

EAST HERTS COUNCIL

STANDARDS COMMITTEE - 14 MARCH 2012

REPORT BY THE MONITORING OFFICER

COMPLAINT IN RESPECT OF A COUNCILLOR: REFERENCE
HORM/03/2011: CONSIDERATION

Purpose/Summary of Report

- To consider a complaint in respect of Councillor J Kilby, a Member of Hornead Parish Council.

<u>RECOMMENDATION FOR :</u>	
(A)	

1.0 Background

1.1 The Committee will decide whether the matters to be considered appear to disclose exempt or confidential information under the provisions of Schedule 12A of the Local Government Act 1972 as amended by the Standards Committee (England) Order 2008. The categories are set out at Appendix 1.

1.2 Consideration of the complaint.

1.3 The Committee will consider the Investigator's report and make one of the following findings:

- a) that the matter should be considered at a hearing of the Standards Committee;
- b) that the matter should be referred to the First Tier Tribunal for determination.

2.0 The complaint

2.1 Details of the complaint are set out in the Investigating Officer's report.

3.0 Report

3.1 The Committee is invited to make one of the following findings:

- a) that the matter should be considered at a hearing of the Standards Committee conducted under Regulation 18; or
- b) that the matter should be referred to the First Tier Tribunal for determination.

3.2 Before such a referral can be made the Standards Committee needs to have determined that the action which the Standards Committee could itself take (if there were a finding that there had been a failure to follow the provisions of the Code) would be insufficient. The reference itself can be made only if the First Tier Tribunal has been agreed to accept it.

3.4 The possibility of such a reference arises only after a monitoring officer has produced a report of the Standards Committee. The Principle Judge is willing to indicate, prior to the consideration of that report by the Standards Committee, whether he would agree to accept such a referral. Such agreement would not commit the Standards Committee to making such a referral but would avoid the Standards Committee seeking to refer matters which were suitable.

3.5 In order to assist the Committee, the sanctions available to the Standards Committee and the First Tier Tribunal if there is a failure to comply with the Code of Conduct are at Appendix 2.

3.6 The report of the Investigator provides further information. Please find attached the Investigator's report at Appendix 3.

3.7 Accompanying evidence has already been provided to the Standards Committee which supports the Investigator's findings of fact.

4.0 Implications/Consultations

4.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers:

Appendix 1 Categories of Exempt Information

Appendix 2 Sanctions for Local Investigations

Appendix 3 Investigator's report

Contact Officer: Simon Drinkwater – Monitoring Officer

Report Author: Simon Drinkwater – Monitoring Officer

ESSENTIAL REFERENCE PAPER 'A'

Contribution to the Council's Corporate Priorities/Objectives:	Fit for purpose, services fit for you. <i>Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation</i> Leading the way, working together <i>Deliver responsible community leadership that engages with our partners and the public.</i>
Consultation:	None
Legal:	The procedures are in accordance with the regulations.
Financial:	None.
Human Resource:	None
Risk Management:	The case should be determined in accordance with the regulations having regard to the relevant guidance.

Definitions of “confidential” and “exempt” information

Meaning of confidential information

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order

Meaning of exempt information

Descriptions of Exempt Information

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes:
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
 - a. Information which is subject to any obligation of confidentiality.
 - b. Information which relates in any way to matters concerning national security.
 - c. The deliberations of a Standards Committee or of a Sub-Committee of a Standards Committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of Section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.

8. Qualifications

Information is not exempt information if it is required to be registered under:

- (a) the Companies Act 1985;
- (b) the Friendly Societies Act 1974;
- (c) the Friendly Societies Act 1992;
- (d) the Industrial and Provident Societies Acts 1965 to 1978;
- (e) the Building Societies Act 1986; or
- (f) the Charities Act 1993.

9. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.

