

**FULL WRITTEN DECISION OF THE NORTH HERTFORDSHIRE DISTRICT  
COUNCIL STANDARDS COMMITTEE**

**Introduction**

- **Name of member:** Town Councillor Raymond Smale ('RS')
  
  - **Relevant authority concerned:** Letchworth Garden City Town Council (LGCTC)
  
  - **Name of investigator:** Mr. J.N. Barnecutt<sup>1</sup>
  - **Date of report of Investigator:** 7<sup>th</sup> August 2007
  - **Date of the hearing:** 28<sup>th</sup> September 2007
  - **Names of standards committee members:**  
  
Chairperson: Mr N. Moss (Independent)  
Member: Parish Councillor M. Goddard  
Member: District Councillor M. Muir  
Member: District Councillor L. Oliver  
Member: Parish Councillor R. Wornham
  
  - **Name of legal adviser to the standards committee:** Mr . T Cosgrove
  
  - **Name of clerk of the hearing:** Mr. I Gourlay
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<sup>1</sup> Appointed by F. Bogie, Monitoring Officer at NHDC

## Section 1: Preliminary documents

On the 9<sup>th</sup> May 2006, the Ethical Standards Officer (ESO) of the Standards Board referred a complaint against RS to the Monitoring Officer of North Hertfordshire DC, Francis Bogie ('FB'). FB conducted the initial investigation but for reasons of ill health appointed J.N. Barnecutt ('JNB') under s.82A(2) and (5) of the LGA 2002 on the 30<sup>th</sup> March 2007 to complete the investigation and write the report to the standards committee.

The Investigator's report ('the report') concerned possible breaches of the Code of Conduct for Parish Councils<sup>2</sup> ('the Code') under Paragraphs 2(b) and 4<sup>3</sup>. The Investigator referred his report to the standards committee for hearing in accordance with the Regulations<sup>4</sup>.

The allegations were that RS:

- (i) Failed to treat Peter Evans ('PE'), the Town Clerk of the LGCTC with respect as required by the Code of Conduct. The allegations related to events surrounding the terms and making of an employment contract with Peter Evans in the period December 2005-February 2006. It was alleged in particular that RS failed to observe accepted council protocols, failed to discuss amendments to the proposed contract with PE, failed to discuss concerns with PE and that he contributed to a delay in the issue of the contract. (Contrary to paragraph 2(b) of the Code).
- (ii) Failed to treat Peter Evans with respect as required by the Code of Conduct. The allegations related to the placing of an advert in a local newspaper and to events in the period October 2005- April 2006. A number of failings were alleged in the process surrounding the advert and it was alleged that the behaviour towards PE by RS amounted to a failure to treat PE with respect and to bullying. (Contrary to paragraph 2 (b) of the Code).
- (iii) Failed to treat PE with respect in his actions as required by the Code of Conduct in relation to the attendance of PE at the LGCTC office. The allegations related to alleged accusatory statements by e-mail, a failure to raise matters with PE and a failure to refer particular matters to the Establishment Committee of the LGCTC and other actions amounting to a failure to treat PE with respect. (Contrary to paragraph 2(b) of the Code).
- (iv) Brought the LGCTC into disrepute. It was alleged that the publication of the advert brought the Council into disrepute and that, as RS was the author of the

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<sup>2</sup> In force at the relevant times – namely SI 2001/3567. It has been subsequently replaced by 2007/1159, in force as of the 3<sup>rd</sup> May 2007.

<sup>3</sup> The report also considered possible breaches of paragraph 2(c) but concluded there was none.

<sup>4</sup> SI 2003/1483, as amended.

text, his actions breached paragraph 4 of the Code of Conduct. (Contrary to paragraph 4 of the Code).

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## **Section 2: Oral and written submissions (procedural)**

At the outset of the hearing the committee considered a number of preliminary matters.

