

STANDARDS HEARING SUB-COMMITTEE

13 DECEMBER 2016

PRESENT: Councillors H Mordue, S Lambert, Sir Beville Stanier Bt; C Billingham (Independent Person) and A Clarke (Parish Representative)

1. ELECTION OF CHAIRMAN FOR THE MEETING

RESOLVED –

That Councillor Mordue be elected Chairman of the Sub-Committee for the meeting.

2. COMPLAINT AGAINST A HADDENHAM PARISH COUNCILLOR

Firstly, the Sub-Committee determined that in the interests of transparency, the hearing should be held in open session. Although having been served all the papers showing the date, time and place of the hearing and including the investigating officer's report, the Parish Councillor, Mr J Wheeler, against whom the complaint had been made, did not attend. The Sub-Committee heard from the Monitoring Officer that he had spoken to Parish Councillor Wheeler and he was aware of the hearing venue and time.

The Sub-Committee received the report of the independent investigator appointed by the Monitoring Officer to consider a complaint made by Mrs Butler-Walters concerning alleged breaches of Haddenham Parish Council's Code of Conduct by Parish Councillor J Wheeler. (A copy of the independent investigator's report, excluding appendices and redacted as appropriate are attached to these Minutes).

The detail of the complaint is contained in section 3 of the investigating officer's report. In summary, it related to Parish Councillor Wheeler's actions in relation to the parking of a vehicle by Mrs Butler-Walters on land in the vicinity of a children's playground adjacent to Haddenham Village Hall. The relevant section of the Code of Conduct was as follows:-

"When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she shall have the following obligations:-

1. He/she shall behave in such a way that a reasonable person would regard as respectful.
2. He/she shall not act in a way that a reasonable person would regard as bullying or intimidatory."

The Chairman of the Sub-Committee explained the procedure for the hearing.

The investigating officer presented her report and individual Sub-Committee Members were given an opportunity to question her about various aspects of her investigations. The investigating officer was then given an opportunity to sum up her case.

Having discussed the investigating officer's findings, she was invited to leave the room whilst Members considered their decisions in consultation with the Independent Person and Parish Representative. The Sub-Committee then invited the investigating officer back into the room and delivered their decisions and explain the rationale. (These are set out in the resolution to this Minute).

RESOLVED –

- (1) That, for the reasons indicated below, the Sub-Committee finds that Parish Councillor J Wheeler's behaviour amounted to a breach of Haddenham Parish Council's Code of Conduct:-

All the evidence appeared to confirm that there had been an altercation on the day in question. The fact that Parish Councillor Wheeler was wearing a high visibility tabard, had access to traffic cones, had indicated that formal proceedings could be taken against Mrs Butler-Walters and, when asked, gave his name as "Councillor John Wheeler", would in all probability lead any reasonable person to conclude that he was acting in his capacity as a Parish Councillor. The Sub-Committee concurred with the investigating officer's view that Haddenham Parish Council's Code of Conduct was engaged. (The Code is engaged when a Member of the Council acts, claims to act or gives the impression of acting as a representative of the Council).

The Sub-Committee accepted that whilst Parish Councillor Wheeler's irritation might be considered understandable, again, any reasonable person might not have regarded his actions as being respectful and could have considered them to be bullying or intimidating.

- (2) That, being satisfied that a breach of Haddenham Parish Council's Code of Conduct had occurred, the following actions be taken:-

- That a formal letter be sent to Parish Councillor Wheeler setting out the Sub-Committee's decision and rationale, with a copy to the Parish Clerk.
- That in the letter to Parish Councillor Wheeler, it be suggested to him that he might wish to consider making an apology to Mrs Butler-Walters.
- That, given that during the discussions between the investigating officer and Parish Councillor Wheeler there appeared to be some uncertainty around training on the Code of Conduct and in particular the boundaries between a Councillor's role and other roles he/she might have, the Parish Council be recommended to consider formal training for all its Members on the Code of Conduct.

Standards Complaint Against Councillor John Wheeler.

Report by Alison Burns.

28 October 2016.

1. I am a solicitor at HB Public Law based at Harrow Council. I have been asked by the Monitoring Officer of Aylesbury Vale District Council ('AVDC') to investigate a Complaint made against Councillor John Wheeler, a Parish Councillor at Haddenham Parish Council ('HPC'). The Complaint was made by a member of the public, Mrs Lucy Butler-Walters ('the Complainant').
2. AVDC is following its own complaints' procedure with reference to HPC's Code of Conduct for Members. These documents are at Appendix D.

The Complaint.

