

**WARWICK DISTRICT COUNCIL**  
**WESTON UNDER WETHERLEY PARISH COUNCIL**

**REPORT**

**Report of an investigation**  
**pursuant to arrangements made under section 28(6) of the Localism Act 2011**  
**by Peter Oliver (Legal Consultant, Warwickshire County Council)**  
**appointed by the Monitoring Officer of Warwick District Council**  
**into allegations concerning Councillor Andrew Coles,**  
**a member of Weston under Wetherley Parish Council.**

Date: 30 January 2014

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## **1. Executive Summary**

- 1.1 Two complaints have been received (from Maria Norman and Peter Haine) which allege that Councillor Coles failed to comply with various provisions of the Weston under Wetherley Parish Council Code of Conduct. The allegations are that he failed to treat Mrs Norman with respect, and that he acted in a bullying and / or intimidatory manner towards Mrs Norman. I was appointed by Andrew Jones, the Monitoring Officer to investigate these complaints.
- 1.2 I interviewed the two complainants, together with Councillor Beth Roberts and Councillor John Hammon. I sought to interview Councillor Coles, but was unable to arrange an interview with him. I also considered various papers relevant to the complaint.
- 1.3 I find that Councillor Coles failed to comply with the following requirements of the Code of Conduct:
  - 1.3.1 he did not behave towards Mrs Norman in such a way that a reasonable person would regard as respectful.
  - 1.3.2 he acted in a way that a reasonable person would regard as bullying and / or intimidatory towards Mrs Norman.

## **2. Councillor Coles' official details**

- 2.1 As I have not interviewed Councillor Coles (see paragraphs 5.2 and 5.3 below), I do not have all his details. I understand that he was first elected as a member of Weston under Wetherley Parish Council in May 2011 and signed a declaration of acceptance of office (which includes a declaration to observe the code of conduct) on 10 May 2011. He completed a Disclosable Pecuniary Interests Form on 31<sup>st</sup> October 2012.
- 2.2 I do not have any information on whether Councillor Coles has undertaken any training on the code of conduct.

## **3. Relevant legislation**

- 3.1 Section 27 (2) of the Localism Act 2011 requires an authority to adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. Section 28 of the Act sets out the principles with which a code must comply, and requires that it must contain provisions dealing with pecuniary and other interests. Weston under Wetherley Parish Council adopted a Code of Conduct ("the Code of

Conduct”) which complied with those principles and requirements on 3rd October 2012. The Code of Conduct is based on the NALC template code of conduct for parish councils, and a copy is at document1 in Appendix A.

- 3.2 The Code of Conduct contains the following provisions which are relevant to this complaint:

*Member Obligations*

*When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has 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.*

**The complaints**

- 4.1 Two complaints were received by the Monitoring Officer regarding the conduct of Councillor Coles. Both complaints relate to similar incidents or facts and it is convenient to consider them together.
- 4.2 The first complainant is Mrs Maria Norman, who has been the clerk to Weston under Wetherley Parish Council since 16<sup>th</sup> July 2012. Her complaint, which is set out in detail at document 2 in Appendix A, alleges that Councillor Coles did not behave in a respectful way towards her, and refers to a campaign of bullying against her.
- 4.3 The second complaint is from Mr Peter Haine, who is a resident of Weston under Wetherley, and who was elected to the Parish Council in January 2013. He was subsequently appointed vice-chairman of the Parish Council. His complaint, which is set out at document 3 in Appendix A, alleges that Councillor Coles’ actions were of an intimidatory nature towards the clerk.
- 4.4 Mr Haine also alleges that by his actions Councillor Coles brought the council and / or his office into disrepute. Although it was a requirement of the old (pre July 2012) code of conduct that a councillor should not bring the council and/or his office into disrepute, it is not a requirement of the present Code of Conduct. I shall therefore ignore those specific allegations.
- 4.6 On 10<sup>th</sup> May 2013, I was appointed by the Monitoring officer, Andrew Jones, to investigate these complaints.

