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Monday 24 September 2012

To: Chairman – Councillor Mick Martin  
Vice-Chairman – Councillor Alison Elcox  
Members of the Civic Affairs Committee – Councillors Simon Edwards,  
Sebastian Kindersley, Douglas de Lacey, Janet Lockwood, Ray Manning,  
Raymond Matthews, Tony Orgee, Jim Stewart, Edd Stonham, Robert Turner and  
Bunty Waters

Quorum: 4

Dear Councillor

Please find attached a report into allegations concerning Councillor Mervyn Loynes which was made public by the Committee at its meeting on Monday 24 September 2012.

Yours faithfully  
**JEAN HUNTER**  
Chief Executive

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## AGENDA

**3. Update on Complaints and Confidentiality Requirements**

**PAGES  
1 - 34**

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**PRIVATE AND CONFIDENTIAL**

**Case reference: 4934**

Report of an investigation under Section 59 of the Local Government Act 2000 by Robert Swinfield, appointed by the Monitoring Officer for South Cambridgeshire District Council, into allegations concerning Councillor Mervyn Loynes of South Cambridgeshire District Council.

**DATED:** 29 June 2012

# Volume 1

  

# Report

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**Page 3**  
**CONFIDENTIAL REPORT**

Volume 1

<b>Contents</b>	<b>Page</b>
1. Executive Summary	4
2. Councillor Loynes' official details	6
3. Relevant legislation and protocols	7
4. Undertaking this investigation	8
5. Evidence and facts	10
6. Material Facts - Findings	20
7. Reasoning as to whether there have been failures to comply with the Code of Conduct	23
8. Finding	34

Volume 2

- Appendix A Schedule of evidence taken into account and list of unused material
- Appendix B Chronology of events
- Appendix C Details of attempts to make contact with Mr Dean Biddle

Volume 3 - Confidential

- Appendix D Email message from Councillor Manning

**1. Executive Summary**

- 1.1 Councillor Loynes is a member of South Cambridgeshire District Council (SCDC). He is a member of the Conservative Group on SCDC and Ward Member for Bourn.
- 1.2 Councillor Loynes attended the SCDC offices on 15 February 2012. A Planning Enforcement Sub-Committee meeting was scheduled to take place at 2.00pm in the Swansley Room that day.
- 1.3 Councillor Loynes went to the Members' Room where he had a conversation with Councillor Roberts in the company of Councillor Val Barrett. It was alleged he said *"You know Deb, I agree with you, I wish we could get rid of all the travellers in South Cams"*.
- 1.4 Councillors Loynes and Barrett then went to the Swansley Room for a briefing meeting prior to the Sub-Committee meeting involving 3 officers, Mr Duthie, Mr Blazeby and Mr Biddle. The briefing involved discussion of the items on the Sub-Committee agenda, which included enforcement issues regarding Smithy Fen and other traveller encampments.
- 1.5 Other people came into the room for short periods whilst the briefing meeting was being held.
- 1.6 Councillor Roberts was in the room at one stage when Councillor Loynes said "this is a minefield".
- 1.7 The complaint alleges that Councillor Roberts responded with a remark and Councillor Loynes replied saying *"all travellers sites should be mined"*.
- 1.8 Councillor Roberts was then asked to leave the meeting and she went to the Monitoring Officer to complain about Councillor Loynes. She submitted an email later that day alleging failure to treat people with respect, causing SCDC to breach the equalities enactments and bringing SCDC into disrepute.
- 1.9 The complaint was referred to SCDC's Standards Committee Local Assessment Panel on 17 February 2012. It ordered an investigation, which I undertook.
- 1.10 I have concluded that:-
  - (a) Councillor Loynes said in the Members' Room *"I wish we could get rid of this problem with the travellers' sites"* and that this is not in breach of the Code of Conduct.
  - (b) Councillor Loynes' comment *"this is a minefield"* in the briefing meeting is not a breach of the Code of Conduct.
  - (c) Councillor Loynes went on to say *"I'd put a minefield round all of them"*. By "them", he meant the traveller community at Smithy Fen. I have concluded that this is a breach of clauses 3(1), 3(2)(a) and 5 – respect, equalities and disrepute.

- 1.11 My finding under regulation 14 of the Standards Committee (England) Regulations 2008, is that there has been breach of the code of conduct of the authority concerned by Councillor Loynes in respect of clauses 3(1) respect, 3(2)(a) equalities and 5 disrepute.

**2. Councillor Loynes' official details**

2.1 Councillor Mervyn Loynes was first elected a member of SCDC in May 2008 and has been a Councillor since that date. He is a Ward Member for Bourn and a member of the Conservative Group.

2.2 He has had the following appointments at the Council:-

*Currently:*

Licensing Committee  
Planning Committee (Vice-Chairman)

*Formerly:*

Planning Enforcement Sub-Committee (Chairman)  
Overview and Scrutiny Committee  
Business Champion for SCDC

2.3 As at 15 February 2012, Councillor Loynes last signed a declaration of office and gave an undertaking to observe the Council's Code of Conduct on 1 May 2008.

2.4 SCDC has produced a "Member Toolkit" for its Councillors containing reference works relating to ethical standards. The Council has required its Councillors to sign to acknowledge the need to establish a culture of high standards at the Council. Councillor Loynes signed an Undertaking to demonstrate his commitment to achieving high standards within the Council on 18 August 2008.

2.5 Shortly after his first election to SCDC Councillor Loynes attended induction training which included a 15 minute scheduled slot on the Monitoring Officer role and duties. That apart, he has attended no training specifically at SCDC on the Code of Conduct or Equalities and Diversity.



**3. Relevant legislation and protocols**

- 3.1 The Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007 provides that:

***“Section 52 Duty to comply with code of conduct***

- (3) *A person who becomes a member of a relevant authority . . . .  
. . . at any time after the authority have adopted a code of  
conduct under section 51 for the first time may not act in that  
office unless he has given the authority a written undertaking  
that in performing his functions he will observe the authority's  
code of conduct for the time being . . . .”*

- 3.2 The Council has adopted a Code of Conduct in which the following paragraphs are included:

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

*“3(2) You must not:*

- (a) do anything which may cause your authority to breach any  
of the equality enactments (as defined in Section 33 of the  
Equality Act 2006)”*

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

#### 4. Undertaking This Investigation

##### *My appointment*

- 4.1 SCDC's Standards Committee Local Assessment Panel referred Councillor Roberts' complaint against Councillor Loynes to Fiona McMillan, the Council's Monitoring Officer (MO) for investigation.
- 4.2 Under section 82A of the Local Government Act 2000, Ms McMillan nominated me to perform her investigatory functions as MO in respect of this complaint.
- 4.3 I hold an honours Bachelor of Arts degree in Law from Kingston Polytechnic and a Diploma in Local Government Law. I am a solicitor and have been employed by local authorities for over 20 years. I have held the position of Deputy Monitoring Officer for 3 years and Monitoring Officer for 8 years. I am now a solicitor consultant with Wilkin Chapman Goolden Solicitors.

