

Written Decision of West Berkshire Council's Advisory Panel

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

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 29th 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 10th 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 10th 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 12th 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 10th 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