## **5. The evidence gathered**

- 5.1 I interviewed and took statements from the two complainants, Maria Norman and Peter Haine. The signed statements from both these people are in Appendix A to this report (documents 4 and 5). I also interviewed and took statements from Councillor Beth Roberts (who has been a member of the Parish Council for most of the time to which these complaints relate and has been chairman of the Council since January 2013) and District Councillor John Hammon whose ward includes Weston under Wetherley and who attends most of the Parish Council meetings. Their statements are at documents 6 and 7 respectively in Appendix A.
- 5.2 I have attempted unsuccessfully to arrange to interview Councillor Coles. I wrote to him on 13 August, 28 August, 17 September and 1 October 2013 requesting that he provide me with some convenient dates for such an interview to be held. Councillor Coles replied on 13 September and 11 October, without providing any dates. I wrote to Councillor Coles again on 30 October (the delay being occasioned by an approach he had made to the Deputy Monitoring Officer), advising him that as he had not provided me with any proposed dates for the interview to take place, I was proceeding with the preparation of my report. These and other relevant letters are listed in Appendix B to this report, but not reproduced as they contain some confidential information. However, they will be made available to the Monitoring Officer and any Hearing Panel if required for the consideration of this report.
- 5.3 It is clearly unsatisfactory that I have not been able to interview Councillor Coles and to hear his account of the events to which the complaints relate. However, I am mindful that whilst every opportunity must be given to a councillor to explain his or her version of events, a duty is also owed to the complainants to produce my report within a reasonable time span. There was a period of more than eleven weeks between my first requesting Councillor Coles to propose dates for an interview and my decision to prepare my report without the benefit of interviewing him. I consider that this period of time was more than adequate for Councillor Coles to propose dates for me to interview him and / or to provide me with any written material he wished me to consider.

5.4 I issued a draft of this report to Councillor Coles and the two complainants on 4<sup>th</sup> November. I received comments from both of the complainants. Mrs Norman's comments are included in appendix A to this report (document 8) and have resulted in some amendments to the report. Mr Haine's comments drew my attention to a typographical error (which has been corrected) and raised another matter which I do not consider relevant to my enquiries for reasons which I have explained to him. This final report therefore contains some updating and some minor textual amendments compared with the draft, additional consideration of whether Councillor Coles was subject to the Code, and an amendment to my findings at paragraph 7.16 below.

## **6. Summary of the material facts**

6.1 Having not had the benefit of interviewing Councillor Coles, nor of receiving any documents or statement from him, the only evidence I have is from the complainants and two other witnesses whom they suggested I should interview. Nevertheless, there is a considerable degree of common ground between the four witnesses. Having interviewed them, I find them to be honest witnesses, and accept the version of events which they have put forward. Accordingly, the material facts as I find them are set out in the following paragraphs.

6.2 Weston under Wetherley Parish Council should have six members. In July 2012, as a result of resignation and death of other members, there were only three – Councillors Mobbs, Coles and Roberts. From May 2012 there had been no appointment of any councillor as chairman of the council, and Councillor Mobbs (the previous chairman of the council) was appointed at each meeting to chair that meeting. A long standing clerk had resigned in May 2011, and three further clerks had come and gone in the ensuing fourteen months. Following an advertisement, Mrs Maria Norman applied for the post and was appointed to it in July 2012 following an interview by the three councillors. She had no previous knowledge of Weston under Wetherley or any of its councillors. Although she had a legal background, Mrs Norman had no previous experience of parish councils or clerking, and those appointing her were aware of this in making the appointment.

