewis was present. For the same reason I disagree with the statement in point 50 that Cllr Lewis is entitled to know the basis on which the Clerk was paid whilst on sick leave.

I comment on two other aspects of point 59. The £578 payment mentioned is completely consistent with the Pension scheme. I can only assume that Cllr Lewis is aware of the amount by reading a cheque stub as the cheque book was passed from one Councillor to another, a lapse in our confidentiality procedures which will not happen again. I also find it rather surprising that Cllr Lewis has the detailed pension payments for 2006, presumably as confidential information from his previous service as a councillor, as the relevant amounts were not published in the Council's minutes.

For information, advice was obtained from BALC's employment adviser to confirm the amount of sick pay that was to be paid to the Clerk. All payments were made by cheque with each cheque signed by three other councillors. The internal auditor's interim report following her visit on 10 November 2015 confirms that *'payroll properly prepared and PAYE/NI requirements fulfilled'*. In addition, the Council's accounts for 2014/15 (and indeed all previous years) have been signed off by internal and external auditors without qualification.

5. **I comment on Cllr Lewis's point 65,** specifically *'Given the massive overpayment of the Clerk when compared with other similar sized councils.....'* The Council considered this in a Part II confidential meeting on 12th March 2015 following the receipt of Mr Lewis's letter of 4<sup>th</sup> March (written as a member of the public- (ref pcapp4a) and included in the complaint documentation as it was referred to in his letter of 12th

July). The Council considered a history of the Clerk's salary, total staff costs over time and concluded that virtually all the content of the letter was incorrect and agreed to implement its existing resolution of 12<sup>th</sup> February (referred to on p6 of the Standards report its report) that the correspondence from the complainant be acknowledged but no detailed correspondence be entered into.

Further, following the resignation of the Clerk, The Finance and General Purposes Committee in a Part II Confidential meeting on 2<sup>nd</sup> November 2015 agreed the terms and conditions for appointing a new clerk. The conclusion was the post to be 30 hours per week (1560 hours per year) at spinal points 29 to 34, with the appointee eligible to join the Local Government Pension Scheme. This minute was circulated and received by the Full Council in Part II confidential meeting on 12 November 2015 at which Cllr Lewis was present. The post has subsequently been advertised with these terms and conditions. Given this, it is strange that in January 2016 Cllr Lewis continues to make the point about the massive overpayment of the Clerk.

**6. I comment on Cllr Lewis's point 72.** I do not understand this. As far as I am aware, the only written statements from Cllr Lewis about not pursuing the allegations of criminal behaviour are under the heading '*Possible criminal acts by the clerk*' in his letter pc203 of 12<sup>th</sup> July. This is certainly not an unconditional retraction. Indeed these statements were a major point in my complaint against Cllr Lewis (see point 4 of my initial statement). My point then, and still is now, that it is not proper for a Councillor to essentially say that if they are happy with any settlement made by the Council with the Clerk, he will not independently pursue previously raised criminal allegations against the Clerk, but if he is not satisfied, he will do so.

**6. I comment on Cllr Lewis's point 56.** Cllr Lewis refer to a '*breakdown in communications which he (ie: myself) has contributed to*'. It appears that the paragraph 26 point mentioned here is to do with the correctness of some payments (stated in point 51). As stated in my point 4 above, I am not entitled to disclose this information to an individual councillor.

It should be noted that at the May 2015 meeting (the Annual meeting) of the Parish Council, following the election, the Clerk was on sick leave and the Council could not obtain the services of a locum Clerk. As Chairman I asked for a volunteer to take the minutes. Cllr Lewis volunteered, this was accepted by the meeting and Cllr Lewis took the minutes and he and I subsequently worked together to finalise the minutes. This continued for each monthly Full Council meeting up to and including the November meeting after which the Council managed to appoint a locum Clerk. This, to me was done amicably and professionally, and seems to me to be contrary to a breakdown in relations. Cllr Lewis is currently a member of three council committees and has also been appointed to two working groups which also does not suggest a breakdown in relations.

**7. I comment on Cllr Lewis's point 96.** My complaint was based on Cllr Lewis's behaviour in July 2015. I do not believe that either the fact that this complaint may continue for a long time or that the Council will be appointing a new clerk provides reasons for me to withdraw the complaint. I also can not see how mediation can change the past.

M D Dennett

27 January 2016

# Written Decision of West Berkshire Council's Advisory Panel

<b>Date of the Advisory Panel:</b>	11 February 2016
<b>Reference Number :</b>	NPC4/15
<b>Member who this Decision relates to:</b>	Mr Christopher Lewis
<b>Person who made the original allegation:</b>	Mr Michael Dennett
<b>Authority:</b>	Stratfield Mortimer Parish Council
<b>Chair of the Advisory Panel:</b>	James Rees
<b>Other Members of the Advisory Panel:</b>	Adrian Edwards, Alan Macro, Tony Renouf
<b>Apologies:</b>	Mollie Lock, Richard Crumly, Darren Peace and Mike Wall
<b>Declarations of Interest:</b>	None
<b>Monitoring Officer:</b>	Andy Day
<b>Investigator:</b>	Elizabeth Howlett
<b>Clerk of the Advisory Panel:</b>	Moira Fraser
<b>Date Decision Issued:</b>	

## **Summary of the Original Complaint**

Dr Dennett, Chairman of Stratfield Mortimer Parish Council alleged that Councillor Lewis had breached section 3.1 of the Parish Council's Code of Conduct by failing to treat fellow Councillors and Officers with courtesy and respect and by engaging in bullying or intimidating behaviour (or behaviour which might be regarded as such). Dr Dennett provided the following as basis for his reasons that Councillor Lewis had breached the Code of Conduct:

- In a letter dated 10 July 2015 Councillor Lewis, used threatening language towards the chairman (Dr Dennett) and the vice-chairman of the Parish Council (Councillor Julian Earl).
- In the same letter Councillor Lewis refers to stating points publicly on Facebook pages in relation to the cost of clerking. However, this had previously been viewed as harassment of the Council and the Clerk by independent advisers.
- The email sent on the 12 July 2015 repeated similar points, however it also made reference to unsubstantiated claims that the Parish Clerk had acted in a criminal manner.

## **Outcome of the Initial Assessment**

The complaint which was received on the 12 August 2015 and was initially assessed on 10 September 2015 by the Monitoring Officer (David Holling) and an Independent Person (Lindsey Appleton) of West Berkshire Council.

They concluded that in this case:

- while not making any findings of fact, if the allegations were substantiated they may constitute a breach of the Code of Conduct and therefore the allegation should be referred for investigation. The Monitoring Officer concluded that a reasonable person could interpret the comments and tone used as being intimidatory.
- This was a complex and longstanding issue and it would therefore be appropriate for an independent investigator to look at the facts in so far as they were relevant to this particular complaint.

## **Investigation**

Ms Elizabeth Howlett was appointed to undertake the investigation on behalf of the Monitoring Officer. She interviewed the complainant, the subject member, the Vice Chairman of the Parish Council (Councillor Julian Earl) and Councillor Tony Butcher (The Chairman of the Grievance Panel that dealt with the grievance lodged by the Clerk). The Investigator also considered the Parish's Code of Conduct, minutes of a number of meetings, letters and emails relevant to the complaint. She also considered the original complaint, the subject member's response to that complaint and the Initial Assessment Notice.

Ms Howlett's final report was submitted to the Council on the 29<sup>th</sup> January 2016 after relevant parties had had the opportunity to comment on it.

## Conclusion of the Independent Investigator

- 1. Did Councillor Lewis use threatening language towards the Chairman (Councillor Dennett) and the Vice-Chairman (Councillor Julian Earl) in his letter of 10<sup>th</sup> July 2015?** Yes. Councillor Dennett and Councillor Earl both considered the language threatening and I agree with them.
- 2. Did the reference in the letter of 10<sup>th</sup> July 2015 to stating points publicly on Facebook in relation to the cost of clerking amount to harassment of the Council and the Clerk?** No. An organisation cannot be harassed and I do not believe this specific threat alone amounted to harassment of the clerk. There is an issue about the confidentiality of the information at that time. It is legitimate for both the public (and councillors) to challenge costs. The problem here is the manner and timing of that challenge. The threat to go public on Facebook does fall within the definition of bullying under the Code of Conduct but it has to be taken in context with everything else. This one threat would not in itself amount to harassment.
- 3. Did the letter of 12<sup>th</sup> July 2015 compound the issue by repeating the same points but, in addition, also make reference to unsubstantiated claims that the Parish Clerk had acted in a criminal manner?** Yes. The language is threatening. The reference to stating views on Facebook is made again. There are allegations with no facts put forward to prove the substance of the allegations.
- 4. Is there any evidence to justify the allegations of criminal behaviour?** No. It is interesting that Councillor Lewis is prepared to “let the matters drop if the settlement is satisfactory”. This approach has continued throughout the investigation. This implies an attempt to secure a bargaining position which is unacceptable and wholly inappropriate. The willingness to compromise suggests to me that Councillor Lewis is well aware that the allegations are not of any substance. Councillor Lewis has also challenged why the question of whether the allegations were justified were part of a Code of Conduct investigation. To be clear, the allegations were a key reason the complaint was made. It was therefore necessary to establish the background to these allegations.