### **1. Application to proceed in the absence of the member.**

RS did not attend the hearing. The committee was informed on his behalf<sup>5</sup> that, although he was in the building, he did not wish to take part in proceedings. He had provided a document (through a colleague who passed it up at the outset of the hearing) headed '*Statement from Letchworth Garden City Councillor R. Smale to NHDC Standards Committee 28<sup>th</sup> September 2007*' in which he indicated, amongst other things, that he did not wish to participate in the hearing as he considered it to be flawed. The Committee read the statement. The Investigator made an application for the matter to proceed in the absence of the member and made submissions.

Having read the statement and having heard submissions from the Investigator, the committee considered whether to proceed in the absence of the member. The committee considered its discretion to proceed in the absence of the member provided by the Regulations and received legal advice on the exercise of that discretion.

The committee decided, after careful deliberation and having received legal advice as to approach, to proceed in the absence of the member.

In deciding to proceed in the absence of the member the committee in particular considered:

- (i) RS clearly had had proper notice of the hearing.
- (ii) Although Article 6 of the European Convention on Human Rights implied a right for the member generally to be present (as did the general principles of fairness), such a right could be waived if such a waiver was unequivocal. RS had indicated a voluntary desire to absent himself. Indeed, the committee considered that he had chosen, whilst knowing the time and place of the hearing (and indeed being in the building), to deliberately and voluntarily absent himself from the hearing.
- (iii) There was a public interest to be considered in hearing and determining the allegations without further delay.
- (iv) There was no indication that, even if the hearing was adjourned, RS would attend a future hearing. Indeed he had indicated that the process was, in his view,

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<sup>5</sup> Councillor Harlow, a Member of LGCTC, attended and passed up the statement

flawed and that he would ‘not participate’. The nature and circumstances of his behavior in absenting himself indicated that any adjournment would serve no purpose.

- (v) The committee did not consider there to be any basis in the assertions that the hearing was flawed or any reason for adjourning the hearing.
- (vi) RS had provided no indication that he wished to be legally represented.
- (vii) The committee considered, so far as it was able, the extent of any disadvantage to RS in not being able to give his account of events having regard to the nature of the evidence against him and the risk of reaching an improper conclusion in his absence. Although in correspondence RS had indicated he might wish to call witnesses, there was no proper explanation as to why any such witnesses would help in relation to relevant issues<sup>6</sup>. Nor now did there appear to be any continued wish to call witnesses, as the member had chosen not to attend.

On balance, the committee having carefully considered its discretion, felt it was appropriate to proceed in the absence of the member. It indicated that it would seek to take into account the matters that had been raised in the ‘statement’ provided at the outset of the hearing together with matters raised in earlier correspondence from the member when making any determinations.

## 2. Other preliminary matters

The committee addressed a number of other matters raised in a letter dated 11<sup>th</sup> September 2007 from RS addressed to the Chairman of the committee. In particular:

- (i) **An assertion that Ms Sawyer should not be the legal adviser to the committee and that Francis Bogie (FB) had invalidated the proceedings by deciding to initiate an investigation.** The committee invited submissions from the Investigator and determined that neither points had merit. Ms Sawyer was not the legal adviser to the committee and the Investigation conclusions had not been reached with input from FB. Nor was there any basis for suggesting the decision to investigate invalidated the proceedings.
- (ii) **Assertions relating to whether matters could amount to breaches of the Code.** The committee agreed that insofar as the letter raised issues<sup>7</sup> in relation to whether various facts could amount to a breach of the Code, that was something that could be considered – should it become relevant and necessary – at a later stage of proceedings.
- (iii) **Assertions relating to the composition of the committee.** In relation to whether the composition of the committee meant the proceedings should not go ahead the committee noted that Councillor Kearns (in relation to whom an issue had been raised by RS) was not sitting on the committee. Further, there was no

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<sup>6</sup> The committee had read earlier correspondence dated 11.9.07 which indicated witnesses might speak to the making of the advertisement, but did not consider – without further explanation – how this would help their determinations.