- 6.3 The first incident of which Mrs Norman complains occurred within a few weeks of her taking up her post. She had been told by the acting chairman (Councillor Mobbs) that the minutes should be written as a narrative rather than as a bald statement of the resolution. She wrote what she considered to be a fair synopsis of a particular item (relating to the sale of Offchurch playing field) but was asked to change it as Councillor Coles considered that it reflected adversely on him. Although she believed the draft minute was accurate, Mrs Norman bowed to the pressure and amended it.
- 6.4 At the following meeting of the Parish Council in October 2012, there was a discussion led by Councillor Coles about proposals for traffic calming measures in the village. At the end of the discussion, Mrs Norman was unclear as to what had been decided and tried to clarify it with Councillor Coles the next day, but received no reply. She was subsequently put under pressure to change the draft minutes, and Councillor Coles told her that if he had to challenge the minutes at the council meeting “You won’t like it”.
- 6.5 In December 2012, the Parish Council became inquorate as a result of the resignation of Councillor Roberts. By the middle of January 2013, four councillors had been elected unopposed (including the re-election of Councillor Roberts) so that the council was back to full membership. A meeting of the Parish Council was held on 24<sup>th</sup> January 2013 at which Councillor Coles was not present and at which Councillor Roberts was elected Chairman of the Council.
- 6.6 Following that meeting, there was a series of emails between Councillor Coles and Mrs Norman as to whether Councillor Roberts’ appointment was for that meeting only or until the next annual meeting, and the statutory basis for the appointment. These emails are appendix 4 to Mrs Norman’s complaint.
- 6.7 The next meeting of the Parish Council was to be on Wednesday 27<sup>th</sup> February 2013. Notice of the meeting was to be published on the preceding Friday (22<sup>nd</sup> February). Because Councillor Roberts was busy or away, she and Mrs Norman had agreed a draft agenda earlier in the week (either the Tuesday or the Wednesday). On Thursday 21<sup>st</sup>, Councillor Coles sent an email to Mrs Norman requesting that three items be put on the agenda for the meeting. Two of the items related to the legality of the previous meeting (alleging that it had been improperly convened) and the legality of Councillor

Roberts' appointment as chairman. The copy of the email (appendix 5 to Mrs Norman's complaint) is timed at 13.57 although Mrs Norman says she did not receive it until late in the day. Councillor Coles also drove over to Mrs Norman's home to deliver a copy of the email by hand.

6.8 Mrs Norman refused the request to put the items on the agenda as the agenda had already been drawn up and signed. She offered to put them on the agenda for the following meeting, or suggested that Councillor Coles could raise them under Matters Arising.

6.9 On 27<sup>th</sup> February (the day of the Parish Council meeting), Councillor Coles sent an email to all members of the council, and copied it to Mrs Norman. The email (which is appendix 6 to Mrs Norman's complaint) is timed at 17.20, i.e. 1 hour 40 minutes before the meeting was scheduled to begin. The email refers to "continued abuse and wanton disregard for the LGA and our standing orders" as "totally unwarranted and a matter I find offensive both towards me as a Councillor and the council I have the privilege to represent".

6.10 Shortly before the start of the meeting, Councillor Coles placed several copies of that email in front of Mrs Norman. None of the matters in the email were raised by Councillor Coles during the meeting. At the end of the meeting, Councillor Coles approached Mrs Norman and spoke to her in what she describes as "an offensive and hostile manner", and which Councillor Roberts describes as appearing to be intimidating towards Mrs Norman. Councillor Coles then removed the copies of the emails which had remained on the table in front of Mrs Norman and said "I'll take those, I'm going to sleep on it".

## **7. Reasoning as to whether there have been failures to comply with the Code of Conduct.**

### **(a) Whether Councillor Coles was subject to the Code**

7.1 The first matter which it is necessary for me to consider is whether, at the times to which the various matters of complaint relate, Councillor Coles was acting, claiming to act or giving the impression of acting as a representative of Weston under Wetherley Parish Council. It is only in those circumstances that he is subject to the provisions of the Code.

7.2 The matters which are the subject of the complaints occurred either at meetings of the parish council or related directly to them (the preparation of the agendas or the contents of the minutes). In those circumstances I have



no hesitation in finding that Councillor Coles was acting as a member of Weston under Wetherley Parish Council and was thus subject to the Code of Conduct.