## Decision of the Advisory Panel

In respect of complaint NPC4/15 the Advisory Panel concurred with the findings of the Investigator as set out above and agreed to refer a recommendation to the Governance and Ethics Committee who would make a final determination on this matter.

The Panel accepted the fact that the letter of the 10<sup>th</sup> July 2015 might have been sent in error albeit that there did not appear to be any attempt to retract it.

The Panel concurred with the comments made by the investigator that ‘Councillor Lewis needs to reflect and consider carefully the impact that the language and tone he uses actually has on people’. The Panel also concurred with the comment from the investigator that ‘This does not mean that Councillor Lewis does not raise very useful

points and that the council could not benefit from his enthusiasm to follow correct processes and procedures’.

The Advisory Panel did not identify any areas of the Investigator’s report that required further clarification.

The Advisory Panel recommended that the following people be invited to attend the Governance and Ethics Committee on 14 March 2016 where the matter will be determined:

1. Investigator – Mrs Elizabeth Howlett
2. Complainant – Mr Michael Dennett
3. Subject Member – Mr Christopher Lewis
4. Councillor Julian Earl
5. Councillor Tony Butcher

The Advisory Panel recommended that if the Governance and Ethics Committee concurred with the finding that a breach of the Code of Conduct has occurred the Panel would recommend that the following sanctions be applied:

1. A formal letter be sent from the Chairman of the Governance and Ethics Committee to the Subject Member about the impact his language and tone was having.
2. A Public Notice be placed in local newspaper and on the Council’s website
3. The Monitoring Officer write to the Parish Council to recommend that the Subject Member be sent on an ‘enhancement of interpersonal communications’ course, funded by the Parish Council, before resuming any duties on the Parish Council Committees.

### **Right to Appeal**

Under the revised Localism Act 2011 there is no appeals mechanism in place. Parties may challenge the decision by way of Judicial Review in the High Court. Parties are advised to seek independent legal advice prior to pursuing this option

### **Sanctions Which Can be Applied to Councillors Deemed to Have Breached the Code of Conduct**

- (i) A formal letter to the member from the Chairman of Governance and Ethics Committee indicating the failure to comply with the Code.
- (ii) Removal of a member from a particular committee which can only be achieved in consultation with the Group Leader of the members' party.
- (iii) Formal censorship motion via Council initiated by the Chairman of the Governance and Ethics Committee.
- (iv) A formal press release sanctioned by Governance and Ethics Committee summarising the breach.
- (v) A local resolution acceptable to the complainant and member and sanctioned by Governance and Ethics Committee.

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# **Stratfield Mortimer Parish Council**

## **CODE OF CONDUCT FOR MEMBERS OF STRATFIELD MORTIMER PARISH COUNCIL**

### **1. INTRODUCTION**

- 1.1. This Code of Conduct was adopted by Stratfield Mortimer Parish Council (The 'Council') at its meeting on 13th September 2012 pursuant to the Localism Act 2011 and its duty to promote and maintain high standards of conduct by members and co-opted members of the Council. It will come into immediate effect.

### **2. APPLICATION**

- 2.1. This Code of Conduct applies to you as a member of this Council when you are acting or purporting to act in your role as a member and you have a responsibility to comply with the provisions of this Code.

- 2.2. This Code of Conduct is consistent with and based upon the following principles:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

The above terms are expanded at the end of this Code under the heading 'The Principles'.

- 2.3. Should a complaint be made against you in your role as a Councillor it will be dealt with in accordance with the Localism Act 2011 and its supporting regulations.

### **3. GENERAL OBLIGATIONS**

When acting or purporting to act in your role as a member of the Council, you must have regard to the following obligations. If you are not acting in your role as Councillor then no breach of the Code is likely to occur:

#### **RESPECT**

- 3.1. Treat members, officers, members of the public and service providers with courtesy and respect and do not engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation.

#### **BRIBERY ACT 2010**

- 3.2. Ensure that you are aware of and comply with the requirements which the Bribery Act 2010 places on you in your role as a Member and on the Council.

#### **DISCLOSURE OF INFORMATION**

- 3.3.1. Do not disclose information given to you in confidence by anyone or information acquired by you which you believe or are aware is of a confidential nature.

- 3.3.2. You may disclose such information where:-

- (i) you have the consent of a person authorised to give it
- (ii) you are required to do so by law
- (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice
- (iv) the disclosure is reasonable and in the public interest
- (v) is made in good faith and in compliance with the reasonable requirements of the Council or "its professional advisers".

#### **ACCESS TO INFORMATION**

- 3.4. Do not prevent another person from accessing information if that person is entitled to do so by law.

#### **DECISION MAKING**

- 3.5. When involved in the decision making of the Council:

- 3.5.1. Have regard to any advice provided to you by the Council's Responsible Finance Officer/Proper Officer (Clerk) to the Parish Council pursuant to their statutory duties.

- 3.5.2. Give reasons for the decisions in accordance with any legal requirements or reasonable requirements of the Council.

#### **USE OF INFORMATION**

- 3.6. Do not improperly use knowledge gained solely as a result of your role as a member for the advancement of your disclosable pecuniary interests.

PUBLICITY

3.8. Have regard to the applicable Local Authority Code of Publicity under the Local Government Act 1986.

**4. DISCLOSABLE PECUNIARY INTERESTS AND INTERESTS OTHER THAN DISCLOSABLE PECUNIARY INTERESTS**

4.1. Disclosable Pecuniary Interests

4.1.1. By virtue of the Localism Act 2011 and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 you must disclose and register disclosable pecuniary interests as defined in the foregoing legislation by notifying the Proper Officer (Clerk) **within 28 days**

- (a) the adoption of this Code or
- (b) becoming a member of the Council or
- (c) becoming aware of such an interest

4.1.2. Failure to disclose such interests may result in prosecution by which could result in a fine not exceeding £5,000.00 (Level 5 on the Standard scale).

4.1.3. A Disclosable Pecuniary Interest [DPI] is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife or a person with whom you are living as if you are civil partners). The descriptions of disclosable pecuniary interests are set out in Appendix 1 to this Code of Conduct.

4.2. Other Interests

4.2.1. You must, within 28 days of:

- (a) this Code being adopted by or applied ; or
- (b) your election or appointment to office (where that is later),

notify the Proper Officer (Clerk) in writing of the details of your other personal interests, where they fall within the following descriptions, for inclusion in the register of interests.

4.2.2. You have a personal interest in any business of your authority where either:

- (a) it relates to or is likely to affect
  - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
  - (ii) any body
    - (aa) exercising functions of a public nature;
    - (bb) directed to charitable purposes; or

## Stratfield Mortimer Parish Council

- (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
- (iii) any easement, servitude, interest or right in or over land which does not carry with it a right for you (alone or jointly with another) to occupy the land or to receive income.

### 4.3. Disclosure of interests

4.3.1. Subject to sub-paragraphs 4.3.2 to 4.3.5, where you have a personal interest described in paragraph 4.2 above or in paragraph 4.3.2 below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

### 4.3.2. You have a personal interest in any business of your authority

- (i) where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a *relevant person* to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision, or
- (ii) it relates to or is likely to affect any of the interests you have registered as a disclosable pecuniary interest.

In sub-paragraph 4.3.2, a *relevant person* is:

- (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000.00; or
  - (d) any body of a type described in paragraph 4.2.2(a)(i) or (ii).
- (3) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 4.2.2(a)(i) or 4.2.2(a)(ii)(aa), you need only disclose to

## Stratfield Mortimer Parish Council

the meeting the existence and nature of that interest when you address the meeting on that business.

- (4) Where you have a personal interest but, by virtue of paragraph 5, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (5) Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

### 4.4. Register of interests

4.4.1. Any interests notified to the Proper Officer (Clerk) will be included in the register of interests. A copy of the register will be available for public inspection and will be published on Stratfield Mortimer Parish Council's website.

### 4.5. Non participation in case of pecuniary interest

- (1) Where you have a personal interest in any business of your authority you also have a pecuniary interest in that business where the interest is one 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 of the public interest and where that business;
  - (a) affects your financial position or the financial position of a person or body described in paragraphs 4.2.2 ;or
  - (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph.
- (2) Subject to paragraph (3) and (4), where you have a pecuniary interest in any business of your authority;
  - (a) you may not participate in any discussion of the matter at the meeting.
  - (b) you may not participate in any vote taken on the matter at the meeting.
  - (c) if the interest is not registered, you must disclose the interest to the meeting.
  - (d) if the interest is not registered and is not the subject of a pending notification, you must notify the Proper Officer (Clerk) of the interest within 28 days.