10. Information which:

- (a) falls within any of paragraphs 1 to 7 above; and
- (b) is not prevented from being exempt by virtue of paragraph 8 or 9 above,

is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

11. Interpretation

(1) In Parts 1 and 2 and this Part of this Schedule:

"employee" means a person employed under a contract of service;

"financial or business affairs" includes contemplated, as well as past or current, activities;

"labour relations matter" means—

- (a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or
- (b) any dispute about a matter falling within paragraph (a) above;

and for the purposes of this definition the acts mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders

under the authority as they apply in relation to employees of the authority;

"office-holder", in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority;

"registered" in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act).

Sanctions of the Standards Committee and Sanctions of the Adjudication Panel for England

Sanctions of the Standards Committee

Regulation 19(3) of the Standards Committee (England) Regulations

- (a) censure of that member;
- (b) restriction for a period not exceeding six months of that member's access to the premises of the authority or that member's use of the resources of the authority, provided that those restrictions—
 - (i) are reasonable and proportionate to the nature of the breach; and
 - (ii) do not unduly restrict the person's ability to perform the functions of a member;
- (c) partial suspension of that member for a period not exceeding six months;
- (d) suspension of that member for a period not exceeding six months;
- (e) that the member submits a written apology in a form specified by the standards committee;
- (f) that the member undertakes such training as the standards committee specifies;
- (g) that the member participate in such conciliation as the standards committee specifies;
- (h) partial suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the standards committee;
- (i) partial suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the standards committee specifies;
- (j) suspension of the member for a period not exceeding six months or until such time as the member has submitted a written apology in a form specified by the standards committee;
- (k) suspension of the member for a period not exceeding six months or until such time as that member has undertaken such training

or has participated in such conciliation as the standards committee specifies.

Sanctions of the Adjudication Panel for England

- (A) Censure
- (B) Suspend, or partially suspend, the member from being a member or co-opted member of the relevant authority concerned for a limited period,
- (C) Disqualify the member, for a period not exceeding five years, for being or becoming (whether by election or otherwise) a member of that or any other relevant authority.

PRIVATE AND CONFIDENTIAL REPORT

MJB/1/2/2012

**REPORT OF AN INVESTIGATION UNDER s60 OF THE LOCAL GOVERNMENT ACT
2000 INTO AN ALLEGATION CONCERNING COUNCILLOR JOHN KILBY OF
HORMEAD PARISH COUNCIL**

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5. **Reasoning as to whether there have been failures to comply with the Code of Conduct**
6. **Finding**

Appendix A Schedule of evidence taken into account

1.0 Executive Summary

1.1 Allegation

The complaint is that Councillor John Kilby has failed to treat Colin Marks who is the clerk to Hormead Parish Council with respect as an employee and as the proper officer of the clerk to the Parish Council meeting in public.

It is alleged that Councillor Kilby has failed to treat Colin Marks with respect by accusing him of fraud in a public meeting.

I have investigated the complaint made and in doing so have taken email evidence from Councillors Elizabeth Collery, Elaine Harding, Geoff Abbey, David Ginn, ex Councillor Brian Stone and Councillor John Kilby.

1.2 Finding

My finding is that there is evidence that Councillor Kilby failed to comply with the Code of Conduct adopted by Hormead Parish Council.

2.0 Councillor John Kilby's official details

2.1 Councillor Kilby is an elected member of Hormead Parish Council. He was originally co-opted to fill a vacancy in September 2006 and was elected to be a Parish Councillor in May 2007 and again in May 2011. There is no record of Councillor Kilby attending a training course for the Code of Practice.

3.0 Summary of allegations and conclusions on whether there have been failures to comply with the Code of Conduct

3.1 Colin Marks, Clerk at Hormead Parish Council, complained that Councillor John Kilby failed to comply with the Code of Conduct as follows:

- Failed to treat Colin Marks with respect both as an employee and as a proper officer of the Town Council in public.

