

Statement by Cllr. Chris Lewis, Stratfield Mortimer Parish Council (“SMPC”) in response to statement by Cllr. Mike Dennett, SMPC, dated around 12th August 2015.

- 1 On 12th August 2015 I received an electronic copy of the above complaint with a request that I submit my own information by 28th 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 22nd October 2014 and 4th March 2015. To make sense of the story West

Berks also needs to see my letter of 30th 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 10th July 2015 warrants an explanation. It is only a draft and was completed by 8th July. I did not want to put Cllr. Dennett under unnecessary pressure before the main meeting on 9th 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 10th. 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 12th and 24th July have been cut and pasted from the letter of 10th 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 10th 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 4th 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 24th July and presumably the procedural part of the 10th 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 19th 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 1st 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 24th 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 10th July letter.
 - .2 The whole of the 12th July letter.
 - .3 The e-mail of 28th 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 8th 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 28th 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 12th July (duplicating 10th 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 10th 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 10th / 12th 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 30th 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 9th 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 12th 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 9th 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 10th 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 12th 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 12th 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 12th 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 12th July letter is factually correct. I had already withdrawn the contention part before commencement of these proceedings.
 - .6 The 28th 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

26th August 2015