

**Minutes of the Members' Code of Conduct – Final Hearing Panel  
18 January 2013**

**Present:**

Mr Murray Litvak (Chairman)

Councillors:

Mrs C. Bannister

R.D. Dunn

A.E. Friday

**1/13 Disclosure of Interest**

Councillor Mrs Bannister disclosed that she sat on the same Parish Church Council as Councillor Davis however this did not preclude her from sitting on the Panel. Councillor Friday disclosed that he is the Chairman of the Spelthorne Conservative Group which Councillor Davis is a member. This did not preclude him from sitting on the Panel.

**2/13 Determination of Complaint against Councillor Colin Davis**

The Chairman opened the meeting by re-introducing the members of the Panel and officers present and explained the nature of the decision to be taken.

The Chairman reminded all concerned of the process undertaken so far in that on 18 December 2012 representations had been heard from all parties in relation to the alleged breaches of the Code of Conduct. There had also been a period of questioning and both parties were able to present a closing submission. The Panel had then adjourned to make their decision. At that time it became clear that the Panel needed more time to consider the complex issues raised and had agreed that the Hearing be adjourned to enable the Panel to give proper and due consideration to the matter.

The Chairman reported that the purpose of this reconvened hearing was to determine whether Councillor Davis' action at the Ashford Pride Meeting on 9 March 2012 amounted to a breach of the Members' Code of Conduct by

- a) Speaking in a disrespectful manner about Officer A, referring to him as an 'idiot boy';
- b) Bringing his office into disrepute due to the conduct referred to in a) above;
- c) Speaking in a disrespectful manner about the Council's Head of Corporate Governance, bring his office into disrepute and also compromising that officer's impartiality by referring to him as Councillor Frazer's 'pet solicitor'; and
- d) Bringing his office into disrepute by generally acting in such an unbecoming way for a councillor that it offended members of the public

who attended to such a degree that he was removed as chairman of the meeting while it was in progress.

**RESOLVED** that the Panel having considered the mitigation put forward concluded the following sanctions are appropriate:

- (1) For breaches a to d Councillor Davis is required to undertake training on the control of his type II diabetes on a course provided by an organisation such as diabetes UK and as approved by the Deputy Monitoring Officer. Councillor Davis is also required to attend training with the Deputy Monitoring Officer and the Head of Human Resources on the conduct in public meetings.
- (2) For breaches a to d the Deputy Monitoring Officer is requested to provide a factual press statement on the findings.
- (3) For breach c Councillor Colin Davis to submit a private letter of apology to the Head of Corporate Governance, within 7 days of this hearing. A copy of the apology to be given to the Panel Members.
- (4) For breach d the Panel censured Councillor Colin Davis.

Please refer to the Decision Notice for full details.

**SPELTHORNE BOROUGH COUNCIL**  
**final written decision of**  
**Member's Code of Conduct Hearing Panel**

**Date of Hearing** 18 December 2012 and 18 January 2013

**Subject Member** Councillor Colin Davis

**Complainant** Mr Michael Graham – Head of Corporate Governance

**Chairman of the Members' Code of Conduct Hearing Panel** Mr Murray Litvak

**Other members of the Members' Code of Conduct Hearing Panel** Councillor Christine Bannister  
Councillor Richard Dunn  
Councillor Alfred Friday

**A panel was conducted in accordance with the Localism Act 2011 and the hearing procedures adopted by the Council.**

**The complaint was considered in relation to the Code of Conduct that was applicable at the time of the Ashford Pride meeting.**

### **Summary of original complaint**

The complaint concerns allegations that Councillor Colin Davis failed to comply with the Members' Code of Conduct in that at the Ashford Pride meeting on the 9 March 2012 he:

- a) Spoke in a disrespectful manner about Officer A, referring to him as an 'idiot boy';
- b) brought his office into disrepute due to the conduct referred to in a) above;
- c) Spoke in a disrespectful manner about the Council's Head of Corporate Governance, brought his office into disrepute and also compromised that officers impartiality by referring to him as Councillor Frazer's 'pet solicitor'; and
- d) brought his office into disrepute by generally acting in such an unbecoming way for a councillor that it offended members of the public who attended to such a

degree that he was removed as chairman of the meeting while it was in progress.

### **Relevant Section of the Code of Conduct**

The Code of Conduct which was applicable at the time of the Ashford Pride meeting on the 9 March 2012, was that which was adopted by Spelthorne Borough Council from the 1 October 2007. The following paragraphs of the Code are relevant to these allegations:

**Paragraph 3 (1)** You must treat others with respect.

**Paragraph 3 (2)** you must not-  
**(d)** do anything which compromise or is likely to compromise the impartiality of those who work for, or on behalf of your authority

**Paragraph 5 (a)** You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

### **Summary of the evidence considered and representations made**

- The Panel read and considered the report of the investigator, Mr Richard Lingard.
- The Panel heard representations from Mr Lingard and from Mr Ben Douglas-Jones, the appointed representative of Councillor Davis.
- The Panel heard verbal evidence from Councillor Davis.
- The Panel read the witness statements of Mrs Ellen Luise Davis submitted on behalf of Councillor Davis.