7.3 Councillor Coles raises two further points which he claims means that he is not subject to the Code. The first is that he claims that the adoption of a Code of Conduct by Weston under Wetherley Parish Council was not publicised as required by s.28(12) of the Localism Act 2012. That sub-section provides “A relevant authority must publicise its adoption, revision or replacement of a code of conduct in such manner as it considers is likely to bring the adoption, revision or replacement of the code of conduct to the attention of persons who live in its area.” It is clear to me that the purpose of this provision is to ensure that local people are aware of the adoption of a Code so that they can judge the conduct of their councillors against it. It is not the case that a failure by the Council to publicise the adoption of a Code should absolve the members of the council from the requirement to comply with it.

7.4 Councillor Coles also says that he has not given an undertaking to comply with the new code. In my opinion, there is no requirement for such an undertaking within the new conduct regime introduced on 1<sup>st</sup> July 2012. The statutory provisions, taken as a whole, provide that a council sets out in its code the standards of conduct expected of a councillor, and the occasions on which the councillor is required to comply with them. As the Weston under Wetherley Parish Council’s Code states “When a member of the Council acts, claims to act or gives the impression of acting, as a representative of the Council, he/she has the following obligations”.

7.5 I therefore have no hesitation in finding that Councillor Coles was subject to the Code at all times relevant to the complaints which are the subject of this investigation and report.

**(b) Whether Councillor Coles failed to behave in such a way that a reasonable person would regard as respectful**

7.6 The requirement to treat others with respect was part of the old (pre-2012) national Code of Conduct, on which guidance was issued by the (former) Standards for England. In relation to the requirement to treat others with respect, that guidance included the following: “Individuals should not be subject to unreasonable or excessive attack. This particularly applies to

dealing with the public and officers” and “Members should as far as possible treat the public courteously and with consideration. Rude and offensive behaviour lowers the public’s expectations and confidence in its elected representatives”. Whilst I recognise that this does not constitute formal guidance on the current code of conduct, I consider that it continues to provide a useful benchmark of the standards which the public should reasonably be entitled to expect from councillors. Accordingly, I shall apply these principles to the facts which I have found in section 6 of this report.

- 7.7 The first incident is that related at paragraph 6.3. It occurred in relation to a meeting which took place in August 2012 and before the meeting of the Parish Council on 3<sup>rd</sup> October 2012 at which the Code of Conduct was adopted. The old code of conduct had ceased to have effect by operation of law on 1<sup>st</sup> July 2012. It therefore follows that there was no code of conduct in force for members of Weston under Wetherley Parish Council at the time of this incident and therefore Councillor Coles cannot have failed to comply with it.
- 7.8 The next incident is that considered at paragraph 6.4. The clerk was unsure as to what the final decision had been on the item, and sought to clarify it after the meeting. When she did not receive a reply from Councillor Coles she wrote the minutes in line with what she thought had been decided. At that point Councillor Coles asked her to change them. Instead of apologising for not responding to her earlier request for clarification, Councillor Coles made it clear that if the draft minutes were published as they then were and had to be changed at the Council meeting, there would be unpleasant consequences for Mrs Norman. I consider that by failing to respond to the request for clarification and by then acting in the way he did to seek to get the draft minutes changed, Councillor Coles failed to behave towards Mrs Norman in a way that a reasonable person would regard as respectful.
- 7.9 Paragraph 6.6 relates a series of emails between Councillor Coles and Mrs Norman. Whilst the emails proceed on the basis of what appears to be a misunderstanding by Councillor Coles (that the office of chairman of the council was not vacant at the time of the meeting on 24<sup>th</sup> January), I do not consider that the emails are such that a councillor seeking clarification of a matter could not properly send to the clerk. I therefore find that those emails

on their own do not amount to a failure to behave towards Mrs Norman in a way that a reasonable person would regard as respectful.