3.2 Specifically Colin Marks complained that Councillor Kilby who is a Councillor with Hormead Parish Council, failed to comply with the Code of Conduct as follows:

- Councillor Kilby accused Colin Marks of fraud in respect of an expenses claim during a meeting of the Hormead Parish Council on 13th October 2011.

3.3 Colin Marks says he did not hear the remarks himself, but Councillors confirmed at the 10th November 2011 meeting that they had heard them, and the minutes of the meeting were subsequently amended to reflect this.

3.4 Colin Marks states that he was stunned to hear of this accusation as the matter had been explained and resolved prior to that meeting, and was not relevant to anything on the agenda.

3.5 He further states that the public record shows that he has been accused of fraud by a Councillor, an accusation that was unwarranted, totally unjustifiable, unacceptable and is a stain upon his character. Furthermore at no time has he received an apology.

3.6 This report investigates whether by his conduct Councillor John Kilby has failed to treat others with respect. The report considers whether Councillor Kilby failed to comply with the paragraph 3 of the Code of Conduct.

3.7 I have also considered whether paragraph 5 of the Code has been breached but do

not find any evidence of this.

- 3.8 My finding is that there is evidence that Mr Kilby made this accusation on 13th October 2011 against Colin Marks and thereby failed to comply with the Code of Conduct paragraph 3.

3.0 The Code of Conduct

3.1 Hertford Town Council has adopted the model Code of Conduct.

3.2 The relevant part of the Code of Conduct is as follows:

- Paragraph 3 of the Code states a Member must 'treat others with respect'.
- Paragraph 5 of the Code states that a Member must not 'conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

3.3 The seventh General Principle of the Annexure to the Code states

- Members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

4.0 Investigating Officer's findings of fact

4.1 I have relied upon evidence from Councillors Elizabeth Collery, Elaine Harding, Geoff Abbey, David Ginn, ex Councillor Brian Stone, Colin Marks and Councillor John Kilby, together with a copy of the minutes of meetings of Hormead Parish Council held on 13th October, 11th November and 8th December 2011.

4.2 Colin Marks was appointed Clerk to Hormead Parish Council in July 2011, the previous clerk having left shortly before. The previous Chairman did not stand for re-election so a new Councillor became Chairman.

4.3 On 13th October 2011 Colin Marks was clerking a meeting of the Hormead Parish Council and was asked to leave for an item concerning his contract of employment.

4.4 Councillor John Kilby accused Colin Marks of fraud in relation to a previous expenses claim.

4.5 A successful application was subsequently made for the minutes of this meeting to be amended to reflect this accusation.

5.0 Reasoning

5.1 I must now consider whether the actions of Councillor Kilby failed to comply with

paragraph 3 of the Code of Conduct.

- 5.2 Paragraph 1 states that it is the responsibility of a Councillor to comply with the provisions of the code and paragraph 2 confirms that this is whenever a Councillor conducts the business of the Authority in an official capacity. Paragraph 3 of the code states that a Member must treat others with respect.
- 5.3 This paragraph is not intended to stand in the way of lively debate as such discussion is a crucial part of the democratic process. A very clear line has to be drawn between the Code of Conduct and the freedom to disagree with the views and opinions of others. However, I consider that an accusation of fraud goes far beyond this, and is a serious matter, being not only disrespectful but potentially slanderous too, especially when spoken about the Clerk to the Meeting who was not even there to defend himself.
- 5.4 An adjudication Panel in a previous case (APE 0419) has decided that you can be the victim of disrespect even if you did not witness the disrespectful behaviour. Therefore a Member's disrespectful treatment of an officer who is not present may amount to a failure to comply with the Code.
- 5.5 I have found that there is compelling evidence that Councillor Kilby has behaved in a disrespectful manner by accusing the Clerk of fraud in a public meeting. I consider therefore that Councillor Kilby did fail to comply with paragraph 3 of the Code of Conduct.

Finding

My finding on all the circumstances of this case is that in accordance with the Local Government Act 2000 there is evidence of a failure to comply with the code.