### **Findings in respect of the Conduct of Councillor Colin Davis**

The Panel made the following findings in relation to Councillor Davis conduct at the Ashford Pride meeting on the 9 March 2012:

1. That it did not amount to an act of automatism due to a state of hypoglycaemia.

#### **Reason for finding**

The Panel were persuaded that at the relevant time Councillor Davis may well have been suffering a hypoglycaemic episode, but that this did not amount to automatism. In order for automatism to apply there needs to be a complete lack of control; in effect an act by a person who is not conscious of what he is doing. The case law in this area was presented to the Panel by their legal advisor with particular reference to the cases *Bratty v. Attorney General for Northern Ireland* and *R. v. Hennessy*.

The Panel were persuaded that there was not a complete lack of control due to the accounts of the meeting by persons who were present. Councillor Mrs Pinkerton, states "He was totally in command but rapidly losing patience". Also Councillor Davis could clearly recollect a statement made by Councillor Ayers "Look – what the hell's up with you, I know you are not pissed. Now take yourself home and we'll talk in due course."

The Panel agreed with the position set out by Mr Lingard that Councillor Davis' diabetes was a matter to be considered in mitigation when deciding upon sanctions.

2. That the Council was not obliged to make adaptations under the Equalities Act 2010 in relation to the hearing.

**Reason for finding**

The Panel concluded that diabetes is a disability within the definition of the Equalities Act 2010, but that all relevant adaptations have been made by the Council. There were relevantly trained first aiders always available in the building, food was accessible at all times that the building was open and adequate time was provided so that all present could obtain lunch.

The Panel also concluded that the hearing procedures had been agreed by a cross section of Councillors including those with disabilities and were therefore entirely appropriate. Full consideration to Councillor Davis' condition was considered in mitigation.

3. That, contrary to the Members' Code of Conduct, he failed to treat Officer A with respect by reference to him as 'idiot boy'.

**Reason for finding**

The Panel considered the report of the Investigator and agreed that Councillor Davis used disrespectful language to describe Officer A.

The Panel heard from Councillor Davis that this phrase was used to explain that Officer A was suitable for undertaking the work as he was not qualified in video production, but he agreed that the term used was probably inappropriate. The Panel considered the explanation given by Councillor Davis in his interview of the 17 August 2012 that he should have used the term 'Private Pike' or 'technological twit' and considered that these were equally offensive.

Those interviewed referred to the remark as 'very derogatory', 'not very professional' and 'inappropriate'. The Panel agree entirely that this is the case and that this amounts to treating a person without due respect.

The Panel concluded that this was not an acceptable way to speak about an officer of the Council regardless of the intention. Councillors should learn to adapt their communication style to suit the meeting.

4. That, contrary to the Members' Code of Conduct, in relation to referring to a council officer as 'idiot boy', he conducted himself in a manner which could reasonably be regarded as bringing his office into disrepute.

**Reason for finding**

The Panel found that although not everyone at the meeting may have been aware of whom Officer A was; it was clear that the derogatory comment referred to a member of the Council's staff.

The comment gives the impression to the public that there is a lack of respect for the Council officers. Members of the public were clearly affected by the remark. Dr Sabine Lohmann stressed 'to say "idiot boy" is kind of back firing and has a knock-on effect on the reputation of the Council because why on the one hand would they hire someone who they did not think highly of and on the other hand, using that kind of language puts the Council in a negative light because it is just not professional'. The Panel also took on board the comments of Councillor Pinkerton who told Councillor Davis that he 'should not have used that description particularly as the meeting was a public forum'. Also the words of Terry Collier 'that those attending the meeting were very surprised that a councillor would speak that way in a public meeting about a junior member of staff' and those of Keith McGroary that this remark 'caused a silence around the room'.

5. That, contrary to the Members' Code of Conduct, he failed to treat the Head of Corporate Governance with respect by reference to him as Councillor Frazer's 'pet solicitor'.

**Reason for finding**

The Panel were of the view that the term 'pet' was not a term of endearment, but was meant in a derogatory manner. The extracts of the interviews highlighted by the Investigator show that the tone of the meeting was such that this term could only be meant in such a way. Councillor Davis in his own interview stated that he was 'immensely irritated that Councillor Frazer was apparently arguing against Mr Graham's suggestion that Officer A should be asked to produce the video after he (Councillor Frazer) had earlier in the day opined that Mr Graham was 'a paragon of local government jurisprudence'.