3. The Complaint form is dated 5/11/15. A summary of the complaint is below.
 - 3.1. The Complainant had parked her car at the edge of grass whilst she visited the dentist.
 - 3.2. When she returned to her car Councillor Wheeler had put 6 cones around her car. He spoke to her in a rude and angry manner, telling her that she should not have parked there and it was obvious that she shouldn't.
 - 3.3. When the Complainant apologised and said that she had made a genuine mistake, Councillor Wheeler did not accept her apology but continued to be critical.
 - 3.4. When the Complainant asked Councillor Wheeler if he worked for the Council, he replied that he did and that his name was Councillor John Wheeler.
 - 3.5. When the Complainant told Councillor Wheeler that she was going to make a complaint, he told her that she would receive a summons.
 - 3.6. That there should be signs, rocks or similar on the grass so that drivers are aware that they are not meant to park there.
 - 3.7. That it was not acceptable for Councillor Wheeler to have given her a 'dressing down'.

3.8. She had been very upset by the incident and REDACTED caused to cry.

The Code of Conduct.

4. An extract from the Code of Conduct of Haddenham Parish Council is copied below.

'When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/ she shall have the following obligations.

1. *He/ she shall behave in such a way that a reasonable person would regard as respectful.*
2. *He /she shall not act in a way which a reasonable person would regard as bullying or intimidatory.'*

5. The matter has been considered pursuant to Stages One and Two of the AVDC Member Complaints' Procedure. It was decided that the matter should proceed to Stage Three and so the matter was referred to me for investigation. My role is to investigate the Complaint and prepare a report for consideration by AVDC Hearings Sub Committee.

6. The potential remedies under the Member Complaints' Procedure are report to council, formal letter to subject Councillor, formal censure by motion, recommendation to Parish that the member is removed from special responsibilities or press release / other publicity.

Investigation and Findings.

7. During my investigation I reviewed the documents which are listed on the contents page. I discussed the Complaint on the telephone with Councillor Wheeler, the Complainant and the REDACTED.
8. I prepared a note of my telephone discussions with Councillor Wheeler which I sent to him (enclosure 3.4 in Appendix B). I gave him an opportunity to comment

on my note of our telephone conversation but I did not hear back from him with any comments. I sent Councillor Wheeler a copy of this report in draft and gave him an opportunity to comment on it before it was finalised.

9. I prepared a note of my conversations with the Complainant and her son which are enclosed at Appendix A. There are various aspects with which they disagreed with Councillor Wheeler's version. There is also some common ground between their versions of events.

10. The following facts appear to be common ground between the Complainant and Councillor John Wheeler:

10.1. In or about late October 2015, the Complainant had parked her car on a grassed area in the grounds around Haddenham Village Hall and in proximity to a recreation area for small children. The Complainant had driven around bollards to park her car. A google maps image of the location is included in the bundle at Appendix C. (I understand that the children's slide in the picture is no longer there but there are swings somewhere in that area at the end of the line of parked cars).

10.2. There were no visible signs asking drivers not to drive on the grass and there was no notice that the grass had been recently re-seeded.

10.3. By the time that the Claimant and REDACTED returned to the car with the intention to drive away, Councillor Wheeler had placed cones around the car.

10.4. Councillor Wheeler approached the Complainant when she returned to her car. He was wearing a high visibility jacket. There was a conversation between them and Councillor Wheeler accepts that he was 'irate'.

10.5. The Complainant informed Councillor Wheeler that she was going to make a complaint. Councillor Wheeler told the Complainant that she could receive a summons, or some words along those lines.

10.6. Councillor Wheeler did not ask the complainant for her address. (Councillor Wheeler's letter to Ifty Ali dated 8 12 15 says that he asked for her address). The Complainant denies this and in his conversation with me

of 26th August 2016 Councillor Wheeler says that he did not request her address and he does not carry a note book around with him.

111. The following facts are disputed between Councillor Wheeler and the Complainant. I have added my comment in respect of each disputed fact listed.

11.1. The proximity of the parked car to the children's play area. Councillor Wheeler says that the car was 3 feet from the swings. The Complainant says she does not recall how far her car was from the swings but denies that it was that close. The Complainant's son says that the car was half on the grass and half on the tarmac, neither the Complainant nor Councillor Wheeler state this. I don't know the exact location of the parked vehicle and I am unable to make a finding about how close it was parked to the children's swings.

11.2. Councillor Wheeler says that he had re-seeded the grass and that he had recently taken down a small barrier to enable people to walk on new grass. The Complainant says she does not believe that the area had recently been re-seeded. Councillor Wheeler's version on this issue seems more likely to me, but it is not particularly relevant to whether there has been a breach of the Code.

11.3. The Complainant and her son state that she apologised to the Councillor and the Councillor did not accept the apology. The Councillor says that he has no recollection of an apology being given. I consider it likely that the Complainant did apologise to Councillor Wheeler. The Complainant and her son both say that she did. Her complaint form contains an apology of sorts, in that she admits that she was in the wrong parking there and says that she had apologised previously. There was no acknowledgement of this from Councillor Wheeler in his written response received by the Council on 8/12/15.