- (3) Where you have a pecuniary interest in any business of your authority, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

## **5. SENSITIVE INTERESTS**

- 5.1. Where a member is concerned that the disclosure of the details of an interest (either a DPI or any other interest which the member is required to disclose) at a meeting or on the Register of Members' Interests, and such disclosure would lead to the member or a person associated with him/her being subject to violence or intimidation, the member may request the Monitoring Officer agree that such interest is a sensitive interest.
- 5.2. If the Monitoring Officer agrees that the interest is a sensitive interest the member must still disclose the existence of the interest at a relevant meeting but the member is not required to provide the details of the sensitive interest during the meeting. The Monitoring Officer shall also exclude the details of the sensitive interest from the published version of the Register of Members' Interests.

## **6. DISCLOSURE AND PARTICIPATION**

- 6.1. Should you have a disclosable pecuniary interest you MUST NOT take part in the decision making process of the Council and in order to ensure transparency you must withdraw from such process as regards that DPI.
- 6.2. The Localism Act 2011 makes participation in such matters if you have a DPI a criminal offence.

## **7. GIFTS AND HOSPITALITY**

- 7.1. You must disclose and record any gift or hospitality you receive in your capacity as a member of the Council in excess of £25.00. Such disclosure should be made in writing or by email to the Monitoring Officer in accordance with the Council's Protocol on Gifts and Hospitality.

## **8. DISPENSATIONS**

- 8.1. Under Section 33 of the Localism Act 2011 on a written request made to Proper Officer (Clerk) the Members who have a disclosable pecuniary [or other interest] may apply for a dispensation.

The categories in which a dispensation can be granted are as follows:-

- (i) That so many Members of the decision making body have Disclosable Pecuniary Interests in a matter that it would "impede" the transaction of the business of that body. In practice this means the decision making body would be inquorate as a result or

- (ii) It is in the interests of the inhabitants in the Council's area to allow the member to take part or it is otherwise appropriate to grant a dispensation.

## 9. INTERPRETATION

"A Co-opted member of any committee, sub-committee or working party of the Council", means a person who is not a member of the Council but who:-

is entitled to vote on any question which is to be decided at any meeting of the committee or sub-committee.;

- (a) is a member of, and represents the Council on, any joint committee or joint sub-committee;

"Disclosable Pecuniary Interests (DPI)" means those interests prescribed by the Secretary of State as such under the Localism Act 2011 and set out in Appendix 1 to this Code of Conduct.

"Other Interests" means interests other than DPI's which a member is required (by law) to disclose.

"Meeting" means any meeting of:-

- (a) the Council;
- (b) any of the Council's Committees, sub-committees or working parties;

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members.

"Member" includes a co-opted member.

"Bullying and intimidating behaviour" means offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim's confidence, capability and health.

Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs, (but within the scope of the Code of Conduct).

It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a member will be found guilty of bullying when both parties have contributed to a breakdown in relations.

## THE PRINCIPLES

(referred to in paragraph 2.2 above)

- **Selflessness**  
Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
- **Honesty and Integrity**  
Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
- **Objectivity**  
Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.
- **Accountability**  
Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.
- **Openness**  
Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
- **Leadership**  
Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.



(In the extracts from the Regulations below, 'M' means you, when acting as a member of the Council, and 'relevant person' means you and your partner, as above)

<i>Subject</i>	<i>Prescribed description</i>
<i>Employment, office, trade, profession or vacation</i>	<p><i>Any employment, office, trade, profession or vocation carried on for profit or gain.</i></p> <p><i>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.</i></p> <p><i>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</i></p>
<i>Contracts</i>	<p><i>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority -</i></p> <p><i>(a) under which goods or services are to be provided or works are to be executed; and</i></p> <p><i>(b) which has not been fully discharged.</i></p>
<i>Land</i>	<p><i>Any beneficial interest in land which is within the area of the relevant authority.</i></p>
<i>Licences</i>	<p><i>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.</i></p>
<i>Corporate tenancies</i>	<p><i>Any tenancy where (to M's knowledge)—</i></p> <p><i>(a) the landlord is the relevant authority; and</i></p> <p><i>(b) the tenant is a body in which the relevant person has a beneficial interest.</i></p>

Securities

*Any beneficial interest in securities of a body where—*

- (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and*
- (b) either—*
  - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or*
  - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.*

These descriptions on interests are subject to the following definitions;

*“the Act” means the Localism Act 2011;*

*“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;*

*“director” includes a member of the committee of management of an industrial and provident society;*

*“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;*

*“M” means a member of a relevant authority;*

*“member” includes a co-opted member;*

*“relevant authority” means the authority of which M is a member;*

*“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;*

*“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;*

*“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.*

# Complaint about an elected Councillor's Conduct Form

Please read the **Guidance Notes** before completing this form.

Use this form to tell us and send it to:

Monitoring Officer, Legal Services, West Berkshire Council, Council Offices, Market Street, Newbury RG14 5LD

## Your details

### 1. Please provide us with your name and contact details

<b>Title:</b>	Dr	
<b>First Name:</b>	Michael	
<b>Last Name:</b>	Dennett	
<b>Address:</b>	34 Victoria Road	
	Mortimer Common	
	Reading	
	<b>Postcode:</b>	RG7 3SE
<b>Daytime telephone:</b>	0118 9332985	
<b>Evening telephone:</b>	0118 9332985	
<b>Mobile:</b>	07765837874	
<b>Email address:</b>	m.d.dennett@reading.ac.uk	

### 2. Please tell us which complainant type best describes you:

- |   |  |
|---|--|
| <input type="checkbox"/> Member of the public   | <input type="checkbox"/> Local Authority monitoring officer          |
| X An elected or co-opted member of an authority | <input type="checkbox"/> Other council officer or authority employee |
| <input type="checkbox"/> Member of Parliament   | <input type="checkbox"/> Other (please describe)                     |

If 'other' please state:

**3. Please provide us with the name(s) of the Councillor(s) you believe have breached the Code of Conduct and the name of their authority:**

Title	First name	Last name	Council or authority name
Cllr	Christopher	Lewis	Stratfield Mortimer Parish Council

**4. Please explain in detail what the Councillor has done that you believe breaches the Code of Conduct. You also need to state which areas of the Code of Conduct you believe the Councillor has breached. It is important that you attach any supporting information to this form. Use a separate sheet if there is insufficient space.**

I believe that Cllr Lewis has breached the Code of Conduct of Stratfield Mortimer Parish Council, with regard to treating others with respect and not acting with integrity and properly in his role as a Councillor.

My detailed explanation is given in the attached file: Statement\_re\_Lewis.pdf.

I also attach the following documents referred to in the statement with their filenames:

Letter/ email from Cllr Lewis to Cllr Dennett 10 <sup>th</sup> July 2015	pc202.docx
Letter from Cllr Lewis to Cllr Dennett 12 <sup>th</sup> July 2015	scanpc203.pdf
Letter/email from Cllr Lewis to Cllr Dennett 24 <sup>th</sup> July 2015	pc204.pdf
Email from Cllr Lewis to Cllr Dennett 28 <sup>th</sup> July 2015	pensions.pdf

As Cllr Lewis in the above communications refers to his letters to SMPC (written as a member of the public) of October 2014 and March 2015, I also attach these:

October 2014	pcapp2.pdf
March 2015	pcapp4a.pdf

I also attach the Stratfield Mortimer Parish Council Code of Conduct

SMPC\_Code\_of\_Conduct\_2012pdf.pdf.pdf

M D Dennett  
 Chairman  
 Stratfield Mortimer Parish Council  
 12 August 2015



## 5. Confidentiality

In the interests of fairness and natural justice and in accordance with the Localism Act 2011, we believe Councillors who are complained about have a right to know who has made the complaint. As part of the process the Councillor who has been complained about **will be** informed about who has complained about them and the nature of that complaint/ We are unlikely to withhold your identity or the details of your complaint unless you have good reason (see **Guidance Notes**).

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

## 6. Equality Monitoring

It will help us to give a fair and equal service to everyone if you answer the following monitoring questions - we will keep this information confidential.

However you do not have to answer these questions if you do not want to.

