

LOCAL DETERMINATION OF ALLEGED BREACHES OF THE CODE OF CONDUCT OF BEAUDESERT AND HENLEY JOINT PARISH COUNCIL

Case Reference: SEC 019 and SEC 022

Councillor W Leech of Beaudesert and Henley Joint Parish Council

Decision of the Standards and Ethics (Determination of Complaints) Sub Committee ("The Committee")

BACKGROUND INFORMATION

Date of Investigators Report: 26th November 2010

Relevant Authority: Beaudesert and Henley Joint Parish Council

Investigating Officer: Stephen Cork

Date of Hearing: 11th May 2011

Sub Committee Members:

Chairperson: Mrs A Dorow

Parish Councillor: Mrs M Hardy

District Councillor: Mr D Pemberton

Legal Advisor to the Sub Committee: Liam Nevin

PRELIMINARY MATTERS

On the 3rd August 2010 the Standards and Ethics (Local Assessment) Sub Committee ("the Sub-Committee") referred allegations about Councillor William (Bill) Leech of Beaudesert and Henley Joint Parish Council ("the JPC") to Standards for England (SFE) for Determination. The allegations were referred back by SFE on the 22nd September 2010 and on the 5th October 2010, the Sub Committee referred the allegations to the Monitoring Officer for investigation who in turn appointed Mr Stephen Cork to carry out the investigation.

The Sub Committee provided the following general summary of the allegation:

It was alleged that Councillor Leech had sent threatening correspondence to Mrs Walsh and also maliciously attempted to undermine her position as Clerk to the JPC. Examples of this alleged conduct included:

- (i) Threatening Mrs Walsh personally with legal action in respect of functions that she had carried out in her professional capacity as Clerk to the JPC;
- (ii) Attempting to undermine Mrs Walsh in her professional capacity by;
 - (a) Publicly criticising her through an on-line newspaper and using the same forum to deliberately misrepresent her;
 - (b) Publicly criticising her terms and conditions of employment despite being advised that such discussions should properly be resolved by the JPC in private;
 - (c) Responding to reasonable requests from Mrs Walsh with threats of complaints to third parties;
 - (d) Sending her details of a governance toolkit which coupled with a reference to his seeking advice elsewhere, implied that he was questioning her competence.

On the 8th November 2010 the Sub Committee convened to consider a further complaint from Mrs Walsh against Councillor Leech. The subject of the complaint was an e-mail dated 29th October 2010 from Mr John Tristram (Councillor Leech's representative) to which was attached a copy of Mrs Walsh's original complaint. The e mail sought to elicit a character reference on behalf of Councillor Leech and asked "if appropriate" for "a statement concerning any experiences you may have had of Mrs Walsh's attitude, conduct and particularly correspondence from her."

The complaint was also referred for investigation.

The allegations were investigated by Mr Stephen Cork who prepared a report concerning possible breaches of the Code of Conduct and under section 59 of the Local Government Act 2000 this was referred to the Monitoring Officer of the Council to be determined by the Standards Committee.

THE RELEVANT PARAGRAPHS OF THE CODE OF CONDUCT AND APPLICABLE LEGISLATION

2(1) "You must comply with this Code whenever you –

(a) conduct the business of your authority (which in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority;

and references to your official capacity are construed accordingly."

2(2) "this code does not have effect in relation to your conduct other than where it is in your official capacity."

3(1) "You must treat others with respect."

3(2) "You must not....bully any person."

3(2) (c) (i) "You must not intimidate or attempt to any person who is...a complainant ... in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct."

4(a) You must not ... disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where –

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is –

(aa) reasonable and in the public interest

(bb) made in good faith and in compliance with the reasonable requirements of the authority.”

5. “A member must not in his official capacity, or any other circumstance conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.”

Section 63(1) Local Government Act 2000:

“Information obtained by ethical standards officers under section 61 or 62 must not be disclosed....”

Section 6(1) Human Rights Act 1998:

“It is unlawful for a public authority to act in a way which is incompatible with a Convention right.”

Article 10 of the European Convention on Human Rights:

(1) “Everyone has the right to freedom of expression. The right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of....the protection of the reputation or rights of others.”