##### *The investigation*

- 4.4 During the investigation, I held face to face meetings with, and obtained signed statements from:-
- Councillor Deborah Roberts (Independent) – Complainant
  - Councillor Val Barrett (Conservative) – Vice-Chairman of the Planning Enforcement Sub-Committee
  - Councillor Charles Nightingale (Conservative)
  - Mr Gary Duthie – Senior Lawyer at SCDC
  - Mr Nigel Blazeby – Development Control Manager at SCDC
- 4.5 I obtained signed statements following a telephone interview with:-
- Councillor Hazel Smith (Liberal Democrat)
  - Ian Senior – Democratic Services Officer at SCDC
  - Margaret Jennings - Democratic Services Officer at SCDC
- 4.6 I also held a face to face meeting with Dean Biddle, Planning Enforcement Officer, on 2 April 2012, during which he drew a sketch plan of the layout of the Swansley Room during the briefing meeting on 15 February 2012. I prepared a draft statement for him to sign, but he left SCDC before giving me his views on the draft. The record of attempts to contact Mr Biddle are found in Appendix C of this report.
- 4.7 Copies of the statements, together with other relevant documents, are annexed to this report and listed in a schedule of evidence in Appendix A to this report.
- 4.8 I conducted a face to face recorded interview with Councillor Loynes from which a transcript was prepared. Councillor Manning accompanied Councillor Loynes at that interview. Councillor Loynes was given an opportunity to comment on the transcript of the interview. Councillor Loynes returned a signed copy of the transcript indicating his agreement with its contents. In the meantime, Councillor Manning had contacted me by phone after the interview and as a result of our conversation he submitted an email, a copy of which is found at Appendix D. It raises potentially confidential information.

- 4.9 I wish to record my thanks for the co-operation and courtesy shown to me by those who assisted me during the investigation.

**5. Evidence and facts**

*Background*

- 5.1 At the material time, Councillor Loynes was the Chairman of the Planning Enforcement Sub-Committee at SCDC and Ward Member for Bourn.
- 5.2 On 15 February 2012, Councillor Loynes arrived at SCDC's offices and went to the Members Room. It was alleged that he had a conversation with Councillor Roberts and made a remark which Councillor Roberts found objectionable.
- 5.3 Councillor Loynes then went to the Swansley Room at about 1.30pm for a briefing meeting. The briefing meeting concerned preparation for the Sub-Committee meeting which was due to begin there at 2.00 pm.
- 5.4 The briefing meeting involved Councillor Loynes and Councillor Val Barrett, Mr Duthie, Mr Blazeby and Mr Biddle. Other people entered the room and left whilst the briefing meeting was going on.
- 5.5 It is alleged that Councillor Loynes made remarks which breach the Code of Conduct.
- 5.6 Councillor Roberts made a complaint about Councillor Loynes' conduct.
- 5.7 SCDC's Standards Committee Local Assessment Panel met on 17 February 2012 and referred the complaint for investigation.

*Councillor Deborah Roberts' complaint*

- 5.8 On 15 February 2012, Councillor Roberts made a complaint by email to the Monitoring Officer (document 4934SCLAP001).
- 5.9 Councillor Roberts complained that Councillor Loynes had said to her in the Members' Room in front of Councillor Val Barrett "*I agree with you Debbie I wish we could get rid of all the travellers*". She added that, later in the Swansley Room, Councillor Loynes said further comments, which she stated in her email of complaint as "*all travellers sites should be mined*".
- 5.10 She believed by his words, Councillor Loynes had breached of the Code, in particular, "treating others with respect", breaching equality laws and "bringing the Council into disrepute".

*Councillor Deborah Roberts*

- 5.11 In her statement (document 4934RS001) Councillor Roberts said:-
  - (a) she had been a Councillor at SCDC since 1990, initially standing as a Conservative but subsequently as an Independent;
  - (b) she was a member of SCDC's Planning Enforcement Sub-Committee;
  - (c) on 15 February 2012 she was in the SCDC offices for the Sub-Committee meeting scheduled to begin at 2.00pm in the Swansley Room. She arrived early for the meeting and went straight to the Members' Room;

## CONFIDENTIAL REPORT

- (d) as she walked in to the room Councillor Mervyn Loynes and Councillor Val Barrett were the only people present. Councillor Loynes asked her *"Why are you here – I thought Mike Mason was filling in for you?"*. She replied, *"Yes he is, but I'm entitled to sit at the back, which is what I will do, because I'm interested in this"*;
- (e) Councillor Loynes then leaned forward and said, *"You know Deb, I agree with you, I wish we could get rid of all the travellers in South Cams"*. She noticed Councillor Barrett's face drop at this. She replied *"That's not how I feel about travellers. I just get angry about those people, whoever they are, that continually refuse to abide by the same rules as the rest of us."*;
- (f) then Councillors Loynes and Barrett both left and Councillor Roberts stayed in the Members' Room;
- (g) a short while later she went to the Swansley Room. She entered, and walked round the table. Councillors Loynes and Barrett were at the top of the table accompanied by Gary Duthie, Nigel Blazeby and a new planning enforcement officer whose name she did not know;
- (h) whilst she was present, she heard Councillor Loynes say with a heavy sigh *"it's all a minefield."* She said to this: *"Well Chairman, if you are talking about the travellers I don't think using the term minefield is a very good idea"*. She saw Nigel Blazeby smile to himself at this point. Councillor Loynes then said *"If I had my way I'd put a minefield round all of them"*. She took "them" to mean the travellers in South Cambridgeshire. She saw all the officers grit their teeth at this remark;
- (i) she said to Councillor Loynes, *"you really shouldn't say such things, especially in front of officers and Mr Duthie"*. She felt Councillor Loynes was flustered by this, realising he had said what he thought in front of the legal officer. She felt amazed Mr Duthie did not stop Councillor Loynes after that – it was only 15 minutes or so before the Sub-Committee meeting was due to consider reports about items concerning traveller sites on the Sub-Committee agenda;
- (j) she was then asked to leave the briefing meeting: Mr Duthie said *"Well, actually Councillor Roberts, we are having a briefing meeting"*. She replied, *"Well, if you're having secret meetings I will go."* Mr Duthie said *"It's not a secret meeting."* She said *"I'll go anyway"* and left the room;
- (k) at the time of Councillor Loynes' comments, she said no others were in the room save herself, Councillors Loynes and Barrett, Mr Duthie, Mr Blazeby and the Enforcement Officer;
- (l) she went upstairs to see the Monitoring Officer, Fiona McMillan, and told her what she had just heard. Councillor Roberts told her it was not acceptable and asked her to get confirmation from Mr Duthie about it when she next saw him;
- (m) she returned to the Swansley Room for the Sub-Committee meeting. She stayed for the part of the meeting, declared an interest and sat in the public gallery. She had previously been advised not to participate in traveller items to prevent the Sub-Committee's enforcement

## CONFIDENTIAL REPORT

decisions about travellers being at risk of challenge on the basis of bias. She believed the Chair's comments represented a similar risk;

- (n) she later read an email from the Monitoring Officer (within document 4934SCLAP001) and replied, asking for the complaint to go forward;
- (o) at interview on 2 April 2012, she accepted the words quoted in that email ("*all travellers sites should be mined*") were a little different to what she then recollected was said, but felt the message was the same.

*Councillor Val Barrett*

5.12 In her statement (document 4934RS002) Councillor Val Barrett said:-

- (a) she had been a Councillor at SCDC since 2008. She was Vice-Chairman of the Planning Enforcement Sub-Committee;
- (b) she attended a Planning Enforcement Sub-Committee meeting scheduled for Wednesday 15 February 2012 in the Swansley Room at SCDC offices at 2.00 pm. A briefing meeting had been arranged to take place beforehand, for the Chairman, Councillor Mervyn Loynes, and herself;
- (c) on arrival at the Council offices she went to the Members' Room. She met Councillor Loynes in the building on the way to the Members' Room. When they arrived in the Members' Room, Councillor Deborah Roberts was there, but no one else;
- (d) Councillor Loynes said something to Councillor Roberts, along the lines of "*I wish this problem of the traveller sites would go away*" or possibly, "*it would be nice if the problem of the traveller sites would go away*" or something like that, but not "*I agree with you Debbie, I wish we could get rid of all the travellers*";
- (e) Councillor Roberts said something like "*I don't care if they are pink, blue, or sky green, as long as they comply with the law.*" She remembered this - referring to the odd colours - as Councillor Roberts repeated this phrase when she was in the Sub-Committee meeting later that day. She left the Members' Room with Councillor Loynes; Councillor Roberts remained;
- (f) she then went with Councillor Loynes to the Swansley Room for the briefing meeting. The officers who also attended the briefing meeting were Gary Duthie, Nigel Blazeby, Ian Senior and Dean Biddle;
- (g) part way through the briefing meeting Councillor Roberts came into the room. While she was there, Councillor Loynes said to Mr Duthie "*this is a minefield*". Councillor Barrett took this to mean the issues being considered in the meeting were complicated, and he was looking to Mr Duthie to help out if it got technical. She heard Councillor Roberts react to that comment saying, as she headed off to the end of the room where the coffee was, "*You'd better be careful of what you say or you'll be accused of blowing them up*" or words to that effect;
- (h) Someone explained to Councillor Roberts that they were holding a briefing meeting, and asked her to leave, which she did, saying as she