### What is your age:

- |                          |          |                          |             |
|--------------------------|----------|--------------------------|-------------|
| <input type="checkbox"/> | Under 18 | <input type="checkbox"/> | 45 to 54    |
| <input type="checkbox"/> | 19 to 24 | <input type="checkbox"/> | 55 to 64    |
| <input type="checkbox"/> | 25 to 34 | X                        | 65 or older |
| <input type="checkbox"/> | 35 to 44 |                          |             |

### Are you:

- |   |      |                          |        |
|---|------|--------------------------|--------|
| X | Male | <input type="checkbox"/> | Female |
|---|------|--------------------------|--------|

**Do you consider yourself as having a disability or longstanding illness - longstanding means anything that has troubled you over a period of time or that is likely to affect you over a period of time:**

- |                          |     |   |    |
|--------------------------|-----|---|----|
| <input type="checkbox"/> | Yes | X | No |
|--------------------------|-----|---|----|

### If yes, what type of disability do you have:

- |                          |                    |                          |                              |
|--------------------------|--------------------|--------------------------|------------------------------|
| <input type="checkbox"/> | Affecting mobility | <input type="checkbox"/> | Affecting your mental health |
| <input type="checkbox"/> | Affecting hearing  | <input type="checkbox"/> | Learning disability          |
| <input type="checkbox"/> | Affecting vision   | <input type="checkbox"/> | Other                        |

If 'other' please state:

**Do you have difficulty in accessing any of West Berkshire Council's services because of your disability:**

- |                          |     |                          |    |
|--------------------------|-----|--------------------------|----|
| <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
|--------------------------|-----|--------------------------|----|



**Would you describe yourself as:**

X White British

White Other

Black or Black British

Asian or Asian British

Mixed Race

Chinese

Other

If 'other' please state:



**Statement by Councillor Mike Dennett, Chairman Stratfield Mortimer Parish Council as part of Section 4 of the Complaint Form completed by me in respect of the actions of Councillor Christopher Lewis also Stratfield Mortimer Parish Council**

Mr Lewis was elected a Councillor of Stratfield Mortimer Parish Council at the election of the whole Council on 7<sup>th</sup> May 2015. He was previously a Parish Councillor in Stratfield Mortimer for many years up to 2007. I was elected Chairman of the Council at the Annual Meeting of the Council on 21st May 2015.

The Code of Conduct for Stratfield Mortimer Parish Council is attached to this document. It was adopted on 13<sup>th</sup> September 2012 and has been signed by all Councillors since then and has been signed by all elected councillors following the May 2015 election.

I believe that the actions and events described below have contravened Section 3.1 of the Code of Conduct. This takes into account the relevant rules of interpretation set out in Section 9 of the Code of Conduct. I further consider that some of the points described below contravene the requirement for integrity and specifically that a Parish Councillor should not behave improperly in connection with Parish business.

It is necessary to set out briefly the background to the events which form the subject of this complaint. Our Parish Clerk, Jayne Kirk, has been on sick leave since March 2015 with stress. A grievance has been raised by Mrs Kirk against the Council as her employer and that is being dealt with in accordance with standard procedures. Her legal advisers have also indicated a claim against the Council possibly amounting to constructive dismissal. I consider it relevant to this particular complaint that a main part of her grievance is the alleged harassment caused by Mr Lewis when a member of the public from 2007 to 2015. The Council has often considered what independent advisers have described as a campaign against the Council and the Clerk by Mr Lewis during that period. One of the allegations from the Clerk is that the Council failing to end the harassment from Mr Lewis is a major factor in her considering a claim for constructive dismissal.

As parts of this complaint refer to the views that Councillor Lewis has now expressed currently in connection with the Clerk and the current legal proceedings and the way they have been put to me as an individual Councillor and Chairman, that background is I consider relevant to this complaint.

Four emails / letters sent to me by Councillor Lewis dated 10<sup>th</sup>, 12<sup>th</sup>, 24<sup>th</sup> and 28<sup>th</sup> July 2015 are attached and form the basis for this complaint. In the first two of these communications Cllr Lewis refers to his letters to the Council of October 2014 and March 2015 written whilst a member of the public. I have therefore also attached these.

I do not complain of the raising so many detailed procedural matters when the Clerk is on sick leave (see letters of 10<sup>th</sup> July and 24<sup>th</sup> July). The Council is in the process of updating its policies as recorded in the minutes of the Finance and General Purposes Committee of 3 November 2014 at which Mr Lewis was present as a member of the public. The Clerk's absence has slowed this process, but the situation will be considered at the next meeting of Finance and General Purposes Committee on 8<sup>th</sup> September 2015.

It is the tone and approach and some specific comments in the communications, written whilst a Councillor, which I consider constitute breaches of the Code of Conduct by Councillor Lewis.

1. I regard the end of the first paragraph of the letter dated 10<sup>th</sup> July 2015 as threatening me and seeking to influence the work of the Council and the position of the Chairman and Vice Chairman (Councillor Julian Earl) in an improper way.
2. At the end of Section 4 of letter dated 10<sup>th</sup> July, there is a reference to stating points publicly on Facebook pages. This is said to be specifically in connection with the cost of clerking. I consider it relevant that the cost of clerking was a constant factor raised over the 8 years by Mr Lewis as a member of the public which was considered by the Council and by independent advisers as harassment of the Council and the Clerk and action was taken accordingly.
3. The email dated 12<sup>th</sup> July 2015 repeats a number of points from the letter dated 10<sup>th</sup> July 2015. Again, under Section 2 there is a threat to contact the Auditors in connection with failures by the Clerk in respect of financial regulations. Those matters have been the subject of constant correspondence. They have been refuted by the Council and the continual raising of them is a central point in the Clerk's claim against the Council.
4. I regard the section of the email dated 12<sup>th</sup> July 2015, referring to possible criminal acts by the Clerk as wholly improper and outside the conduct appropriate to a member of the Council. The reference to potential criminal acts has been made before by Mr Lewis as a member of the public including his mentioning possible fines and prison sentences which could apply. I and other Councillors who have worked on these matters do not consider these allegations have substance. The Full Council agreed with this view when they were presented to them during Part II Confidential Council meetings in February and March 2015. However, in respect of this specific complaint, it is the further associated wording which I consider creates a breach of the Code of Conduct, specifically the requirement to act properly and with integrity by a Councillor. I cannot see that it is proper for a Councillor to essentially say that if they are happy with any settlement made by the Council with the Clerk, he will not independently pursue previously raised criminal allegations against the Clerk but if he is not satisfied, he will do so. That is in specific connection with a claim by the Clerk against the Council based to a very large extent on the activity of Mr Lewis and his behaviour as a member of the public over a period of seven years;
5. It is recognised that the most recent email (28th July) attached indicates that he is temporarily willing not to "go public" but even that I consider to be improper in that it is linked to his view of the Council's position on the current employment matters.
6. The sections on the Clerk's pension (communications of 10<sup>th</sup> and 12<sup>th</sup> July) do not agree at all with the Council's records and appears to be based on supposition rather than fact and I consider questions integrity of Councillor Lewis. A report on Pension



arrangements will be given to the next meeting of Finance and General Purposes Committee.

All of the points set out above indicate in my view that Councillor Lewis in his actions towards me as an individual Councillor and Chairman has breached the requirement for respect at 3.1 of the Code of Conduct. I do not consider I have been dealt with sufficient courtesy and respect but in particular, I regard the behaviour and wording of the emails set out above as intimidatory and intending to be intimidatory and amounting to bullying. I am aware that bullying would not normally be an interpretation for one or two incidents. Here we have at least two incidents but the background set out above can, I think, be taken into account in considering the exact interpretation of Councillor Lewis's behaviour as a Councillor.

Further, I believe that the various points considered above provide clear evidence that Councillor Lewis is not acting with integrity and properly in his role as a Councillor and is therefore also contravening the Code of Conduct in this respect.

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**Statement by Cllr. Chris Lewis, Stratfield Mortimer Parish Council ("SMPC") in response to statement by Cllr. Mike Dennett, SMPC, dated around 12<sup>th</sup> August 2015.**

- 1 On 12<sup>th</sup> August 2015 I received an electronic copy of the above complaint with a request that I submit my own information by 28<sup>th</sup> August. Owing to other commitments and the seriousness of the allegation this is simply not long enough. I have done my best given these practical constraints but there is some unnecessary repetition for which I apologise. I am advised that more procedural information is available on West Berkshire Council's web site. I have not yet looked at this and must reserve my position on a questionable timescale and any other matters which may arise.
- 2 In summary I see the complaint as relating to a single letter, two sentences in another and an e-mail which does not say what Cllr. Dennett claims. Unfortunately the bulky remainder of the statement refers to other unsubstantiated allegations; evidence in support is not attached to the complaint as it should be. My primary case is that they are assertions where no attempt has been made to prove them; as such they should be ignored. However given the seriousness of the allegations I have no choice but to present an alternative argument and to respond in more detail.
- 3 Cllr. Dennett's statement is three pages long. For convenience I have labelled the paragraphs on page one and the first paragraph on page 2, A to H inclusive. I have left the numbering on page 2 as it is, though for ease of reference I will insert an 'MD'. The final two paragraphs on page 3 are J and K. Attachments are indicated by brackets thus {No.}. The complaint appears to be handled at different levels by West Berkshire Council; for ease of reference I have grouped these together as "West Berks". Cllr. Dennett has referred to 'sections' of the Code of Conduct ("Code") though these should be 'paragraphs'.
- 4 Save that I strongly deny any breach of the Code, paragraphs A to C inclusive are accepted.
- 5 The references to constructive dismissal and other matters in paragraph D, have been put to SMPC on a without prejudice basis in an ongoing employment dispute. I find it surprising that that Cllr. Dennett should mention them in what I understand to be a public forum. Whilst verbal summaries of the complaints and subsequent dealings with the Clerk have been given at meetings I have not had the opportunity to study them and it is therefore unfair for Cllr. Dennett to cite them in his statement. Cllr. Dennett should provide me with copies of all cited documents before his complaint proceeds. I submit that it is likely that by making these statements Cllr. Dennett has breached his obligations in respect of the confidentiality paragraphs of the Code and also breached SMPC's obligations in regard to evidential privilege in an ongoing legal dispute. I therefore further submit that West Berks should completely ignore paragraph D.
- 6 Cllr. Dennett makes reference to 'independent advisers' and 'harassment'. Again I am entitled to see the evidence. I submit that West Berks should ignore all unsubstantiated allegations when it considers the way forward. I note that SMPC has paid money to Bethan Osborne and enquire whether this is the independent adviser; in the past she has been in the pay of the Society of Local Council Clerks in a case against SMPC. She cannot therefore give independent advice; in any event I enquire what the money was for.
- 7 With regard to paragraphs E to G, I agree with Cllr. Dennett that it is necessary for West Berks to see my letters of 22<sup>nd</sup> October 2014 and 4<sup>th</sup> March 2015. To make sense of the story West