11.4. The Complainant states that the Councillor was 'very angry' (her complaint and her telephone conversation with me of 3/8/16) and caused REDACTED to cry. The Complainant's REDACTED says that the Councillor was rude and shouted, and agrees that REDACTED crying. The Councillor

states he was irate rather than angry and that the REDACTED was not crying. I consider it likely that Councillor Wheeler was angry at the time of the incident and that he continued to be hostile to the Complainant after he had made his initial point and she had said sorry for her parking.

- 11.5. Councillor Wheeler says that when he used the word 'summons' or similar, he had in mind a potential civil action by the Parish Council for recovery of the cost of damage to the grass (he said that the Parish Council employs the gardener who maintains the village hall grounds). The Complainant says that she thought Councillor Wheeler was threatening that she would be fined. The Complainant does not report anything specific that is inconsistent with Councillor Wheeler's version that he had in mind recovery of the cost of damage so I accept his version on this.
- 11.6. The Complainant says that when she asked Councillor Wheeler whether he worked for the Council, he replied yes he did. Councillor Wheeler says he did not tell her that he worked for the Council but that he told her he was a Councillor. As it is agreed that the title 'Councillor' was used, I think it not likely that Councillor Wheeler was holding himself out as an employee of the Council.
- 11.7. The Complainant denies damaging the ground with her car. The Councillor says that she caused damage to the newly sown grass. Sue Gilbert the clerk to the Parish Council says 'She left deep tyre skid marks in the grass as she drove off in anger which I did see' (Sue Gilbert's e mail of 3/2/16). I think it is therefore likely that some damage was caused at least after the altercation, but I do not consider this to be material.
- 11.8. The Complainant denies that Councillor Wheeler mentioned newly sown or damaged grass to her during her discussion (Complainant's e mail of 18/1/16). Councillor Wheeler says he said that she would be charged for damage to the grass (his letter of 8/12/15). The REDACTED says that Councillor Wheeler did say something about grass on the day (telephone conversation of 1/9/16). It is not possible for me to make a finding on what was said in relation to the grass being newly seeded.

Is the Code of Conduct Engaged?

12. The Code of Conduct is engaged *'when a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council'*. Councillor Wheeler told me that at the time in question he was acting in the capacity as volunteer at the Village Hall. I think this must be correct. I can think of no reason why he would have been in the park wearing a high visibility jacket in the capacity of Parish Councillor. The role of Parish Councillor does not usually include communicating with members of the public in relation to car parking. However, when he was asked for his name he gave his name as *Councillor* John Wheeler. By using the prefix Councillor for his name, rather than Mr or Dr, he was likely to have given the impression that he was acting on behalf of the Council. Also by informing the Complainant that she was going to receive a summons for her parking, or words along those lines, he was giving the impression that he was acting on behalf of the Council. So I consider that the Code of Conduct was engaged.

Has the Code of Conduct Been Breached?

13. As stated above the Code of Conduct requires of Councillors:

He/ she shall behave in such a way that a reasonable person would regard as respectful.

He /she shall not act in a way which a reasonable person would regard as bullying or intimidatory.'

14. I can understand that a person who had re-seeded a lawn on a voluntary basis would become irate if a car drove on the area. I also agree with Councillor Wheeler that it is generally not good parking practice to park on grass, particularly near to swings for small children.

15. Although Councillor Wheeler's irritation was understandable, a reasonable person may not have regarded his actions as respectful and could have considered them to be bullying or intimidating. For example the purpose of

placing of cones around the car is not clear to me -this action could be regarded as bullying or intimidating. It would be understandable and appropriate for a volunteer gardener at the Village Hall to raise an issue of inappropriate parking with a driver. However once the point was made politely, it would be expected that would be the end of the matter. It seems likely that Councillor Wheeler continued to communicate his annoyance for some time including after the Complainant had apologised. This could be construed as bullying or intimidating.

16. It is a matter for the hearings sub committee to decide whether there was a breach of the Code of Conduct.

Recommendations.

17. If it is found that there was a breach of the Code then an appropriate sanction could be reported to council or formal letter to Councillor Wheeler. Alternatively it may be possible for the matter to be resolved informally, for example if Councillor Wheeler offered to apologise to the complainant.

18. It may be appropriate for the Parish Councillors at Haddenham to be given some training. Councillor Wheeler was unable to recall any training he had undertaken, although he said that he had had some. The training could include the Code of Conduct and the Parish Councillor's role. One issue that arises from these facts is that Councillor Wheeler had no reason to mention that he was a Councillor and had he not done so the Code would most likely not have been engaged. He should aim to keep clear boundaries between his Councillor role and other roles he may have. The blurring of boundaries is not a breach of the Code of Conduct per se and so I have not referred to this in the substance of the report. However this is perhaps an issue that could be addressed in training.

Alison Burns

Solicitor. HB Public Law.

28 October 2016