## CONFIDENTIAL REPORT

left *"I'll leave you to your secret meetings"* and slammed the door on the way out;

- (i) She recalled that Councillor Nightingale came into the room at some stage and was asked to leave, which he did straight away. She was unsure whether he was there when Councillor Roberts was;
- (j) She felt the phrase *"this is a minefield"* was an innocent phrase and on 22 March 2012, she heard a presenting speaker on an internet based seminar (webinar) on Gypsies and Travellers, organised by Westminster Studio, state *"this whole thing is a minefield"* on the subject.

*Councillor Charles Nightingale*

5.13 In his statement (document 4934RS003) Councillor Nightingale said:-

- (a) he had been a Councillor at SCDC since 2002;
- (b) on 15 February 2012 he attended SCDC offices to attend the Planning Enforcement Sub-Committee meeting due to begin at 2.00pm in the Swansley Room;
- (c) he arrived slightly early and entered the meeting room via the print room corridor. As he walked in to the Swansley Room, he noticed that Councillor Roberts had arrived just ahead of him via the other entrance. He busied himself getting a drink from the tea trolley located next to the door he had come in. There were some officers at the other end of the meeting room with Councillors Loynes and Barrett. The officers were Gary Duthie, the planning enforcement officer, and a planning officer, whose names he did not know. He did not notice anyone else in the room;
- (d) Councillor Roberts was walking up the room towards the officers when he entered. He did not hear what was being said. He had a hearing difficulty and found it difficult to hear clearly when there are several noise sources in a room;
- (e) after a short while, the officers said to Councillor Roberts and Councillor Nightingale that it was a briefing meeting and would they please leave? Councillor Roberts did not take too kindly to this. They both left by the door she had entered. Out in the main lobby Councillor Roberts said *"They can't treat me like this!"*;
- (f) he said he was only in the Swansley Room for about a minute. He did not hear anything other than when the officers asked them both to leave.

*Mr Gary Duthie*

5.14 In his statement (document 4934RS004) Mr Duthie said:-

- (a) his job title was "Senior Lawyer" and he had worked for SCDC since February 2008 in that role;
- (b) on 15 February 2012 he was due to attend the Planning Enforcement Sub-Committee meeting scheduled to start at 2.00 pm in the Swansley

CONFIDENTIAL REPORT

Room at SCDC offices. A briefing meeting had been arranged for 1.30 pm in that room for the Chair and Vice-Chair to meet with officers;

- (c) the purpose of the briefing meeting was to assist and support the Chairman in dealing with matters on the agenda for the Sub-Committee and in managing that meeting. The agenda included three traveller related issues, one of which concerned long-standing unauthorised occupations at Smithy Fen, an especially contentious issue locally. At the time, the proceedings concerning the eviction of travellers at Dale Farm in Essex, which had attracted considerable national media coverage, was still fresh in the mind. The local press had viewed the Smithy Fen issue as having parallels with that;
- (d) he was also aware that the Chairman had not long resumed his duties after some serious health problems, although he appeared well enough at the meeting and seemed to display his normal demeanour, as previously seen immediately prior to chairing potentially difficult meetings;
- (e) he arrived in the Swansley Room and the briefing meeting began. Present at that time were Councillors Loynes and Val Barrett, Nigel Blazeby, the planning officer, and Dean Biddle, a planning enforcement officer;
- (f) there were some significant issues to deal with at the Sub-Committee meeting and the officers explained the current state of play with each case and the nature of the questions that might arise;
- (g) Councillor Loynes seemed anxious. Previous Sub-Committee meetings had been quite difficult and the current meeting, given the agenda, had all the indicators of being the same. He attributed Councillor Loynes' apparent anxiety to this;
- (h) part way through the briefing, Councillor Roberts and Councillor Nightingale entered the Swansley Room. He thought Councillor Nightingale was a few moments behind Councillor Roberts. At that time he was in discussion with Councillor Loynes and Nigel Blazeby about the Smithy Fen matter. He became aware of Councillor Roberts approaching;
- (i) at that point he engaged with her saying they were still in the Chairman's briefing meeting and would she mind waiting outside. Councillor Roberts challenged that saying if they were going to hold "*secret squirrel meetings*" then they should find somewhere else to hold them;
- (j) in the meantime, Councillor Loynes was continuing the conversation that Councillor Roberts had interrupted and he heard him say the issue "*is a minefield, isn't it?*";
- (k) he took this as being said rhetorically rather than in expectation of a reply. He felt clear that Councillor Loynes used that phrase and took it to be a comment on the complexity and degree of contention around the Smithy Fen issue;



## CONFIDENTIAL REPORT

- (l) Councillor Roberts reacted to that comment. She said, “*You shouldn’t use such language, I’m sensitive about minefields*”. At the time he was aware that Councillor Roberts’ daughter had recently given birth and her son-in-law, a serviceman, had been sent out to Afghanistan, so he felt her comment was likely about her son-in-law being in jeopardy with minefields. Councillor Roberts then commented “*I have been before the Standards Board for remarks like that*” or some similar words;
- (m) Councillor Loynes responded to Councillor Roberts’ comment by saying “*I’d put a minefield around all of it...*” At the time he understood this to mean putting a metaphorical minefield around the issues rather than him making a pejorative remark, although he was paying more attention to Councillor Roberts at this time given her apparently increasing agitation and indignance. Councillor Roberts then left the room making further remarks about secret squirrel meetings;
- (n) he felt that Councillor Roberts coming in and interrupting the briefing meeting seemed to add to the stress of the occasion for Councillor Loynes as he grappled with the prospect of the forthcoming meeting;
- (o) he thought Councillor Nightingale had walked in whilst the exchange with Councillor Roberts was going on, but is unsure how much he would have witnessed as he was busying himself at the tea trolley located in the opposite corner of the room;
- (p) after the Enforcement Sub-Committee had finished he left the Swansley Room and went up to the Legal Office. He spoke to Ms Fiona McMillan, as a result of which he asked Mr Blazeby and Mr Biddle to note what they had heard in the briefing meeting and e-mail it to him. He also wrote down his own account of events and emailed it to Ms McMillan on 15 February 2012 at 5.05pm (document 4934GAD002);
- (q) Mr Blazeby sent him his account in two emails (documents 4934GAD003 and 4934GAD004). Mr Biddle sent him his account (document 4934GAD006). He forwarded those to Ms McMillan and also sent her an email (4934GAD005) emphasising that he had not heard what Mr Blazeby had mentioned in his second email.

