

**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**