Berks also needs to see my letter of 30<sup>th</sup> January 2015 together with the three March responses from SMPC {1 to 4}.

- 8 Whilst admitting discussion of minor correspondence prior to May 2015 is necessary, I find it objectionable that Cllr. Dennett makes five references to the period from 2007 to 2015. [1] He has not attached a shred of evidence to support his contentions. [2] He was not a councillor until well after 2007 and it is therefore unsubstantiated hearsay. [3] Looking at the conclusions drawn it seems that I have been tried in my absence which is a breach of Article 7 of the Human Rights Act; I will provide authority for this statement if it is required. [4] My understanding is that West Berks does not have any jurisdiction over my conduct in this period. I therefore submit that, save for the cited correspondence, West Berks should ignore all references to this period.
- 9 My letter of 10<sup>th</sup> July 2015 warrants an explanation. It is only a draft and was completed by 8<sup>th</sup> July. I did not want to put Cllr. Dennett under unnecessary pressure before the main meeting on 9<sup>th</sup> July; after that there was a two month break which should have given him ample time to resolve the issues. This explains why it is dated 10<sup>th</sup>. I did discuss the draft letter with a friend. In the event I did not like the first paragraph and thought it best to split the letter into controversial and less controversial matters. An inspection reveals that the letters of 12<sup>th</sup> and 24<sup>th</sup> July have been cut and pasted from the letter of 10<sup>th</sup> July with the controversial first paragraph deleted. It is possible that I attached an incorrect document to an e-mail but I have checked my e-mail attachments in the period and do not believe this to be the case. The letter is unsigned. I do not know how it came into Cllr. Dennett's possession. If I had known it was in his possession I would not have sent to two subsequent letters because they say the same things without the first paragraph. The evidential value of the 10<sup>th</sup> July letter is questionable but I cannot go further until I know how it was served on Cllr. Dennett.
- 10 In summary I had decided by October 2014 that I would stand as a Councillor in the election that was to be held the following May. I had been openly critical of SMPC in respect of the cost of clerking and its poor procedures. To get elected I thought it best to produce a public document to reflect these criticisms. I believe that the excessive cost of clerking is a fair election issue. Naturally I was a little concerned that anything contentious could be regarded as libellous. With this in mind I gave the core facts to SMPC in October stating that if it disagreed with them it would be in both our interests to say so. Some four months later I had not received a substantive reply and I subsequently asked in the 4<sup>th</sup> March letter whether there is any good reason why I should not state my concerns publically. In the run-up to the election I prepared a draft statement which I intended to put on the Mortimer Village Partnership Facebook web site. I thought that it would be controversial so I sent an advance copy to the site Administrator who suggested a few presentational changes and was quite happy with it. It is my understanding that it is this Facebook entry that has upset the Clerk. If SMPC now query any inaccuracies or publication issues it should have done so last October.
- 11 In G, I note that Cllr. Dennett makes no complaint in respect of my letter 24<sup>th</sup> July and presumably the procedural part of the 10<sup>th</sup> July letter. In May I had a certain reluctance to sign the acceptance form because the Code had been amended by SMPC in such a way that it did not comply with statute. On 19<sup>th</sup> May 2015 I had an informal meeting with Cllr. Dennett and there was an express verbal agreement that the re-drafting would be dealt with as a matter of urgency. Minutes for the Financial and General Purposes Committee are on the web site and on 1<sup>st</sup> July 2014 it states that work on the entire suite is ongoing and will be complete by late August 2014.

- 12 Even though it is not part of the complaint, West Berks may care to glance at the letter of 24<sup>th</sup> July and in particular the procedures for confidential meetings. In my view SMPC is very poor procedurally.
- 13 From H, I conclude that Cllr. Dennett's complaint is restricted to the tone, approach and some specific comments in:
- .1 The last two sentences of the first paragraph of the 10<sup>th</sup> July letter.
  - .2 The whole of the 12<sup>th</sup> July letter.
  - .3 The e-mail of 28<sup>th</sup> July. The only reference in the body of the complaint is at MD5. West Berks should note that the e-mail is completely inconsistent with the allegation made by Cllr. Dennett.
- 14 The complaint refers to [1] bullying, [2] harassment, [3] intimidation and [4] lack of integrity. It gives no substantiated evidence in support of the words used. I will not provide a legal analysis of each term but I will quote some aspects which are freely available on the internet and are within the Code:
- .1 Bullying is mentioned in paragraph 9 of the Code. It states that minor isolated instances are unlikely to be considered as bullying. Paragraph J of the complaint Cllr. Dennett accepts that only two incidents are reported. One of these incidents is referred to in my paragraph 9 and cannot really be considered to be a genuine incident. Cllr. Dennett also refers to a completely unsubstantiated and disputed background; I fail to see how West Berks can include this within its considerations. Cllr. Dennett has produced very limited evidence in support of his contention and I therefore submit that the claim must fail.
  - .2 Harassment is defined in the Equality Act 2010 and includes conduct in relation to age/sex/race. Cllr. Dennett has failed to provide any evidence in support of his contention and I therefore submit that the claim must fail.
  - .3 Intimidation has been defined as intentional behaviour that would cause a person of ordinary sensibilities fear of injury or harm. In the case of spoken or written acts there can be no intimidation if the statement is true. Again Cllr. Dennett has failed to provide any evidence in support of his contention and I therefore submit that the claim must fail.
  - .4 Lack of integrity is also mentioned. Integrity is defined as being honest and having strong moral principles. I believe that I am scrupulously honest and have very strong moral principles. Again Cllr. Dennett has failed to provide any evidence in support of his contention Cllr. Dennett has failed to provide any evidence in support of his contention and I therefore submit that the claim must fail.
- 15 Turning to the cost of clerking and associated issues. It was my intention to ask the following questions at the next meeting which I think are fair and reasonable:
- .1 Why is regulation 7.2 {5} of the Financial regulations being ignored? From the format of the payment section of the minutes this seems to have occurred in May 2012; I can find no decision to amend the Financial Regulations around that time. Cllr Dennett has failed to address this major issue in his complaint.
  - .2 Whilst on sick leave, is the Clerk being paid in accordance with her contract of employment? At our meeting in May I showed Cllr. Dennett a copy of the contract of employment that I believe was effective in 2007 {6 and 7} and is for 87 hours per month or 1044 hours per year. I asked the above question and have yet to receive a straight answer. At the public meeting on 8<sup>th</sup> May 2014 which I attended (minute 14/101) there was a discussion on clerking overtime and it was mentioned

that the budget for clerking hours was 1500 per year. In the period 2012/2013, with full SMPC approval, I had several meetings with the then Chairman, Graham Puddephatt, in an attempt to try and resolve the issues between us. If the contract of employment has been increased to 1500 hours it would be incompatible with what was stated. I still have to accept that it may have been legitimately altered and if that is the case the majority of my concerns under this head disappear. It should be a fairly straightforward thing to resolve.