*Mr Nigel Blazeby*

5.15 In his statement (document 4934RS005) Mr Blazeby said:-

- (a) he had worked for SCDC since 1989 and since July 2010 had been Development Control Manager;
- (b) on 15 February 2012 he was due to attend the Planning Enforcement Sub-Committee meeting scheduled to start at 2.00 pm in the Swansley Room at South Cambridgeshire Hall. A briefing meeting had been arranged for the Sub-Committee Chairman and Vice-Chairman to take place in the same room from 1.30 pm;
- (c) the purpose of the briefing meeting was to advise the Chairman and Vice-Chairman what was likely to arise at the Sub-Committee meeting so that there would be no surprises;

## CONFIDENTIAL REPORT

- (d) there were two other officers in attendance: Dean Biddle and Gary Duthie;
- (e) he believed Councillor Loynes had exhibited some anxiety during the briefing, although it may have been annoyance. The content of the agenda was quite complex with all the enforcement action being undertaken at the different sites and he gained the impression Councillor Loynes thought it might be an awkward Sub-Committee meeting;
- (f) at some stage Councillor Deborah Roberts entered the room;
- (g) at one stage, Gary Duthie had given quite a complex answer to one of Councillor Loynes' questions about Smithy Fen, a travellers' site. He seemed to be getting stressed about that. Councillor Loynes then said *"This is a bit of a minefield isn't it. It would be better if we just put a minefield around the lot of them"*. He took this to mean Smithy Fen because the question had been about the Smithy Fen traveller residents. It was said in a slightly jokey way. No other people were in the room at the time;
- (h) Councillor Roberts reacted to what Councillor Loynes said with words to the effect *"I was done for saying something like that"*. Councillor Loynes then said *"Gary, you didn't hear that did you"* to Gary Duthie. He was unsure whether that was said before or after Councillor Roberts made her comment. Councillor Roberts had already been asked to leave because it was a pre-meeting;
- (i) at some point another Councillor came into the room but he could not remember which one;
- (j) after the end of the Sub-Committee meeting Gary Duthie asked him to e-mail his recollection of the briefing meeting. He sent two emails regarding his recollection (documents 4934GAD003 and 4934GAD004).

*Mr Ian Senior*

5.16 In his statement (document 4934RS006) Mr Senior said:-

- (a) he had been Democratic Services Officer at SCDC since October 2000;
- (b) on 15th February 2012, he was the committee clerk responsible for the Planning Enforcement Sub-Committee which was due to begin at 2.00 pm in the Swansley Room at SCDC. Before the meeting started he had a number of duties to perform to ensure that meeting ran smoothly, including ensuring the correct layout of the room, nameplates, additional papers and ballot papers in case of a secret vote;
- (c) he was in and out of the room a few times in the half hour or so before the meeting started attending to these duties;
- (d) he was aware there was a briefing meeting going on at the head of the table involving Councillors Mervyn Loynes and Val Barrett, Gary

CONFIDENTIAL REPORT

Duthie, Nigel Blazeby, Dean Biddle and Chris Collison. He was not taking much notice of what they were discussing, being busy with his own duties;

- (e) he saw Councillor Deborah Roberts around at the time, both outside in the foyer and in the meeting room, though she was not part of the briefing;
- (f) he had no recollections of anything said in the Swansley Room before the Sub-Committee meeting began.

*Councillor Hazel Smith*

5.17 In her statement (document 4934RS008) Councillor Smith said:-

- (a) she had been a Councillor at SCDC since June 2004;
- (b) on 15th February 2012 she attended the SCDC offices to attend the Planning Enforcement Sub-Committee meeting in the Swansley Room, scheduled to begin at 2.00 pm;
- (c) shortly before the meeting she entered the Swansley Room and put her papers on the table. She saw that there was a briefing meeting going on involving Councillor Mervyn Loynes and Councillor Val Barrett with a couple of officers. There was no one else in the room at the time. She left the meeting room. She did not witness anything said at that time;

*Evidence of Dean Biddle*

5.18 Mr Biddle was interviewed and a draft statement was compiled from what he had said. This draft appears in the schedule of evidence (document 4934RS010) but as it is only draft, care needs to be taken before giving its content any weight. He did, in interview, confirm that on 16 February 2012 at about 1.00 pm he had sent an email of what he had witnessed to Gary Duthie. He identified that email as document 4934GAD006. Its content reads:

- (a) *"My recollections of the sub committee briefing were as follows - Councillor Roberts entered the room and was asked to leave as it was the chairs briefing, Councillor Loynes commented that todays agenda was a minefield, Councillor Roberts responded by saying "dont mention minefield and gypsies in the same sentence".*
- (b) *"Councillor Loynes then said, i cannot remember word for word but that Smithy Fen should be surrounded by a minefield, he then also commented that somebody should drive through it in a tractor or jcb (cannot remember exactly) and flatten it, the caravans as well. Hope the above is of use"*

*The Agenda for the Sub-Committee Meeting*

5.19 The Agenda for the Planning Enforcement Sub-Committee meeting reveals the following three substantive items for decision:-

- (a) Residual breaches at Smithy Fen, Cottenham
- (b) Formation of unauthorised Gypsy / Traveller site at

CONFIDENTIAL REPORT

- (c) The Oaks, Meadow Road, Willingham, and  
Breach of Enforcement Notices on land adjacent to  
Hill Trees, Babraham Road, Stapleford

*Councillor Loynes*

5.20 Councillor Loynes was interviewed on 14 June 2012 and a transcript of the interview was produced (document 4934RS007). In his interview Councillor Loynes said:-

- (a) he had been a Councillor for four years, representing the Bourn Ward and currently served on the Licensing Committee and as Vice-Chairman of the Planning Committee;
- (b) in the past he was Chairman of the Planning Enforcement Sub-Committee, on the Overview and Scrutiny Committee and was Business Champion for SCDC;
- (c) he suffered a heart attack on 29th June 2011 and consequently had a triple bypass operation on 13th July 2011. He resumed duties at SCDC a couple of months after the bypass operation, but dropped off a couple of committees. It took him until about February 2012 to fully recover;
- (d) he has not had any specific training on the Code of Conduct, Standards and Ethics or Diversity and Equalities over the years with SCDC;
- (e) there had been press and public interest at the Planning Enforcement Sub-Committee meetings;
- (f) there was a Planning Enforcement Sub-Committee meeting scheduled for 15th February 2012. On arrival that day at the SCDC offices he went to the Members' Room, as usual, to see if there was any post and see what other members had turned up for meetings. There were a number of members in the room but he could not specify who;
- (g) he recalled Councillor Roberts was present and said something to him, to which he replied *"I wish we could get rid of this problem with the travellers' sites"*;
- (h) he then left the room and went to the Swansley Room for a briefing meeting with officers and his Vice-Chairman, Councillor Val Barrett. Gary Duthie, Nigel Blazeby and the Planning Enforcement Officer, whose name he did not know, attended. Nobody else was supposed to be at the briefing meeting. The purpose of the briefing meeting was to run through the agenda so that he and the Vice-Chairman could be fully aware of what was going to happen and in what order on the agenda, prior to the other Sub-Committee members joining them;
- (i) other people came in and out of the room during the briefing, including Councillors Charles Nightingale, Hazel Smith and Deborah Roberts;
- (j) during the briefing meeting he referred to the mountain of paperwork in front of Mr Duthie as, *"this is a minefield and I'm out of my depth on*

CONFIDENTIAL REPORT

*how to handle this meeting". He also said "Mr Duthie, can you lead on this please?";*

- (k) by "*this is a minefield*", he meant that there was such a mass of paper for the case that was in front of them;
- (l) he did not know whether or not Councillor Roberts was there at the time he made that comment and did not think she then made a comment in reply;
- (m) he was sure of his recollection as he had made a note of what had happened once he received a letter on 17 February 2012 informing him a complaint had been made.