<sup>7</sup> Under the heading ‘employment status of the clerk’ in the letter.

power to refer the matter to the Adjudication panel at this stage – nor would it have been appropriate to do so even if there had been.

- (iv) **Assertions relating to unfair investigation process.** The committee heard submissions from the Investigator and took account of the matters raised in correspondence and in ‘the statement’ from RS. It determined that there was no basis to suggest that the Investigation process was demonstrably unfair so that the hearing should not proceed.
  - (v) **Request for witnesses to be called and pre-hearing process.** In the letter dated the 11<sup>th</sup> September 2007 RS had indicated he wished to call various witnesses. The committee noted that he had failed to complete any of the standard forms that were provided to him under cover of letter dated 29<sup>th</sup> August 2007 and so had not indicated which, if any, facts in the investigators report he disputed. He was not now present so as to be able to seek to call any witnesses. The committee considered whether it was possible to ascertain what relevance or use any such witnesses might have been to the issues before the committee. The investigator made submissions on the point. The committee were not able to hear any submissions from the member as he had chosen not to attend. The committee indicated that had the member attended they would have allowed him to make submissions explaining the relevance and need for witnesses. However, it determined that in the absence of any reasonable justification for the request for witnesses and as the member had not attended there was no basis for such witnesses to be called.
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### **Section 3: Findings of fact**

RS had not completed any of the forms sent to him as part of the pre-hearing process which invited him to indicate which, if any, facts he disputed. In correspondence he sent prior to the hearing (11<sup>th</sup> September 2007) various points had been made but not so as to clearly indicate which facts he disputed, if any.

The committee proceeded, however, as if the facts were in dispute and took account of what documentation they had from RS.

#### **Summary of evidence:**

The evidence in support of the findings of fact of the Investigator’s report consisted of documents contained in Part A pages 1-105 of the report and witness evidence in Part B , tabs 1-10 of the report.

The member had provided the hearing with a written 'statement' on the day of the hearing (presented through a colleague) which the committee also formally considered along with correspondence he had sent prior to the hearing.

**Summary of submissions:** The Investigator presented the report to the committee and summarized the evidence and invited the committee to find that the facts were proven.

#### **Standards committee's findings of fact:**

The standards committee made the following findings in relation to the facts in dispute after considering the submissions of the investigator and the evidence before the committee :

**The findings of fact as set out in the report at sections 7.1.2, 7.2.2, 7.3.2 and 7.4.2 were made out in their entirety.**

In making such findings the committee carefully considered all the evidence and made its decision on the findings as to facts on the balance of probability (as directed by their legal advisor) based on the evidence it had received. Having considered the witness evidence in Part B of the report and the documents in Part A the committee felt that the findings of fact as set out in the report were supported by evidence and so the committee were able to determine that, on the balance of probability, such facts were made out. Before coming to such a conclusion, the committee considered the documents submitted by the member.

#### **Section 4: Decision on whether the Code was breached**

**Summary of submissions:** The Investigator indicated that he relied upon the matters he had set out in his report under the headings 'compliance with the code of conduct' (at paras 7.1.3, 7.2.3, 7.3.3 and 7.4.3) and 'conclusions' (section 8)

The member was not present to make any submissions, although the committee took into account the written documents he had submitted prior to and at the hearing.