Councillor Davis himself stated that it was an 'inappropriate colloquial reference'; the Panel consider that the comment goes beyond such and is disrespectful to Mr Graham.

In each of the matters concerning respect the Panel considered the advice of their legal advisor to consider the matters set out in the case LGS/2011/0540 from May 2011 (which although relating to previous legislation, presents a good description of the consideration of what must be taken into account). "Expressing oneself in a forthright manner especially in the cut and thrust of political debate, does not necessarily amount to disrespect and an officer may expect members to express opinions forcefully. Enquiring and a probing attitude or challenging a professionally held view may not amount to

disrespect. However, disrespect may comprise: behaviour that is deliberately rude or offensive; aggressive or intimidating; the use of intemperate or strong language; making unsubstantiated accusations; impugning professional integrity or questioning professional competence; unfair criticism; physically undermining the officer; physical assault; and/or making racist or sexist comments.”

6. That, contrary to the Members’ Code of Conduct, in relation to referring to the Head of Corporate Governance as Councillor Frazer’s ‘pet solicitor’, he conducted himself in a manner which could reasonably be regarded as bringing his office into disrepute.

**Reason for Finding**

Although it shows from the interviews of some of those present that those persons in attendance were not as shocked by this comment as to the reference to ‘idiot boy’, the Panel considered that hearing these words would have the effect of lowering the public’s opinion of the Councillor and the Council, which has the effect of bringing Councillor Davis’ office into disrepute.

The Panel considered that the comment implied that Michael Graham afforded greater professional courtesy to Councillor Frazer than other Councillors. Thus implying that officers do not play the impartial role that they must observe, this was of particular significance in that Michael Graham is in a senior position within the authority and at that time Councillor Davis was a member of the Cabinet.

7. That, contrary to the Members Code of Conduct, he compromised the impartiality of the Head of Corporate Governance, by reference to him being Councillor Frazer’s ‘pet solicitor’.

**Reason for Finding**

The Panel concluded that the statement of being someone’s ‘pet anything’ implied that there was some sort of close relationship, it implies favouritism. The Panel felt it implied that there was some form of collusion between Councillor Frazer and Michael Graham.

The Panel agreed with the sentiments of the Investigator that the effect was to suggest that there existed between Michael Graham and Councillor Frazer some degree of connection, loyalty or link not enjoyed by other Councillors and that Mr Graham’s impartiality could have been compromised.

8. That, contrary to the Members Code of Conduct, he generally behaved in such an unbecoming way for a Councillor that it offended members of the public who attended to such a degree that he was removed from the Chair of the meeting while it was in progress and that it brought his office into disrepute.

### **Reason for Finding**

The Panel have found two individual incidents which have led to a finding of bringing his office into disrepute. It is clear from the interview accounts that persons present were alarmed by Councillor Davis' behaviour. Terry Collier advised the Investigator that Councillor Davis had 'offended and upset people present', Mr McGroary stated it was the worst chaired meeting he had ever seen. Fellow Councillors who were interviewed expressed their dissatisfaction with the conduct of the meeting.

The Panel concluded that the actions of Councillor Davis at the meeting would have an impact on the public's opinion of the Council, Councillors and how the whole operation is run.

### **Sanctions Imposed**

In accordance with the Localism Act 2011 and the Spelthorne Borough Council adopted procedures the Panel imposed the following sanctions:

1. Councillor Davis is required to attend training on the control of his type II diabetes on a course provided by an organisation such as Diabetes UK and such course to be approved by the Council's Deputy Monitoring Officer.
2. Councillor Davis is required to attend training with the Deputy Monitoring Officer and the Head of Human Resources on conduct in public meetings.
3. The Deputy Monitoring Officer is requested to provide a factual press statement of the findings.
4. Councillor Davis should submit a private letter of apology to Mr Michael Graham within 7 days of the date of the hearing. A copy of the apology is to be given to the members of the panel.
9. The Panel **censure** Councillor Colin Davis for generally behaving in such an unbecoming way for a Councillor that it offended members of the public who attended to such a degree that he was removed from the Chair of the meeting while it was in progress and that it brought his office into disrepute.

When deciding which sanctions to impose the Panel paid particular attention to the mitigation put forward, that at the time of the meeting that Councillor Davis was in a state of hypoglycaemia. The sanctions are considered to be an appropriate balance to ensure that Councillor Davis continues his duties without further recourse to a panel hearing. It is hoped that this will give guidance to Councillor Davis to enable him to learn to control his diabetes. It is aimed to ensure that Councillor Davis is able to adapt his style of address at meetings. Even when Councillor Davis was interviewed by Mr Lingard and he was not in a hypo state, the alternative references to Officer A would not be acceptable.

The Panel agreed that this decision notice should be placed on the Council's website under the agenda and minutes of the meeting.

Murray Litvak  
Chairman  
19 February 2013