THE INVESTIGATORS FINDINGS IN RELATION TO THE CODE OF CONDUCT

The Investigating Officer found that Mrs Walsh's complaints did not amount to a breach of the Code of Conduct by Councillor Leech with the following exceptions:

- (1) In his official capacity as a Councillor, Councillor Leech, acting as Editor of Henley News on Line published an article concerning Mrs Walsh, which was misleading and inaccurate and which could have been harmful to her reputation.
- (2) That Mr Tristram circulated Mrs Walsh's letter of complaint to third parties in breach of an obligation of confidentiality imposed upon Councillor Leech.

THE INVESTIGATOR'S DISPUTED FINDINGS OF FACT

Through the pre-hearing process it was established that in all material respects save two, there was no dispute about findings of fact. The exceptions were:

- (a) Paragraph 6.2.7 of the report: Councillor Leech stated that Mrs Walsh did state at a JPC meeting on the 1st February 2010, that residents should not read Henley News on Line. This was contrary to Mr Cork's finding that Mrs Walsh did not advise people not to read Henley News on Line and that she simply advised them to use the JPC website for information relating to the JPC.
- (b) Paragraph 7.10.2 of the report: Councillor Leech disputed whether Mrs Walsh was in a position to defend herself against criticism and stated that Mrs Walsh had a right of reply to the newspaper but did not exercise it. This was

The Sub Committee heard evidence from Councillor Osborne and Mrs Walsh on the above facts in dispute and received submissions from Mr Cork and Mr Tristram.

Mr Cork essentially repeated the submissions contained in his report.

Mr Tristram asserted that Mrs Walsh had not consulted the JPC prior to making her statement and that if she had done so the JPC would have probably refused permission for her to make it. As such the assertion that her comments were either unlawful and/or outside of her mandate were justified. He further asserted that Mrs Walsh had acted unilaterally and not in accordance with the governance toolkit for parish councils.

Mr Tristram relied upon the documents contained at pages 12 to 15 of the bundle to demonstrate that dissenting opinions are afforded a right of reply in Henley News on Line and that had Mrs Walsh exercised that right, her response would have been published.

Councillor Osborne attended the hearing to confirm that her statement (at page 337 of the bundle) was accurate, and that Mrs Walsh did say that people should not read Henley News on Line.

Mrs Walsh re-iterated that she had not made such a comment and that she had used her notes to inform her comments. She reminded the Sub Committee that the notes made clear that she had said that Henley News on Line was a good source of information, but was not authoritative as regards the JPC.

THE COMMITTEE'S FINDINGS OF FACT

- (1) Paragraph 6.2.7 – In so far as Councillor Osborne's recollection of the Clerk's comments is that Mrs Walsh advised people not to read Henley News on Line, the Sub-Committee preferred the evidence of Mrs Walsh. The heading of the article in Henley News on Line was misleading as it did not reflect the context or meaning of Mrs Walsh's comments.
- (2) Paragraph 7.10.2 – Mrs Walsh did have the opportunity to defend herself against the criticism as the Sub- Committee were satisfied that had she responded to Henley News On Line, her article would have been published.

REPRESENTATIONS ON WHETHER THE CODE OF CONDUCT HAD BEEN BREACHED

The committee received representations from Mr Tristram and Mr Cork. Mr Cork submitted that whilst accepting that Mrs Walsh had a right of reply, people would have formed a view about Mrs Walsh's conduct from the initial article, and essentially the damage was done. Councillor Leech's article was misleading and inaccurate and in that respect he failed to treat Mrs Walsh with respect.

In relation to the disclosure of confidential information Mr Cork submitted that whilst Councillor Leech had not authorised or even been aware of Mr Tristram's intention to disclose confidential information he was responsible for ensuring that Mr Tristram was aware of the duty of confidentiality and abided by it.

Mr Tristram stated that there was no intention to personally denigrate Mrs Walsh and therefore the Code of Conduct had not been breached.

In relation to the disclosure of confidential information, Mr Tristram explained that this was the result of some confusion on his part, since he was aware that the summary of the complaint had been published on the District Council's website and therefore he thought it permissible to circulate Mrs Walsh's complaint in full. He further added that in his view it seemed likely that a copy of the complaint could have been obtained under the Freedom of Information Act. Mr Nevin advised the Sub-Committee at this point that disclosure of the full complaint would have been exempt under the Act. Mr Tristram stated that the complaint had been circulated to 28 or 29 recipients. Mr Cork stated that he had no reason to doubt that this number was accurate.