## 6. Material facts - Findings

### *In the Members' Room*

- 6.1 On 15th February 2012, there was a Planning Enforcement Sub-Committee meeting scheduled for 2.00pm in the Swansley Room at SCDC offices. Councillor Loynes arrived in the building that day and went to the Members' Room.
- 6.2 There he had a conversation with Councillor Roberts. He says that a number of Councillors were present but he cannot identify who they were. Councillors Barrett and Roberts both agree only 3 people were in the room at the time – themselves and Councillor Loynes. Councillor Loynes says he said to her, "*I wish we could get rid of this problem with the travellers' sites*". Councillor Val Barrett says he said, "*I wish this problem of the traveller sites would go away*" or possibly, "*it would be nice if the problem of the traveller sites would go away*". Councillor Roberts says he said, "*You know Deb, I agree with you, I wish we could get rid of all the travellers in South Cams*".
- 6.3 There is a different slant to the above phrases. Some are focused on traveller site provision others are directed at travellers.
- 6.4 When there is conflict between what is said, it is important to bear in mind that people's memories can differ. It is possible for one or more people present to mis-hear or misunderstand what is said. It is possible for the speaker of the words to think they said something different to what they actually said. It is possible for someone to be sure they heard a particular phrase, but be wrong.
- 6.5 In this case, the words recollected by Councillor Loynes are very similar to the words alleged by Councillor Roberts. Councillor Loynes says he wrote his recollection down on 17 February 2012. Councillor Roberts wrote it down in an email to the Monitoring Officer less than 9 hours after she heard it. Councillor Roberts also alleges that Councillor Barrett's face dropped as she heard this. This is not corroborated. On the other hand, Councillor Barrett, although less sure of what was said, corroborates the more innocent meaning to the phrase.
- 6.6 I find, on the balance of probabilities, that Councillor Loynes said "*I wish we could get rid of this problem with the travellers' sites*".

### *The Briefing Meeting*

- 6.7 Councillor Loynes then left the room and went to the Swansley Room for the briefing meeting with Councillor Val Barrett and officers, Gary Duthie, Nigel Blazeby and Dean Biddle.
- 6.8 The purpose of the briefing meeting was to run through the agenda so that the members present could be fully aware of what matters may arise during the Sub-Committee meeting.
- 6.9 During the briefing meeting the officers discussed with the Chairman and Vice-Chairman the matters on the agenda for the forthcoming Sub-Committee meeting. Whilst discussing the Smithy Fen issue, a longstanding unauthorised traveller encampment, it is alleged the matters the subject of this complaint were said.

## CONFIDENTIAL REPORT

- 6.10 Dealing first with the phrase that seems to have begun the dialogue, Councillor Loynes says he said *"this is a minefield and I'm out of my depth on how to handle this meeting"*. Councillor Val Barrett says he said *"this is a minefield"*. Gary Duthie says he said the issue *"is a minefield, isn't it"*. Nigel Blazeby says he said, *"this is a bit of a minefield, isn't it"*. Dean Biddle's email 24 hours after the meeting says he referred to the agenda being a minefield. Councillor Roberts says in her statement that he said *"it's all a minefield"*.
- 6.11 There is considerable similarity here about what people heard. I find on the balance of probabilities that Councillor Loynes said *"this is a minefield"*.
- 6.12 Other witnesses say Councillor Roberts responded to that remark, and that Councillor Loynes then said something else about mines or minefields.
- 6.13 Councillor Loynes says he did not know whether or not Councillor Roberts was in the room when he said *"this is a minefield"* and cannot recall her making a remark to this. He denied he made any other remark about minefields.
- 6.14 Councillor Val Barrett says Councillor Roberts said something like *"you'd better be careful of what you say or you'll be accused of blowing them up"*. Councillor Barrett did not hear any other remark about mines or minefields.
- 6.15 Mr Duthie says Councillor Roberts said *"you shouldn't use such language, I'm sensitive about minefields"* and *"I have been before the Standards Board for remarks like that"*. He says, to this Councillor Loynes said, *"I'd put a minefield around all of it"*.
- 6.16 Mr Blazeby says Councillor Loynes said after his reference to minefield, *"It would be better if we just put a minefield around the lot of them"*. He says Councillor Roberts then said, *"I was done for saying something like that"*. He says, Councillor Loynes then said, *"Gary, you didn't hear that did you"*.
- 6.17 Dean Biddle's email says Councillor Roberts said, *"don't mention minefield and gypsies in the same sentence"*. He says in the email that Councillor Loynes then said that Smithy Fen should be surrounded by a minefield, and that somebody should drive through it in a tractor or a JCB (could not remember exactly) and flatten it, the caravans as well.
- 6.18 Councillor Roberts says in her statement, that she said *"Well, Chairman, if you are talking about travellers, I don't think using the term minefield is a very good idea"*. She says Councillor Loynes responded to this with *"if I had my way I'd put a minefield round all of them"*, to which she said *"you really shouldn't say such things, particularly in front of the officers and Mr Duthie"*.
- 6.19 Councillor Roberts' email complaint, written less than 9 hours after the episode, refers to Councillor Loynes saying *"all travellers sites should be mined"*.
- 6.20 Councillor Loynes' recollection is assisted by notes he made on 17 February. Mr Duthie's account is from emails written less than 4 hours after the episode. Mr Blazeby's account is from two emails written less than 4 hours after the episode. Mr Biddle's email was written 24 hours after the episode.
- 6.21 As indicated above, it is possible for one or more people present to mis-hear or misunderstand what is said, for the speaker of words to think they said something else, and for witnesses to be sure they heard a particular phrase,

## CONFIDENTIAL REPORT

but be wrong. There are a lot differences between the witnesses – even where a note of what has been said has been committed to written form shortly after the episode. There are even differing views about who was in the room at different times, and even where people were sitting.

- 6.22 Councillor Loynes said after his first reference to minefield he made no further untoward comments. Councillor Val Barrett's evidence is similar, although she does hear a reference to "*blowing [the travellers] up*" but attributes this to Councillor Roberts.
- 6.23 The 4 other witnesses all mention a second reference to minefield. It is clear from their evidence that this second phrase had the potential to form the basis of complaint: indeed Councillor Roberts went immediately to the Monitoring Officer to complain.
- 6.24 There is considerable similarity between the evidence of Councillor Roberts, Mr Blazeby and Mr Duthie on the phraseology. Mr Duthie attributes the comment to being about putting a minefield round the issues, whereas Councillor Roberts and Mr Blazeby consider the reference is to putting a minefield round "them" which they consider to mean the travellers site in the district or Smithy Fen specifically. Mr Biddle's email, although not purporting to quote the exact phrase used, is consistent with the recollection of Councillor Roberts and Mr Blazeby. Even Councillor Val Barrett's recollection includes a reference to "blowing them up", which, whilst not using the same language and attributed to another speaker, is not inconsistent with the overall meaning of the phrase identified by the majority.
- 6.25 There are differing opinions about what Councillor Loynes meant by what he said. Mr Duthie thought he was still talking metaphorically. Mr Blazeby and Mr Biddle evidently think he was talking about Smithy Fen. Councillor Roberts in her email refers to the comment being referred to "all travellers" and in her statement clarified that as being all of them in the SCDC district. Mr Duthie acknowledges that at the time the discussion involved the Smithy Fen site.
- 6.26 I find, on the balance of probabilities, that Councillor Loynes said, "*I'd put a minefield round all of them*". In the context of the discussion at the time, I find that by "them", he meant the traveller community at Smithy Fen.
- 6.27 There are other phrases attributed to Councillor Loynes. Mr Blazeby says he said "*Gary, you didn't hear that did you*". No other witness heard that or anything similar being said and I find, on the balance of probabilities, that this was not said.
- 6.28 Mr Biddle's email refers to driving through it in a tractor, or similar. Again, no other witness cites any similar phrase as being said and I find, on the balance of probabilities, that this was not said.
- 6.29 Councillor Roberts left the Swansley Room and went to the Monitoring Officer to complain about what she had heard. She asked her to obtain clarification from the officers and returned to attend the Sub-Committee meeting. Later that day Councillor Roberts read the email from the Monitoring Officer and replied confirming her complaint (document 4934SCLAP001).
- 6.30 The Council's Standards Committee Local Assessment Panel met on 17 February 2012 and referred the complaint for investigation.