- 7.10 The next matter relates to the email sent by Councillor Coles to Mrs Norman and then delivered by hand on 21<sup>st</sup> February (paragraph 6.7). It is not necessary for me to consider whether Councillor Coles was right or wrong in his interpretation of the Local Government Act and the Council's Standing Orders. What I am concerned with is his conduct towards Mrs Norman and whether that breached the requirements of the Code of Conduct. If Mrs Norman had failed to comply with the Local Government Act or the Council's Standing Orders other legal avenues would have been available to Councillor Coles to challenge such failures.
- 7.11 I have considered carefully the contents of the email. I consider that the matters in it are not such as could not properly be put on the agenda (leaving aside the question of whether they were in time), although whether the council would properly be able to consider them without expert legal advice is a moot point. The email was sent on what I believe Councillor Coles considered to be the last day for submitting items for the agenda. The email was sent some four weeks after the previous meeting of the Parish Council to which it related and a week after the exchange of emails between him and Mrs Norman relating to what had happened at the previous meeting. As I have not been able to interview Councillor Coles, I have not been able to form a view as to whether he deliberately delayed sending the email until shortly before what I believe he thought was the deadline. What is abundantly clear to me is that if he had sent it a couple of days earlier, the items would have appeared on the agenda. Nevertheless, if his view of the deadline was the correct one he was entitled to send the request for items to be put on the agenda when he did, and I do not consider that the fact that this may have been inconvenient to Mrs Norman (whether or not intentionally on the part of Councillor Coles) to amount to a failure to be respectful towards her. I therefore find that in relation to that email there was no failure to adhere to the requirements of the Code of Conduct.
- 7.12 Paragraph 6.9 sets out the facts relating to the email sent by Councillor Coles to members of the Parish Council shortly before the meeting of the council on 27<sup>th</sup> February. It must be remembered that Mrs Norman is an employee of the

Council, and the comments in the email were being made to other members of the Council in a situation where Mrs Norman had no opportunity to respond. I consider that the email, rather than being merely factual, is littered with comments (e.g. “wilfully refused”, “continued abuse”, “wanton disregard”) which can only be intended to denigrate Mrs Norman in the eyes of the other councillors. Bearing in mind also that three of the councillors were new to the parish council, there was no attempt to explain the use of the word “continued” which implies similar occurrences previously (although no evidence of such has been given to me). I consider that the tone of this email, and its timing (a week after Mrs Norman declined to include the matters on the agenda but less than two hours before the meeting) were intended to cause maximum embarrassment to Mrs Norman. I find that in sending the email Councillor Coles failed to behave towards Mrs Norman in a way that a reasonable person would regard as respectful.

- 7.13 Finally with regard to Mrs Norman’s complaint, I need to consider Councillor Coles’ conduct at the meeting of the Parish council on 27<sup>th</sup> February. This is detailed at paragraph 6.10. Mrs Norman says that Councillor Coles spoke to her at the end of the meeting in an “offensive and hostile manner”, and this is corroborated by Councillor Roberts who says that it appeared to her that Councillor Coles was being intimidating towards Mrs Norman. Again I find that this amounts to a failure to behave towards Mrs Norman in a way that a reasonable person would regard as respectful.

**(c) Whether Councillor Coles acted in a way which a reasonable person would regard as bullying or intimidatory.**

- 7.14 The final matters I need to consider are the complaints by Mrs Norman that Councillor Coles was involved in a campaign of bullying against her and by Councillor Haine that Councillor Coles acted in an intimidatory way towards Mrs Norman.

- 7.15 The prohibition on bullying was previously part of the old National Code of Conduct and bullying was defined by Standards for England as

*“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. It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying.”*

Again, I consider that whilst this guidance is no longer extant, it remains a useful benchmark and the best available definition for use in these circumstances. This definition includes intimidating behaviour, and the provisions of the present code are therefore somewhat tautologous. I am not aware of any guidance as to what constitutes intimidation, but a dictionary definition of that word<sup>1</sup> is to frighten or scare.