- .3 Was the Clerk's enrolment in a final salary pension scheme approved by the full council and was the Statutory Resolution given, if appropriate? I follow SMPC affairs fairly closely and I cannot recall having seen a Statutory Resolution.
  - .4 Are pension contributions being paid on non-contractual overtime? It has been stated that the Clerk is on a final salary scheme but I do not know which one. The most likely one is mentioned in my e-mail of 28<sup>th</sup> July ("the 2008 Scheme"). If so s. 4(2) states that pensionable pay does not include non-contractual overtime. I believe that other government final salary schemes say something similar. If contributions have not been paid on non-contractual overtime, there is no issue and I apologise. If this is not the case, money could have been paid out incorrectly over a number of years.
- 16 As a councillor I believe that I should be given full access to all figure. This has been refused. As a result I have carried out some very crude assessments. Also note that on the free part of CPALC there have been several reports of parish councils being charged an extra 30% on gross salary to cover the cost of the 2008 scheme. Copies of the annual return for 2014 and 2015 {8 and 9} are £31,897 and £38,168 in respect of staff costs. Crudely I have deducted £5000 for the custodian for each year giving approximately £27k and £33k in respect of clerk costs. If the Clerk is on SP 34 then her hourly rate is £15.00 which with 10% National Insurance and 8% pension gives £26,602; fairly similar to the first figure. If there is a 30% increase in pension on gross salary the figure becomes £33,362 which is similar to the second figure.
- 17 From the last two paragraphs I hope that West Berks agree with me that there are some worthwhile questions to be asked involving significant sums of money. My letter of 12<sup>th</sup> July (duplicating 10<sup>th</sup> July) gives Cllr. Dennett two months' notice of what could be some awkward questions and was genuinely intended to be helpful; if I were in his position I would regard this as a constructive act. I do not see how my action in this respect can amount to a breach of the Code. I accept that it is quite possible that from a financial perspective I have gone off on a complete tangent and everything is totally in order; in which case I will apologise.
- 18 In MD1 Cllr. Dennett refers to the end of the first paragraph of my letter of 10<sup>th</sup> May which he regards as threatening and improper. I have referred to this letter in my paragraph 9 and there is some doubt as to how the letter reached him. When I sent, what I thought was, the formal letter this paragraph was deleted indicating that there was no intent on my part. That being said, he has a copy and I may have to deal with it. I had previously asked him whether the Clerk was being paid in accordance with her contract of employment and did not get a straight answer. I had asked similar questions in respect of pension payments and procedures. My letter merely seeks to formalise the position. I have now read the offending two sentences several times and considered the factual background; I fail to see how it can possibly be a breach of the Code.
- 19 I have a number of issues with MD2. I believe that everything that I have quoted is from publically available documents. This indicates that SMPC is not providing value for money

and as such it is a legitimate election issue; if that is not the case SMPC should have explained this to me last October. On reflection and given the broader employment issue, I decided not to speak about these publically available facts and confirmed this to Cllr. Dennett; I thought this a helpful course of action.

- 20 Cllr. Dennett then makes the allegation that the cost of clerking was a constant factor raised over eight years by me. Apart from a Freedom of Information request, I do not believe that I have formally mentioned the cost of clerking until October 2014. I challenge Cllr. Dennett to provide evidence in support of his contention. I will explain how I can be so positive in this assertion. When I met Graham Puddephatt in 2012/3 we discussed the cost of clerking. After the meeting I looking at clerking vacancies on the internet and sent links to Graham, who was appreciative. I stopped doing it after I found two similar sized councils with identical adverts; I concluded that there was probably some recommendation by NALC which was not in the public domain. I attach a summary of the e-mails in spreadsheet form {10}. I could probably find the e-mails but I suspect that the links are no longer live. My main reason for writing the October letter was that I had not formally mentioned the cost of clerking and I wanted to give SMPC the opportunity to verify the facts. A single factually correct letter cannot possibly amount to harassment.
- 21 In MD3, Cllr. Dennett refers to constant correspondence in respect of financial regulations. It states that these have been refuted and are a central part of the Clerk's claim. West Berks may care to note paragraph 15.1 above. It is a fact that in breach of the Financial Regulations payments are being made to the Clerk which are not reported or ratified by the council. I only realised it when I recently read the Financial Regulations. I have never raised the point prior to my letter of 10<sup>th</sup> / 12<sup>th</sup> July 2015. Cllr Dennett must be asked to prove or withdraw this allegation. Unless meaningful explanations are given in the near future, in my view it would be irresponsible not to report my concerns to the auditors.
- 22 Regarding MD4, I will endeavour to explain the points that I have made. In paragraph 4 of my October 2014 letter I stated that by granting a dispensation, the Clerk may have committed a criminal act. In my letter of 30<sup>th</sup> January 2015, I questioned whether there was a correct alcohol licence at a SMPC event in Mortimer. In the same letter I also pointed out that by failing to co-opt a new councillor, SMPC were in breach of its statutory obligations; annoying but not criminal. On 9<sup>th</sup> March 2015 SMPC wrote back stating that I should raise my concerns in the January letter directly with the proper authorities. It has never dealt with the dispensation point. Cllr. Dennett now says SMPC have considered the matter and there is no substance which is at odds with his March letter. I submit that I must be entitled to see details of these conclusions. The reference to 'seven years' is ridiculous.
- 23 On consideration, I had previously decided not to proceed on these issues. My letter of 12<sup>th</sup> July states that I am happy to let matters drop. I put in the proviso that I wanted to be happy with any solution; this was reflective of my frustration at other matters not being dealt with properly. If Cllr. Dennett is unhappy with this, he should not have signed the letter of 9<sup>th</sup> March which expressly allows me to do it.
- 24 Regarding MD5 and 6, I have asked some simple questions and have not had an answer; I feel entitled to put in provisos. On pensions all that I have done is to give Cllr. Dennett advance notice of three questions that I intend to ask; there is no supposition as Cllr. Dennett claims.

- 25 I regard paragraphs J and K as mere unsubstantiated assertions and submit that West Berks should ignore them.
- 26 Coming to a conclusion, I fail to see how West Berks can proceed until Cllr. Dennett has answered the following simple questions:
- .1 Is the Clerk being paid in accordance with her contract of employment while she is on sick leave?
  - .2 Were all the correct procedures followed when the Clerk was enrolled on a final salary pension scheme?
  - .3 Are the correct contributions being paid to the pension and if not how long has this been going on?
- 27 As I see it, the evidence of the case against me is:
- .1 The two sentences at the end of the first paragraph of the 10<sup>th</sup> July letter: [1] I did not intend to send the letter. [2] Given Cllr. Dennett's failure to answer the above simple questions I think that the sentences are very reasonable. [3] At the year-end we are required to agree that there are robust financial controls in place; in my view there are not. I believe that the auditors should be advised of that fact now.
  - .2 Part 1 of the 12<sup>th</sup> July letter gives advance notice of questions that I intend to ask. I think this is a gentlemanly and responsible way to proceed.
  - .3 Part 2 of the 12<sup>th</sup> July letter refers to a straightforward breach of the Financial Regulations and is factually correct. I regard it as an important matter.
  - .4 Part 3 of the 12<sup>th</sup> July letter is a concession by me. The last part could be considered questionable but given the failure to respond to proper questions I believe it allowable. It is a minor point.
  - .5 Part 4 of the 12<sup>th</sup> July letter is factually correct. I had already withdrawn the contention part before commencement of these proceedings.
  - .6 The 28<sup>th</sup> July e-mail does not say what Cllr. Dennett claims.
- 28 With respect Cllr. Dennett's statement lacks coherent form. I do not believe that I have breached the Code in any way. If I am likely to be found guilty of a breach I require the points to be put clearly to me so that I can properly respond.
- 29 I believe that the facts stated in this statement are true.

**C. D. Lewis**

**26<sup>th</sup> August 2015**



Squirrels Run

10<sup>th</sup> July 2015

Dear Mike,

Well I have now returned as a councillor for two months and I am sure that you will agree that I have been on my best behaviour. That being said I remain very critical of certain aspects of the Council's activities. Rest assured that I only want what is best for the parishioners of Stratfield Mortimer; if I am wrong on anything I will admit it and if I am right I will expect change. There are two ways that we can proceed. Either both you and Julian can work together with me in a mature manner or alternatively I will be raise controversial agenda items and write critical letters to auditors; we have the summer break in front of us and the choice is yours.

I append a number of possible heads for discussion:

**1 Procedures.**

Your three main procedures contain incorrect amendments and are poor. We had a verbal agreement that the Code of Conduct issues would be resolved within three months of my signing the acceptance of office form in May. I have offered to update them and that offer remains open.

**2.1 Confidential meetings.**

The manner that these are held are wrong and possibly make any decisions reached invalid. Errors include:

1. No public resolution to exclude the public - SO 30.1.
2. No reason given to exclude the public – SO 30.1.
3. Minutes of previous meetings are not circulated and merely read out.
4. Minutes are not agreed by members – statutory obligation.
5. There is no resolution to approve and the minutes are therefore not properly signed
6. Minutes are not properly numbered – statutory obligation.
7. Minutes are not written in accordance with sound Data Protection principles.
8. Important and controversial documents are not distributed and merely read out.

2.2 A difficulty is that I can see that things are carried out incorrectly, but I am reluctant to put forward proposals because they may be at odds with any recommendation from NALC. To get around both this and para. 1, I would like to be given the Council's access details to both the NALC and SLCC web sites.

2.3 I am considering taking the CLCA clerking qualification which must be a benefit to the Council; it will be unnecessarily difficult with access to the above.