## 7. Reasoning as to whether there have been failures

- 7.1 There are three breaches alleged of Councillor Loynes. First, “you must treat others with respect”. Second, “you must not do anything which may cause your authority to breach any of the equality enactments”. Third, “you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.” I will deal with each in turn. But before doing so, some analysis of the words said merits attention, as I have not found the language used by Councillor Loynes to have matched all the allegations made in this case.
- 7.2 In the Members’ Room, I have found that Councillor Loynes made the comment *“I wish we could get rid of this problem with the travellers’ sites”*, not what was alleged. The traveller sites issue at Smithy Fen involved a longstanding unauthorised development. It would self-evidently have caused concerns for some residents and Councillors.
- 7.3 Regarding the context and language of the phrase *“I wish we could get rid of this problem with the travellers’ sites”*, I am of the opinion that no breach of the Code of Conduct has occurred. This phrase is plainly not disrespectful, contrary to equalities provisions or in danger of bringing the Council into disrepute.
- 7.4 In the Swansley Room, one phrase used by Councillor Loynes is *“this is a minefield”*. This is a phrase that many people will have heard or used before. The word “minefield” in the Oxford English Dictionary lists the following definitions, recognising both the literal and metaphorical meanings of the term:  
*area planted with explosive mines; and  
 subject or situation presenting unseen hazards.*
- 7.5 The traveller sites issue at Smithy Fen involved a longstanding unauthorised development. It is understandable that someone discussing the issue there might feel the situation presented unseen hazards of a legal nature, for instance.
- 7.6 Regarding the context and language of the phrase *“this is a minefield”*, I am of the opinion that no breach of the Code of Conduct has occurred. This is plainly a phrase that was not disrespectful, contrary to equalities provisions or in danger of bringing the Council into disrepute.
- 7.7 I also found Councillor Loynes said, *“I’d put a minefield round all of them”*, meaning the traveller community at Smithy Fen. This phrase requires further consideration against the Code of Conduct.

### *First Alleged Breach: You Must Treat Others With Respect*

- 7.8 The conduct required by this paragraph of the Code of Conduct requires me to examine whether what was said by Councillor Loynes, failed to treat others with respect. This aspect of the Code only applies where the Councillor is in his official capacity. Therefore I shall look at:-
- (a) whether or not Councillor Loynes was in his official capacity when he made the comments;

## CONFIDENTIAL REPORT

- (b) what constitutes respect / disrespect, which involves looking at the language used in this case, whether the words were personal, unreasonable and unwarranted, and the extent to which the comment was protected as free speech under Article 10 of the European Convention on Human Rights.

*Official capacity*

7.9 Paragraph 2(1) of the Code states that councillors must comply with the Code when they:-

- (a) conduct the business of the Council, which includes the business of the office to which they are elected or appointed; or
- (b) act, claim to act or give the impression they are acting as a representative of the Council.

7.10 The same paragraph indicates that references to official capacity must be construed accordingly, - in other words that "official capacity" means (a) or (b) above.

7.11 The Code of Conduct - Guide for Members, published by Standards for England in May 2007 states on page 6:

*"The Code of Conduct applies to you:*

1. *Whenever you act in your official capacity, including whenever you conduct the business of your authority or act, claim to act, or give the impression you are acting, in your official capacity or as a representative of your authority."*

7.12 When a member is acting in an official capacity was one of the central issues in *Livingstone v APE* [2006] EWHC 2533. Collins J held that the Mayor of London was not acting in an official capacity when responding to being "door stepped" by a journalist when leaving the offices of the Greater London Authority.

7.13 The judgement was considered in detail in *Bartlett, Milton Keynes Council* (2008) APE 0401 in an appeal from the local standards committee. In the Case Tribunal's view, the *Livingstone* judgement established that for a member to be acting in an official capacity:-

- (a) the member should be engaged in business directly related to the Authority or constituents; and
- (b) the link between the member's office and the conduct should have a degree of formality.

7.14 In this case, the conduct complained of was in the briefing meeting. The briefing meeting was between officers and the Chairman and Vice-Chairman of the Planning Enforcement Sub-Committee, on SCDC premises, with a view to preparing for the Sub-Committee meeting that followed.

7.15 Councillor Loynes made the comments in the briefing meeting when he was engaged in business directly related to SCDC – one of its informal meetings, arising from a formal Sub-Committee meeting – and there was a degree of

## CONFIDENTIAL REPORT

formality between the conduct and office – he was in that briefing meeting in his capacity as Chairman of the Sub-Committee.

- 7.16 I find that Councillor Loynes was acting in official capacity at the time he made the comments in the briefing meeting in the Swansley Room.

*Disrespect generally*

- 7.17 Under the code, a member will have failed to treat others with respect if they direct unwarranted, unreasonable or demeaning behaviour against another. The circumstances should be taken into account, including the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved, the behaviour of anyone who prompted the alleged disrespect and the subject member's intent.

- 7.18 The requirement to treat others with respect must be viewed objectively. In *Boughton, Dartmouth Town Council* (2009) APE 419 the Adjudication Panel for England (now the First Tier Tribunal) decided that a person can be the victim of disrespect even if they did not witness the disrespectful behaviour themselves.

- 7.19 The Standards for England Case Review 2010 provides guidance by indicating a 'rule of thumb' comparison. Q15 on page 25 of the Case Review 2010 advises that:-

*"A very clear line has to be drawn between the Code of Conduct's requirement of respect for others, including members of the authority with opposing views, and the freedom to disagree with the views and opinions of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other.*

*A rule of thumb is expressed in this comparison:*

- *"You're talking drivel" is likely to be an acceptable expression of disagreement.*
- *Calling someone an "incompetent moron", on the other hand, is more likely to be a failure to comply with paragraph 3(1).*

*We can see that the first comment is aimed at the expression of an idea or argument. The second is aimed at the person and their personal characteristics".*

- 7.20 It is therefore the personalisation of comments that cause the user to breach the Code. The conduct must be unreasonable, unwarranted and personalised. In considering whether comments are disrespectful, regard must be had to the right to free speech in article 10 of the European Convention on Human Rights.

*Disrespect - personalised unreasonable and unwarranted*

- 7.21 An element of disrespect is that it must be personalised, in the sense that the conduct must be directed towards an identified person or group.

- 7.22 There are a number of decisions of the First Tier Tribunal and its predecessor, the Adjudication Panel for England, relating to communications by councillors where the issue of disrespect was considered.

## CONFIDENTIAL REPORT

- 7.23 In *Cox, London Borough of Hillingdon* (2009) APE 0425, Councillor Cox inadvertently referred to the majority group as “*corrupt*” in a council meeting, under the pressure of barracking and his own strong feelings about the behaviour of that group. Even though this was a throwaway remark made without malicious intent, the tribunal still upheld the decision of the Council’s own standards committee that Councillor Cox had failed to treat his fellow councillors with respect, albeit with no sanction.
- 7.24 On the other hand, I note the comments of the tribunal in *Buchanan, Somerset County Council* (2009) APE 409:-

*“In the Tribunal’s view it was desirable that the threshold for a failure to treat another with respect be set at a level that allowed for the minor annoyances and on occasions bad manners which are part of life. During the course of their work people often show a lack of consideration or bad manners but it is not desirable that every such slight should be considered a breach of the Code. To set too low a level might lead to complaints that were about little other than a difference of opinion over the wording of a letter or what amounts to rudeness and for this reason the Tribunal thinks that not every instance of bad manners or insensitive comment should amount to a failure to treat another with respect.”*

- 7.25 In *Cox* a single reference to other councillors as corrupt was sufficient to amount to disrespect even if it was a throwaway comment made under pressure of barracking, but this must be set against the tribunal’s comments in *Buchanan* that the threshold for disrespect must be set at a level which allows for what is lack of consideration, bad manners and rudeness.

