

EJHLEGAL

Standards Investigation at Stratfield Mortimer Parish Council

A report for West Berkshire Council

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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 10th July 2015?
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?
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?
4. Is there any evidence to justify the allegations of criminal behaviour?

On Thursday 10th 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 10th and 12th 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 10th July 2015

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

Councillor Dennett received the 10th July letter. It arrived in his inbox as an attachment to an email at twelve minutes past ten in the morning of 12th 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 10th 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 10th 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 12th July 2015

This letter was sent intentionally. This was not a mistake. One could argue that, given the 10th July letter was not intentionally sent, the harm it caused was equally not intended. The letter of 12th July was picked up from Mortimer library by Councillor Dennett. The library was closed until 1300 on Monday 13th. 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 12th July letter does not have the same personal and emotional language as the 10th. 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 12th 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 26th 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 26th August 2015 to the complaint.

24th 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.

28th 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 28th 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 4th 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 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 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 10th 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 12th 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 22nd October 2014 from Mr Lewis to Councillor Dennett

Letter of 30th January 2015 from Mr Lewis to Councillor Dennett

Letter of 4th March 2015 from Mr Lewis to Councillor Dennett

Letter of 6th March 2015 from SMPC to Mr Lewis

Letter of 9th March 2015 from SMPC to Mr Lewis

Letter of 30th March 2015 from SMPC to Mr Lewis

Letter of 10th July 2015 attached to email dated 12th July 2015 from Councillor Lewis to Councillor Dennett

Letter of 12th July 2015 from Councillor Lewis to Councillor Dennett

Letter of 24th July 2015 from Councillor Lewis to Councillor Dennett

Email of 28th July 2015 from Councillor Lewis to Councillor Dennett

Letter of 25th September 2015 from Councillor Lewis to West Berkshire Council

Letter of 2nd December 2015 from Councillor Lewis to West Berkshire Council