**3 Breach of Financial Regulations.**

Regulation 7.2 refers to payment of salaries and states that they can be made outside the regular cycle *'providing that each payment is reported to and ratified by the next available Council Meeting'*.

Chieveley Parish Council's Financial Regulations were updated in 2014 and the wording of Regulation 7.2 is identical.

You are failing to report these payments at all and it is therefore difficult to see how the council can claim to have robust financial controls.

**4 Cost of Clerking.**

For 2014/5 the cost of clerking is broadly £33k, last year it was £27k and other councils of similar size are spending £10k. Am I the only person who thinks that this is totally unacceptable and that the public should be openly advised of the facts?

You may care to revisit my letters of October 2014 and March 2015. You can then reconsider whether there is any reason why I should not state this publicly on the MVP Facebook page.

**5 Clerk's pension.**

In 2007 the Clerk was on a 'money purchase' scheme with her paying 5% of her gross pay and the Council matching it. I now understand that this has been transferred to a 'final salary' scheme. I guess that this is the Local Government Pension Scheme which was introduced by Statutory Instrument in 2008. You may note that it is optional and not mandatory for Councils to join it. From CPALC I understand this is costing 30% of gross salary and that the Parishioners could have significant ongoing obligations. I give you advance warning of three questions that I will ask:

1. At the time Keith Davies was chairman and on matters such as this he by-passed the main council and took executive decisions through the FGP Committee. Did the full council authorise the joining of this scheme and did it appreciate the financial implications?
2. In order to join the scheme there needs to be a 'Statutory Resolution' which amongst other things has to be publically posted for 28 days. Was this ever done?
3. Have pension contributions been paid in respect of non-contractual overtime?

**6 Two possible criminal acts by the Clerk.**

I previously raised this with you. Is it still your position that the Council will take no actions and leave it to me? I find this extraordinary.

I sincerely hope that over the next six weeks we can discuss this in a rational manner.

Yours truly

Chris.

12<sup>th</sup> July 2015

Dear Mike,

Regarding the employment issue currently before the Council I make the following statements:

1) Final salary pension scheme.

In 2007 the Clerk was on a 'money purchase' scheme with her contributing 5% of her gross pay and the Council matching it. I now understand that this has been transferred to a 'final salary' scheme. I guess that this is the Local Government Pension Scheme which was introduced by Statutory Instrument in 2008. You may note that it is optional and not mandatory for Councils to join it. From CPALC I understand this is costing 30% of gross salary and that the Parishioners could have significant ongoing obligations. I give you advance warning of three questions that I will ask:

1. At the time Keith Davies was chairman, and on matters such as this, he by-passed the main council and took executive decisions through the FGP Committee. Did the full council authorise the joining of this scheme and did it appreciate the financial implications?
2. In order to join the scheme there needs to be a 'Statutory Resolution' which amongst other things has to be publically posted for 28 days. Was this ever done?
3. Have pension contributions been paid in respect of non-contractual overtime?

2) Breach of Financial Regulations.

Regulation 7.2 refers to payment of salaries and states that they can be made outside the regular cycle '*providing that each payment is reported to and ratified by the next available Council Meeting*'.

Chieveley Parish Council's Financial Regulations were updated in 2014 and the wording of Regulation 7.2 is identical.

The Clerk as Responsible Financial Officer has failed to comply with this requirement; I regard this as a serious long term breach. Is there any good reason why I should not raise this and the last item with the Auditors?

Possible criminal acts by the Clerk.

I have advised you in the past of two possible criminal acts by the Clerk and you have stated that I should take up the issues independently. My view is that it is unfair on the Clerk to have these issues hanging over her. If I am happy with the overall settlement I am prepared to let the matters drop. If not, I will proceed independently. You may wish to factor this into any negotiations.

Cost of Clerking.

I have shown you the Clerk's contract of employment that was effective in 2007 for 1044 hours per year. I believe that she is currently being paid more than this. I have asked you the direct question as to whether she is currently being paid in accordance with her contract of employment and have yet to receive an answer.

For 2014/5 the cost of clerking is broadly £33k, last year it was £27k and other councils of similar size are spending £10k. Am I the only person who thinks that this is totally unacceptable and that the public should be openly advised of the facts?

You may care to revisit my letters of October 2014 and March 2015. You can then reconsider whether there is any reason why I should not state this publicly on the MVP Facebook page.

Yours truly,

Chas  
→

Pc203

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Squirrels Run

24<sup>th</sup> July 2015

Dear Mike,

As you are aware I am concerned about poor procedural practices at the Council. A difficulty is that whilst I can see that things are wrong I am reluctant to propose a change which may be at odds with the recommendations of NALC. In addition I believe that some of these NALC recommendations are unwise and/or incorrect; in which case a letter should be written advising them of this. A more detailed summary of facts associated with this is attached at Appendix 1. I think that the easiest way forward is that I have full access to NALC's web site so that I can read everything over the summer break.

I am considering taking the CLCA qualification. It looks reasonably straightforward though I would need the co-operation of the Council on the accounting and certain other aspects. It must be of considerable benefit to the Council to have a member with this qualification. I would not intend to go on any courses and would seek to rely on the information produced by NALC.

It may be best if we could meet next week to discuss this and other matters.

Yours truly,

Pc204

## **Appendix 1**

### **Possible errors in NALC recommendations.**

- 1 In SO 3l 'prior written' is inconsistent with statute. *Need to double check.*
- 2 In SO 3t 'or another interest' is not subject to statutory restrictions as stated.
- 3 In SO 13e 'by the Proper Officer' is at odds with statute.
- 4 SO 13h is in bold and therefore really ought to use the words contained in statute.
- 5 In the Code, disclosure of confidential information is at odds with the Model Publication Scheme.
- 6 In a later version of the Code dispensations are at odds with statutory requirements.

### **SMPC Code of Conduct, Standing Orders and Financial Regulations.**

- 7 I have written separately to the Council on the Code. There are two instances where it does not comply with statute and over thirty drafting errors. By comparing this with another council the vast majority of these problems are drafting errors by SMPC.
- 8 The Standing Orders and Financial Regulations are years out of date. I think the Standards Board was wound up around 2008.

### **Confidential Meetings.**

- 9 The manner that these are held are wrong and possibly make any decisions reached invalid. Errors include:
  1. No public resolution to exclude the public - SO 30.1.
  2. No reason given to exclude the public – SO 30.1.
  3. Minutes of previous meetings are not circulated and merely read out.
  4. Minutes are not agreed by members – statutory obligation.
  5. There is no resolution to approve and the minutes are therefore not properly signed
  6. Minutes are not properly numbered – statutory obligation.
  7. Minutes are not written in accordance with sound Data Protection principles.
  8. Important and controversial documents are not distributed and merely read out.

## Pensions

cdlewis@talk21.com

**Sent:** 28 July 2015 13:21

**To:** m.d.dennett@reading.ac.uk

**Cc:**

; julian.b.earl@btinternet.com

<http://www.cpalc.org.uk/time-to-think-about-council-pensions>

Mike

I found our chat with Tony thought provoking and I assure you that I will reflect on it.

Arnold Baker 9th Edition at p80 (C9.13/14) discusses employees rights to superannuation and the authority is Local Government Pension Scheme ... SI2007/1166 which came into force on 1st April 2008 and has been amended. It mentions the 'statutory resolution' which must be moved and publically notified 28 days before the meeting. You are right in that I do not know whether she is on this scheme but I have openly stated that it is a guess; having said that I do know that she is on a final salary scheme and feel entitled to ask whether the correct procedures were followed.

The attachment is an authority for the 30% cost. I have signed up for the free part of CPALC. It is not one of CPALC's better articles and there are more considered authorities for the figure.

A long time ago I analysed the relevant cheque values over a 19 month period for a different purpose. I have just relooked at them and have to admit that they do not support my contention of 5% by each party. It is difficult because of employer's NI but it looks like a total of around 18%. My apologies.

Regards

Chris

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RG7 3TH

t: 0118 933 2951  
m: 0788 997 1300  
e: cdlewis@talk21.com

Ref: pcapp2

22<sup>nd</sup> October 2014

Stratfield Mortimer Parish Council – By Hand

Dear Cllr. Dennett,

I was disappointed not to be co-opted onto the Council but I accept the result.