*Disrespect - Article 10*

- 7.26 In *Douglas, Berwick on Tweed Borough Council* (2009) APE 414 (an appeal against a decision of the local standards committee), it was alleged that the appellant had breached the Code when he had made critical comments about the planning department. Included in those comments were references to procedural deficiencies, the Council being officer led and lack of commitment from the staff. At paragraph 21 and 22 of its decision, the Tribunal stated:-

*“21 The telephone interview formed the basis for an article which appeared in the Newcastle Journal on 22 May 2008 under the heading “Planning chief attacks own department”. In the article, the following statements appear as quotations of the Appellant’s words:*

*“The fact is that the Council hasn’t given a decision within the prescribed time and therefore they are not applying the rules. As a member of the planning committee this is something I consistently see happening at Berwick.*

*You can make all the excuses under the sun about short staff, but the simple fact is that the department isn’t performing as it should be. I have no sympathy whatsoever. We are exercising our right to reapply.*

*We should have had a decision on April 1 and that hasn’t happened because of the way the organisation is set up. I want this department to improve”*

CONFIDENTIAL REPORT

“The problem we have in Berwick is that as a council we have been officer led for so long. I am a Berwicker, born and bred, and I want Berwick to survive and prosper.

There are people who came into jobs who don't have the local knowledge, and they lack the commitment on the future of Berwick. I will play it my way.

22. *The Appellant made no reference during the interview to any individual officer of the Council; it focussed exclusively on the Appellant's views as to the performance the planning services department as a whole.”*

7.27 The Tribunal considered carefully Article 10 of the European Convention on Human Rights which provides:

“(1) *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....*

(2) *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...the protection of the reputation or rights of others, ...”*

7.28 At paragraphs 38 – 42 of its decision, the Tribunal stated:-

“38. *The right to freedom of expression is a crucially important right in a democratic society and it is clear that it may only be interfered with where there are convincing and compelling reasons within Article 10(2) justifying that interference. A key issue for the Appeals Tribunal's determination is thus whether a finding of a breach of the Code on the facts as found, would represent no greater an impairment to the Appellant's right to freedom of expression than is necessary to accomplish the legislative objective of the Code.*

39. *This requires a factual investigation of the nature of the words used in order to determine whether they constitute expression relating to matters within the legitimate concern of the member as a Councillor (political or quasi political comment which benefit from a high level of protection), or whether they are no more than expressions of personal anger and personal abuse. In the latter case, the high degree of protection required by the authorities is not engaged.*

40. *It is important that the restraints should not extend beyond what is necessary to maintain proper standards in public life and that political expression is afforded a higher level of protection. In the Appeals Tribunal's view, it is important that members should be able to express in robust terms, concerns that they may have about any aspect of the running of the Council and this can include expressing disagreement with officers and can include criticism of the way in which a department or an officer handles particular matters.*

## CONFIDENTIAL REPORT

41. *The concept of “treating others with respect” is one that allows the essential balance required by Article 10(2) to be performed, as does the phrase “bringing his office into disrepute” used in paragraph 5 of the Code.*

42. *In the Appeals Tribunal’s view, the threshold for a failure to treat another with respect and a failure to comply with paragraph 5 of the Code in the case of expressions of view, has to be set at a level that allows for the passion and fervour that often accompanies political debate or debates relating to the efficient running of a Council and which allows for appropriate and robust criticism of the performance of a Council function. This is entirely consistent with the objective of maintaining proper standards in public life.*

7.29 In reaching a determination in this case the Tribunal was mindful that *“the comments could not reasonably be taken as criticism of any existing individual officers in any department of the Council nor did it fail to treat any person with respect”*. The Tribunal also concluded that what the appellant was stating was his view and one he was entitled to express.

7.30 In *Pinfold, London Borough of Sutton* (2007) APE 378, it was alleged that the appellant had breached the Code when she had made critical comments about the Chief Executive of the Council and other officers. One allegation was that the councillor sent an email containing the words:

*Please would you make up your mind! If you actually bothered to look at the original planning permissions you would actually see that there were conditions which putting a car port at the side of Fordwater breached, especially as it had other extensions which fulfilled the conditions of the 30% increase in original area. It would appear that really and truly you do not want to tackle the occupants of Fordwater just in case they actually accused you of racial discrimination.  
I have seen no indication on any of the matters relating to enforcement where you have been strong enough to take the action that is necessary to clear up the problems which are caused by residents not complying with standard planning rules. Those wishing to buck the system are usually of ethnic origin (although not exclusively) but you have not had the courage of your conviction to take on these people head on. An enforcer has to.*

7.31 At paragraph 2.26.6 of its decision, the Tribunal concluded that, as it found those remarks to be racist, the councillor was entitled to virtually no protection under Article 10.

7.32 It is therefore necessary to consider whether Councillor Loynes’ comments *“constitute expression relating to matters within the legitimate concern of the member as a Councillor (political or quasi political comment which benefit from a high level of protection), or whether they are no more than expressions of personal anger and personal abuse”*. If racist, the comments would have virtually no protection under Article 10.

- 7.33 Councillor Loynes' comments were in the context of a briefing meeting held in private with officers and his Vice-Chairman. It is specific to a group of travellers. Whilst a degree of candour is helpful in that setting, the comment has less of the characteristic of being an expression of political comment, and more an expression of abuse or possibly of personal anger. The phrase is derogatory in nature to travellers at Smithy Fen and therefore his comment can attract little protection under Article 10.

*Disrespect - conclusion*

- 7.34 I found Councillor Loynes said, "*I'd put a minefield round all of them*", meaning the traveller community at Smithy Fen.
- 7.35 There is no expectation of a literal application of the words: that Councillor Loynes physically intended to lay mines around the perimeter of the Smithy Fen site. However, the phrase has uncomplimentary and negative connotations. It tells the listener that Councillor Loynes wants rid of the travellers – not just the problem - and, implies some violent imagery.
- 7.36 The elements of disrespect are that it is conduct which is unwarranted, unreasonable and personalised. Regard must also be had to Article 10.
- 7.37 The language used by Councillor Loynes is personalised to the travellers at Smithy Fen. It is unreasonable, because that is not, literally, appropriate behaviour, and metaphorically it connotes a degree of hostility towards that group. It is unwarranted as there was no justification for using that phrase towards that group in the context of a briefing meeting. The intention of Councillor Loynes is difficult to determine because he does not acknowledge he said that phrase. Other witnesses refer to it possibly being jocular or borne of frustration. Neither aspect provides a justification for the comment.
- 7.38 I have said that in *Cox* a single reference to other councillors as corrupt was sufficient to amount to disrespect even if it was a throwaway comment made under pressure of barracking, but this must be set against the tribunal's comments in *Buchanan* that the threshold for disrespect must be set at a level which allows for what is lack of consideration, bad manners and rudeness.
- 7.39 In this case, Councillor Loynes may have been affected by the presence of Councillor Roberts in the Swansley Room when she was not a person entitled to be at the briefing; he may not have made the comment had she not responded to his initial "*it's a minefield*" remark. Nevertheless, there is nothing in what Councillor Roberts said to Councillor Loynes that justifies the retort "*I'd put a minefield round all of them*". In my view it is above and beyond mere lack of consideration, bad manners or rudeness. It is not a comment that should be accorded a high degree of protection under Article 10.
- 7.40 In my opinion, when Councillor Loynes said in the briefing meeting "*I'd put a minefield round all of them*" he failed to treat the travellers at Smithy Fen with respect.