THE DECISION ON WHETHER THE CODE OF CONDUCT WAS BREACHED

In relation to the article in Henley News on Line, the Sub Committee found that Councillor Leech had breached paragraph 3(1) of the Code of Conduct in that he failed to treat Mrs Walsh with respect. In reaching this judgement they were mindful that the headline took her comments out of context, and that the references to Mrs Walsh's conduct as illegal or outside of her mandate were unjustified. Furthermore, it was not appropriate to first raise the criticisms of Mrs Walsh's professional conduct through an on-line newspaper.

In relation to the disclosure of confidential information the Sub Committee endorsed the finding of Mr Cork at paragraph 7.13.2 and found that Councillor Leech had breached paragraph 4(a) of the Code of Conduct.

For the avoidance of doubt, the Sub- Committee endorsed Mr Cork's findings in relation to the application of Article 10 of the Human Rights Act as set out in paragraphs 7.7 to 7.9 of his report.

REPRESENTATION ON SANCTION

Mr Tristram argued that from the date of complaint to the hearing had taken ten months and this itself constituted a punishment for Councillor Leech and the delay had damaged his reputation. He also argued that Councillor Leech had been subjected to considerable vilification from within the JPC. Moreover, a previous request to the Monitoring Officer to attend and observe the JPC meeting had been declined.

In terms of the breach of confidentiality he emphasised that Councillor Leech had done all that was in his power to prevent disclosure.

The Chairman, speaking on behalf of the Sub-Committee also noted that correspondence from Mrs Walsh to Councillor Leech as evidenced in the bundle was provocative and may have contributed to the poor relations resulting in this complaint.

Mr Cork drew attention to the aggravating and mitigating factors set out in his report and asserted that he believed a sanction was appropriate but declined to comment on what that might be.

Mr Tristram also requested the Sub-Committee to consider Councillor Leech's good character and Mr Latham spoke in support of Councillor Leech drawing attention to his business experience, and general service to the community,

including the provision of a free on line newspaper from which he drew no profits. (Henley News on Line)

THE DECISION ON SANCTION

The Committee carefully considered the submissions having regard, in respect of sanctions to the Standards Board for England guidance: "Standards Committee Determinations." The Committee determined that the breaches of the code were sufficiently serious that the public would expect them to be marked by a sanction. **Accordingly, it was determined**

- (i) that Councillor Leech**
 - **be formally censured;**
 - **provides Mrs Walsh with a written apology within 28 days of the date of this judgement in respect of the article in Henley News on Line;**
 - **publishes that apology in full in the edition of Henley News on Line following the provision of the apology to Mrs Walsh, and**
- (ii) that the apology should address the facts found by this sub-committee , namely that Mrs Walsh's comments were taken out of context, the references to her acting illegally or outside of her mandate were unjustified, and that criticisms of her professional conduct should not have been raised for the first time in an on-line newspaper, and**
- (iii) in the event that Councillor Leech does not comply with these requirements the Sub-Committee further directed that he be suspended for two weeks following the expiry of the days specified above.**

RIGHT OF APPEAL

Councillor Leech has the right to apply in writing to the Principal Judge of the First-Tier Tribunal (Local Government Standards In England) for permission to appeal the Committee's findings. The Principal Judge must receive written notice requesting permission to appeal within 21 days of the member's receipt of notification of the Sub-Committee's findings.

RECOMMENDATIONS

An inordinately high number of complaints and counter complaints in respect of Henley in Arden JPC have come before the Standards Committee of Stratford on Avon District Council over the last two years. This is indicative of a Parish Council which is divided, antagonistic, and dysfunctional. There is a perception of public feuding within the JPC, widely reported locally, that is bringing the standing of Henley in Arden JPC into disrepute, at the same time as consuming with no real purpose District Council tax payers money and distracting the JPC from the execution of its proper functions.

It is wholly inappropriate for the Standards Committee of Stratford on Avon District Council to be used as a vehicle for the lodging of complaints that seek to further the objectives of or support the aims of either of the conflicting factions within the JPC.

It is the strongly held view of this Sub-Committee that the Members and the Clerk of the JPC reflect upon the implications of their recent actions for the reputation and standing of the JPC and themselves individually.

We strongly recommend that all parties should agree to participate in a structured and independent mediation process arranged and funded by the District Council aimed at resolving issues and ensuring Beaudesert and Henley in Arden JPC operates in an effective and cohesive manner for the benefit of all residents.

Mrs A Dorow

Chair of the Standards and Ethics

(Determination of Complaints) Sub-Committee