- 7.16 The evidence shows a series of actions on the part of Councillor Coles towards Mrs Norman, from his comments to her regarding the changing of the draft minutes of the October meeting, the sending of an email very close to what Councillor Coles believed to be the deadline for the agenda for the February meeting, the sending of the further email less than two hours before that meeting, and the contents of that email, to his attitude towards her at the conclusion of that meeting. In the words of the definition above, this was in my opinion, intimidating, insulting and humiliating behaviour, which was part of a pattern of behaviour. It is my opinion, and I believe that it would be the opinion of a reasonable person, that this shows that, having become dissatisfied with the actions of Mrs Norman, Councillor Coles was seeking to undermine Mrs Norman’s confidence to the point where she would follow her predecessors and resign. In my opinion, the reasonable person would regard this as bullying and / or intimidatory behaviour, and it therefore constitutes a failure to comply with the provisions of the Code.

## **8. Findings**

- 8.1 I find that in respect of the actions and for the reasons set out in paragraphs 7.8, 7.12, and 7.13, Councillor Coles failed to comply with the Code of Conduct of Weston under Wetherley Parish Council in that he did not behave towards Mrs Norman in such a way that a reasonable person would regard as respectful.
- 8.2 For the reasons set out in paragraph 7.16, I find that Councillor Coles failed to comply with the Code of Conduct of Weston under Wetherley Parish Council

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<sup>1</sup> Collins English Dictionary

in that he acted in a way that a reasonable person would regard as bullying and / or intimidatory towards Mrs Norman.

8.3 There are various other matters set out in the report which I find do not amount to a failure to comply with the provisions of the Code.

Peter J R Oliver  
Legal Consultant  
Warwickshire County Council

30 January 2014

## **Appendix A**

### **Schedule of evidence taken into account and appended to this report**

1. Code of Conduct of Weston under Wetherley Parish Council
2. Complaint from Mrs Maria Norman dated 10<sup>th</sup> March 2013
3. Complaint from Mr Peter Haine dated 4<sup>th</sup> March 2013
4. Statement of Mrs Maria Norman dated 27<sup>th</sup> July 2013
5. Statement of Mr Peter Haine dated 13<sup>th</sup> June 2013
6. Statement of Councillor Elisabeth Roberts dated 7<sup>th</sup> August 2013
7. Statement of Councillor John Hammon dated 31<sup>st</sup> July 2013
8. Email from Maria Norman dated 3 January 2014

## Appendix B

### **List of correspondence relevant to the investigation but not appended to this report on account of it containing material of a confidential nature**

[N.B. This correspondence will be made available to the Monitoring Officer and any Hearing Panel if requested by them]

1. Letter from Investigating Officer to Councillor Coles dated 13<sup>th</sup> May 2013
2. Letter from Investigating Officer to Councillor Coles dated 13<sup>th</sup> August 2013
3. Letter from Investigating Officer to Councillor Coles dated 28<sup>th</sup> August 2013
4. Letter from Councillor Coles to Investigating Officer dated 13<sup>th</sup> September 2013
5. Letter from Investigating Officer to Councillor Coles dated 17<sup>th</sup> September 2013
6. Letter from Investigating Officer to Councillor Coles dated 1<sup>st</sup> October 2013
7. Letter from Councillor Coles to Investigating Officer dated 11<sup>th</sup> October 2013
8. Letter from Investigating Officer to Councillor Coles dated 24<sup>th</sup> October 2013
9. Letter from Investigating Officer to Councillor Coles dated 30<sup>th</sup> October 2013
10. Letter from Investigating Officer to Councillor Coles dated 3<sup>rd</sup> December 2013
11. Letter from Councillor Coles to Investigating Officer dated 4<sup>th</sup> January 2014
12. Letter from Investigating Officer to Councillor Coles dated 14<sup>th</sup> January 2014



## **Appendix C**

### **List of unused materials**

1. Correspondence with Monitoring Officer and witnesses relating to conduct and progress of complaint.
2. Standing Orders of Weston under Wetherley Parish Council
3. Minutes of various meetings of Weston under Wetherley Parish Council