*Second Alleged Breach: You Must Not Cause Your Council To Breach Equality Enactments*

- 7.41 Paragraph 3(2)(a) of the Code of Conduct provides that a member must not do anything which may cause their authority to breach any of the equality enactments.
- 7.42 This aspect of the Code only applies where the Councillor is on official capacity. I have discussed above whether Councillor Loynes was acting in official capacity and found that he was.

*Equality enactments*

- 7.43 A member must not do anything which may cause their authority to breach any of the equality enactments, as defined in section 33 of the Equality Act 2006 (Section 33). Section 33 provides a list of the equality and human rights enactments to which the Act applies.
- 7.44 Section 33 was repealed by schedule 27(1), paragraph 1 of the Equality Act 2010, subject to savings and transitional provisions specified in articles 5 – 22 and schedules 1 -7 of the Equality Act 2010 (Commencement No.4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010.
- 7.45 The Equality Act 2010 largely replaced previous anti-discrimination and equality legislation with a single, streamline legal framework to consolidate the law and remove inconsistencies.
- 7.46 Put simply, the “equality enactments” previously referred to in section 33 are now wholly incorporated, provided for and consolidated within the new Equality Act 2010.
- 7.47 Moreover, although section 33 has been repealed, references to “equality enactments” in the sections of the 2006 Act that remain in force have been substituted with the Equality Act 2010 (see Schedule 26 of the Equality Act 2010).
- 7.48 The 2010 Act covers nine protected characteristics; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. As such, the Equality Act 2010 protects the same groups and categories covered in the 2006 legislation, that is to say, those who came within any of the equality enactments listed in section 33.
- 7.49 Therefore, although section 33 was repealed, it was repealed because it was replaced with the Equality Act 2010.
- 7.50 Hence I conclude that the reference in the Code of Conduct at paragraph 3(2)(a) to “*as defined in section 33 of the Equality Act 2006*” can be taken to be read as or mean - as defined in the provisions of the Equality Act 2010.
- 7.51 The relevant provisions of the Equality Act 2010 include:-
- (a) under section 149(1)(a), the Council must in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;



- (b) under section 149(1)(c) as amplified by section 149(5), the Council must have due regard to the need to foster good relations between persons who share a relevant protected characteristics and persons who do not, including having due regard to the need to tackle prejudice and promote understanding;
- (c) under sections 4 and 149(7), race is one of the protected characteristics and under section 9(1) race includes ethnic or national origin;

7.52 The Council can be vicariously liable for the acts of a councillor – see *Moore v Bude Stratton Town Council* [2000] IRLR 676, Employment Appeal Tribunal.

7.53 At Q19 on page 35 of the Case Review 2010, Standards for England advises:-

*“The Code of Conduct is not intended to stifle democratic debate. Members should always remember that Article 10 of the Human Rights Act 1998 gives a high level of protection to comments that are genuinely made in the course of political debate, even if most people would find them offensive.*

*A member must be careful not to conduct themselves in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders their authority’s fulfilment of its positive duties under the equality legislation. Such conduct may cause their authority to breach an equality enactment and lead to a complaint that they have breached this paragraph of the Code...”*

7.54 I have characterised Councillor Loynes’ comments in relation to disrespect above. As such, they should not qualify for a high degree of protection under Article 10; indeed it is more appropriate they should qualify for virtually no protection. The travellers at Smithy Fen were not present at the briefing meeting but that does not mean that there has not been a breach of the equalities enactments.

7.55 The comment could be discriminatory in that it is likely to lead one to question whether Councillor Loynes would fairly consider issues for decision that were in the remit of that Sub-Committee relating to Smithy Fen. Neither is the comment likely to foster good relations between travellers at Smithy Fen and other people. It would neither tackle prejudice nor promote understanding: quite the reverse. There is virtually no protection given by Article 10 for such a comment and therefore it cannot be justified as free speech.

7.56 In my view the comment made by Councillor Loynes does cause the Council to breach the equalities enactments in failing to have due regard to the need to foster good relations, tackle prejudice and promote understanding between persons who are travellers and those who are not. I consider that Councillor Loynes has breached paragraph 3(2)(a) of the Code.

*Third Alleged Breach - Disrepute*

7.57 This aspect of the Code only applies where the Councillor is on official capacity. I have discussed above whether Councillor Loynes was acting in official capacity and found that he was

7.58 Question 43 on page 66 of the Case Review 2010 advises that disrepute is:-

*“...a lack of good reputation or respectability.*

*In the context of the Code of Conduct, a member’s behaviour in office will bring that member’s office into disrepute if the conduct could reasonably be regarded as either:*

- 1) *Reducing the public’s confidence in that member being able to fulfil their role; or*
- 2) *Adversely affecting the reputation of members generally, in being able to fulfil their role.”*

7.59 Q44 on the next page of the Case Review 2010 advises that:-

*“An officer carrying out an investigation...does not need to prove that a member’s actions have actually diminished public confidence, or harmed the reputation of the authority...the test is whether or not a members’ conduct “could reasonably be regarded” as having these effects.*

*The test is objective and does not rely on any one individual’s perception. There will be a range of opinions that a reasonable person could have towards the conduct in question.”*

7.60 Q42 on page 66 of the Case Review indicates that:-

*“A case tribunal or standards committee will need to be persuaded that the misconduct is sufficient to damage the reputation of the member’s office or authority, as opposed simply to damaging the reputation of the individual concerned.”*

7.61 In applying the Code to the circumstances of an alleged breach of disrepute, it is established that it is not necessary for the member’s actions to have actually diminished public confidence, or harmed the reputation of the authority. The test is whether or not the conduct could ‘reasonably be regarded’ as having these effects. However, the conduct must be sufficient to damage the reputation of the member’s office or the Council, not just the reputation of Councillor Loynes as an individual.

7.62 Article 10 of the European Convention on Human Rights needs to be considered in relation to disrepute in the same way for disrespect under the code. However, I have concluded above that this comment would be afforded little protection under that provision.

7.63 In Cox referred to above on disrespect, the appeals tribunal was satisfied that describing the majority group as “corrupt” was a throwaway remark made without malicious intent. However it was said in a full council meeting at which councillors, council officers and members of the public were present. By making the claim without justification, Councillor Cox brought his own office into disrepute. By making an unjustified claim that the majority group was corrupt, he brought the authority itself into disrepute.

7.64 The Case Review advises that a member’s behaviour in office will bring that member’s office into disrepute if the conduct could reasonably be regarded as either:-

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- (a) reducing the public's confidence in that member being able to fulfil their role; or
- (b) adversely affecting the reputation of members generally, in being able to fulfil their role.

7.65 In Cox the use of a throwaway, but unjustified comment without malice was sufficient to bring the councillors own office into disrepute and those of the councillors as a whole.

7.66 My view of Councillor Loynes' comment is that it would reduce the public's confidence in him being able to fulfil his role as Chairman of the Planning Enforcement Sub-Committee. The comment throws into question his impartiality on matters concerning travellers at Smithy Fen site, and about travellers generally. It would also, in my view, reduce the public's confidence in him being able to fulfil his role on the Council as an ordinary member. Councillors come from all backgrounds, will have differing views and are supposed to represent the views of those they represent. Yet the public, the people each member represents, is entitled to expect the councillor to refrain from making derogatory remarks about a particular minority ethnic community.

7.67 I therefore consider that Councillor Loynes did bring his office or the Council into disrepute.

**8. Finding**

- 8.1 Under regulation 14(8)(a) of the Standards Committee (England) Regulations 2008, my finding is that there has been a failure to comply with the code of conduct of the authority concerned, namely paragraphs 3(1), 3(2)(a) and 5.
- 8.2 Under regulation 14(8)(c) and (d), I am sending a copy of this report to Councillor Loynes and referring my report to the Standards Committee of South Cambridgeshire District Council.



Robert Swinfield BA (Law), Dip.LG, Solicitor  
**Nominated person**

29th June 2012