My view remains that the Council is very poor on procedural matters and has a chronic overpayment problem in respect of administration. I feel capable of improving both these shortcomings and with this in mind intend to stand again at the next election. A method of increasing my chances of success is to distribute a flier similar to the one produced by Cllr. Audsley at the recent by-election; I have mixed feelings about doing this. Any flier that I produce is likely to be critical of the Council. With this in mind I append some basic facts and invite your comments:

- 1 There are other councils of broadly similar size which spend less than half of what you do on clerking. Some other councils of a similar size are spending 832 hours annually as against your 1500. I also believe some other councils pay an hourly rate about £5.00 less than you do. Since I first raised this with the Council I assess that you have overspent by over £130k.
- 2 Contrary to a statement made by the auditor I do not accept that you have robust financial controls. You do not publish your Financial Regulations but I have looked at the regulations of other councils. It cannot be right for two councillors to sign for enormous amounts of overtime without referring the details back to the council on a monthly basis. Looking at other public sector agreements, the right to be paid regular overtime ceases around spinal point 28 and the Clerk is on a higher grade.
- 3 The current Code of Conduct does not comply with the statutory requirements and is badly drafted; this appears to be a Stratfield Mortimer problem. From minutes the Clerk has been involved with 'customising' the standard document. NALC states the 'a local council cannot delegate to staff responsibility for ... adopting or revising the council's code of conduct'. You may also note that NALC are emphatic that the clerk 'cannot give legal advice at the meeting unless he is a qualified legal professional'.
- 4 Every set of minutes still mentions dispensations and I as a member of the public have no idea what has been granted and for what reason. This is not transparent and completely contrary to the ideals of localism. My view is that the Council does not deal with dispensations in respect of LGA s31(4) (conflicts of interest) correctly. For example the Council agreed a commitment to spend £20k on BT's high speed broadband. One of the councillors at the time was a BT employee and therefore had an undisputable pecuniary interest. There is no record of him not

voting or withdrawing from the room. He has a solid argument that he did not need to do so, because at the start of the meeting the Clerk had granted all councillors a dispensation. For a valid dispensation to be granted the councillor has to make an application to the clerk and the council votes on whether one should be granted. The Code then gives two possible reasons and in my view neither of them remotely applies in this case. The Clerk was therefore trebly wrong to grant the dispensation. It is very important because the councillor rendered himself liable to a fine of up to £5k. It is my understanding that as the Clerk has assisted in the crime she may also have been liable to the same punishment.

5 In the past I have made the offer to improve your three main control documents which are currently very poor. You have not come back to me; I make the offer again.

6 For the avoidance of doubt I make the following statement. On 4<sup>th</sup> September 2007 I wrote a letter making seven complaints concerning the Clerk. I followed the correct procedure to have it put on the agenda but it did not appear and I did not get a satisfactory explanation. It is a fact that the Council has failed to deal with these complaints properly. In my view this entitles me to be more critical of aspects of the clerking than would otherwise be the case.

The above represents some of my honestly held beliefs and I am confident of being able to prove every statement. If there is anything that the council disputes I am sure that you will agree that it is in both our interests to resolve the fact amicably. I am happy to meet at your convenience.

Yours sincerely



Chris Lewis

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4<sup>th</sup> March 2015

Stratfield Mortimer Parish Council – By Hand

Dear Cllr. Dennett,

I am disappointed that apart from a curt acknowledgement I have not received any response to my letter of 22<sup>nd</sup> October 2014. You have had the letter for 4.5 months and we are getting close to the election. I set a further letter on 30<sup>th</sup> January 2015 and I hope that it will not be dealt with in the same dilatory manner.

I have your annual return for the tax year to March 2014 and it shows that you have paid £31,987 in respect of staff costs. This includes a custodian; the job was advertised at a day per week and I assess the total 'all in' cost at £3,640 leaving £28,387 for the Clerk. From the internet I have the same document for Chieveley Parish Council which shows staff costs at £9,426. On a population basis Chieveley is almost exactly 75% of the size of SMPC. This confirms my original statement that other councils of broadly similar size spends less than half what SMPC does on clerking.

I was a member of the panel which interviewed and engaged the current Clerk. I believe that she was engaged on a standard NALC contract of employments and job description at 832 hours a year and on around SP18. When she started there were some unusual circumstances in that there were several office moves in a short time and the paperwork that she took over was less than ideal; this resulted in her working virtually full time though the intention was that this would only be in the short term. It was a moot point that I do not believe that there should be employer's pension contributions in respect of overtime. Keith Davies then took over as Chairman and I can prove that through the FGP he was bypassing the Council and taking executive decisions with financial consequences; I believe that this included amendments to the Clerk's terms of engagement. I realised that this was happening and have a letter stating that even though I was a councillor I could not attend FGP meetings because confidential matters were discussed. I believe that the cost of clerking between around 1998 and 2005 went from around £5k to £25k. Regardless of whether I am elected or not I will express my concerns to the internal and external auditor.

I do not have access to the members only part of the NALC web site but I believe that if the Clerk were hypothetically to resign then the post would be advertised at 832 hours at around £11.00 per hour giving an 'all in' annual cost of around £11k as against the £28k that you are currently paying. There may be some minor error in the figures but the current position is unsustainable.

I have mentioned two instances where I believe that the Clerk has broken the law. In my view if an employee breaks the law in the course of her employment it is best if the employer deals with it. That being said as the complainant I need to be assured that you are dealing with the matters properly.

By 20<sup>th</sup> March please advise [1] if you disagree with any of the factual assertions that I have made, [2] if there is any good reason why I do not make them in public and [3] that you have properly dealt with the law breaking points. In the absence of any reply I will feel free to mention them in public.

Yours sincerely

Chris Lewis

# Initial Assessment of Complaint – NPC4/15

## Complaint

On Thursday 10 September 2015, the Monitoring Officer and Independent Person (Lindsey Appleton) of this Authority considered a complaint from Dr Michael Dennett concerning the alleged conduct of Councillor Christopher Lewis, a member of Stratfield Mortimer Parish Council.

A general summary of the complaint is set out below:

Dr Dennett, Chairman of Stratfield Mortimer Parish Council, has alleged that Councillor Lewis has breached section 3.1 of the Parish Council's Code of Conduct by failing to treat fellow Councillors and Officers with courtesy and respect and by engaging in bullying or intimidating behaviour (or behaviour which may be regarded as such). Dr Dennett has set out the following as basis for his reasons that Councillor Lewis has breached the Code of Conduct:

- Councillor Lewis, on the 10 July 2015, used threatening language towards the chairman (Dr Dennett) and the vice-chairman of the Parish Council (Councillor Julian Earl).
- In the same letter Councillor Lewis refers to stating points publicly on Facebook pages in relation to the cost of clerking. However, this had previously been viewed as harassment of the Council and the Clerk by independent advisers.
- The email sent on the 12 July 2015 repeated similar points, however it also made reference to unsubstantiated claims that the Parish Clerk had acted in a criminal manner. This was currently being used in a grievance against the Council by the Parish Clerk for constructive dismissal.

## Potential breaches of the Code of Conduct identified

The following potential breaches of the Code of Conduct were discussed:

### The Principles

- Honesty and Integrity

### General Obligations:

- failing to treat others with respect
- engaging in bullying or intimidating behaviour

## **Decision**

In accordance with the Localism Act 2011, following the initial assessment the Monitoring Officer is able to decide on one of the following four outcomes:

1. the complaint will be investigated fully by an independent investigator;
2. no further action will be taken on your complaint;
3. some form of informal resolution will be sought;
4. the matter will be referred to the Director of Public Prosecution or the Police where it is suspected that some form of criminal conduct has occurred in relation to interests that have not been disclosed.

The Monitoring Officer in consultation with the Independent Person has concluded that in this case:

- while not making any findings of fact, if the allegations were substantiated they may constitute a breach of the Code of Conduct and therefore the allegation should be referred for investigation. The Monitoring Officer concluded that a reasonable person could interpret the comments and tone used as being intimidatory.
- This was a complex and longstanding issue and it would therefore be appropriate for an independent investigator to look at the facts in so far as they were relevant to this particular complaint.

In considering the complaint the Monitoring Officer in consultation with the Independent Person had regard to Stratfield Mortimer Parish Council's Code of Conduct, the information submitted by the complainant and the information submitted by the subject member.

This decision notice is sent to the person or persons making the allegation, the member against whom the allegation was made. As the Parish Council has no Clerk in post at the present time no other party has been advised

## **What happens now?**

### ***Investigation***

The Monitoring Officer will appoint an external investigator to undertake an investigation on behalf of the Standards Committee. The Council will notify the complainant and subject member of the details of the investigator who will contact them in due course to arrange an interview with them. In addition the investigator may wish to interview additional witnesses. All information provided to the Monitoring Officer already will be given to the investigator. You may wish to consider whether there is any additional information you would want them to consider.

## **Additional Help**

If you need additional support in relation to this or future contact with us, please let us know as soon as possible. If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Disability Discrimination Act 2000.

We can also help if English is not your first language.

West Berkshire Council is committed to equality of opportunity. We will treat everyone with respect, regardless of race, disability, gender, age, religion or sexual orientation.

If you require this information in a different format, such as audio tape, or in another language, please ask an English speaker to contact Moira Fraser on Telephone 01635 519045, who will be able to help.

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**Signed** ..... **Date** .....

**Monitoring Officer:**.....

**Signed** ..... **Date** .....  
**Independent Person**.....

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