#### **The standards committee's decision on whether or not there has been a breach of the Code and reasons for that decision**

The standards committee reached the following decision:

That the member had breached the code and in particular paragraphs 2 (b) and 4 of it in that:

- (i) He had failed to treat Peter Evans ('PE'), the Town Clerk of the LGCTC with respect as required by the Code of Conduct in relation to the issue of his employment contract. The evidence and facts relating to events surrounding the terms and making of an employment contract with Peter Evans in the period December 2005-February 2006 indicated that RS failed to observe accepted council protocols, failed to discuss amendments to the proposed contract with PE appropriately, failed to discuss concerns with PE and that he contributed to a delay in the issue of the contract. Such actions amounted, in the view of the committee, to showing a treatment by RS of PE that lacked respect contrary to paragraph 2(b) of the Code.
- (ii) He had failed to treat Peter Evans with respect as required by the Code of Conduct in relation to the placing of an advert in a local paper. The evidence and facts relating to the placing of an advert in a local newspaper and to events in the period October 2005-April 2006 demonstrated a number of failings in the process surrounding the advert and attempts by RS to shift aspects of responsibility from RS to PE. The behaviour towards PE by RS amounted, in the view of the committee, to a failure to treat PE with respect and to bullying contrary to paragraph 2 (b) of the Code.
- (iii) He had failed to treat PE with respect in his actions as required by the Code of Conduct in relation to the attendance of PE at the LGCTC office. The facts demonstrated in the view of the committee that RS had sent accusatory statements by e-mail, had failed to raise matters with PE and had failed to refer particular matters to the Establishment Committee of the LGCTC so that he had treated PE with a lack of respect contrary to paragraph 2(b) of the Code.
- (iv) He had brought the LGCTC into disrepute. The facts demonstrated, in the view of the committee, that the publication of the advert brought the Council into disrepute and that, as RS was the author of the text, his actions breached paragraph 4 of the Code of Conduct.

**The relevant sections of the Code of Conduct are:**

Paragraphs 2 (b) and 4

Para 2 (b) provides: [A member must] '*treat others with respect.*'

Para 4 provides: '*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 5: Sanction**

**The committee having determined there were breaches of the code as set out above then decided if it would be appropriate to impose a sanction.**

The committee heard representations from the investigator who suggested that a one month suspension and an apology might be appropriate as the matters were serious. The investigator did not suggest that any recommendations to the authority would be appropriate in this case.

**The standards committee's decision on what sanction, if any, ought to be imposed:**

The standards committee reached the following decision after considering the written evidence and submissions of the investigator and having considered the documents from the member together with legal advice from the legal advisor.

They considered that a sanction should be imposed.

### **The sanction**

- 1. That Councillor Smale be suspended as a member of Letchworth Garden City Town Council for a maximum period of six weeks, such period of suspension to commence on Monday 8<sup>th</sup> October 2007 or until such time as he sends a written apology to Mr Peter Evans for failing to show him due respect as required by the Code of Conduct.**

### **Important**

**For the avoidance of doubt, the effect of the sanction is that Councillor Smale will be suspended for a maximum period of six weeks, that period to start on the 8<sup>th</sup> October 2007. If at any time before the 8<sup>th</sup> October or during the period of the 6 week suspension the required written apology is sent, the period of suspension shall cease (or cease to begin if before the 8<sup>th</sup> October 2007). In any event, the Councillor shall not be suspended for longer than 6 weeks even if he fails to comply with the requirement of an apology.**

**Accordingly, the sanction of suspension takes effect from the 8<sup>th</sup> October unless an apology has been sent before that time.**

**The standards committee's reasons for deciding to impose a sanction were as follows:**

It considered that in light of all the facts and matters it would be reasonable and proportionate to impose a sanction. It considered that the matters found were serious, particularly in relation to the findings of bullying, so that a suspension in principle was appropriate. However, the committee felt that if an apology was given to PE which accepted that he had not been shown respect as required by the Code the member should be allowed to avoid suspension by virtue of such conduct. Accordingly, the committee felt the order would be both appropriate and proportionate to the behavior of the member.

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## **Section 6: Right to appeal**

Councillor Raymond Smale has the right to apply in writing to the president of the Adjudication Panel for England for permission to appeal the standards committee's finding. The president of the Adjudication Panel must receive written notice requesting permission to appeal within 21 days of the member's receipt of notification of the standards committee's finding.

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*Sign here*

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Chair of the standards committee

*Date*

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