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MEMBER CONDUCT PANEL 27TH FEBRUARY 2019

PRESENT: Councillors Bentley, Draycott and Tassell

Councillor Hayes

Investigating Officer
Independent Person
Monitoring Officer

Democratic Services Officer (NC)

APOLOGIES: none

The Monitoring Officer stated that the meeting would be recorded and the sound recording subsequently made available via the Council's website. He also advised that, under the Openness of Local Government Bodies Regulations 2014, other people may film, record, tweet or blog from this meeting, and the use of any such images or sound recordings was not under the Council's control.

1. APPOINTMENT OF CHAIR

RESOLVED that Councillor Draycott be appointed Chair for the meeting.

2. DISCLOSURES OF PECUNIARY AND PERSONAL INTERESTS

No disclosures of interest were made.

3. DETERMINATION OF COMPLAINTS OF A BREACH OF THE MEMBERS CODE OF CONDUCT OF CHARNWOOD BOROUGH COUNCIL BY COUNCILLOR DAVID HAYES (REF: MC4A, B & C 2018/19)

In accordance with the procedure for dealing with complaints, the Panel was asked to determine several complaints of potential breaches of the Members' Code of Conduct of Charnwood Borough Council as set out in the report of the Monitoring Officer, and to decide whether they amounted to a breach of the Code of Conduct by Councillor Hayes, and if so, whether it felt it was appropriate to recommend the imposition of sanctions to the Borough Council.

Administration of the Panel

The Chair explained the order of proceedings and all present confirmed they understood the procedure. It was established that nobody present was aware of any interests or other reason which could prejudice the ability of the Panel to hold a fair hearing and make a sound determination on the matters in question.

It was confirmed that the Investigating Officer and Councillor Hayes would not be calling witnesses and that Councillor Hayes would be representing himself and that he was happy to proceed on this basis.

Summary of Proceedings

The Investigating Officer, Mrs Elizabeth Warhurst, requested that the sound recording of Councillor Hayes asking his supplementary question to the Question on Notice 10.2 at the Borough Council meeting held on 3rd September 2018 be played to all present. The Chair agreed and the sound recording was played.

The Investigating Officer presented her report and drew the Panel's attention to the following:

- the Panel was required to decide on a balance of probability if the statements made by Councillor Hayes represented a breach of the Code of Conduct and the Protocol on Member/Officer Relations.
- the parties agreed on the material facts of the case regarding what was said by Councillor Hayes at the Council meeting, but they differed on the intention and meaning of the statements made.
- the right to freedom of expression was important in a democratic society and if Councillor Hayes was found to have breached the Member's Code of Conduct and the Protocol on Member/Officer Relations this could be regarded a restriction of his freedom of expression, however, consideration should be made regarding who the comments were directed to, if the subject was an officer or a councillor and the impact of the comments on their professional conduct and reputation.
- in her view, Councillor Hayes had referred to the present incumbent in the role of Head of Planning and that his comments suggested to the ordinary person on the street that the Head of Planning and Regeneration was involved in corrupt practices whilst in the employ of the Council. It was not convincing that Councillor Hayes was making these comments to highlight, in general terms, good employment practices which he felt should be introduced at the Council.

The Panel Members and Councillor Hayes had no questions for the Investigating Officer.

Councillor Hayes presented his case, stated that he wished this hearing to be open and transparent and confirmed that it was being recorded. He drew the Panel's attention to the following:

- it was the first time he had been accused of breaching the Members' Code of Conduct. He was frustrated that his colleagues had complained rather than taking the opportunity to discuss the concerns, that he had raised in the last 3-4 years both formally and informally, verbally and in writing. An email dated 10th May 2018 to Councillor Vardy was read out as evidence of his continued attempts to obtain information; other emails dated from July 2017 were mentioned.
- his career of working across the public and private sector, how terms and conditions of employment had been central to his career and that his approach was about delivering, taking responsibility, accountability and speaking in plain English. He was aware his style had been described as blunt, and if he had

- considered there were improper or underhand practices occurring he would have made it very clear and said so.
- it was important to note the facts of what had been said and that he be judged by the words he had used, and not what others had perceived he had said, as their interpretation of the words was not under his control.
 - his question had related to the largest development in Charnwood and called for expert help in negotiating the contract, and it had been directed to the Lead Member. He considered his comments relating to personal bank account details and that the Head of Planning be stopped from employment with the developer to be simply a request for transparency and good employment practices, relating in particular to restricted trade clauses.

Councillor Hayes brought forward information relating to discussions with the Chief Executive about the terms and conditions of employment of staff but the Investigating Officer stated that Councillor Hayes had not presented this information at the time of the investigation, despite having the opportunity to do so, and it was not related to the case in hand. The Panel agreed and requested that Councillor Hayes focussed on the matter relating to the 3rd September Borough Council meeting.

The Panel questioned Councillor Hayes and received the following responses:

- he had meant to say 'restricted trade clause' when discussing the Head of Planning's employment and considered this was usual at local authorities and would give the public comfort and confidence.
- he considered that members of the public would understand what he had meant in his comments regarding the Head of Planning be stopped from employment with the developer.
- he would have stated if he believed something underhand was occurring and had no evidence of any underhand dealings.

The sound recording failed at this point in the proceedings but was re-started when the Panel returned after it had adjourned the first time to consider if a breach had occurred.

- he had tried to raise this question without success in other ways, and as he was not a member of a council committee, he had considered it appropriate to ask the question at the full Council meeting.
- he considered his comments regarding bank account details to be part of restricted trade clauses, and was usual practice, particularly in sales roles and would make clear to the public nothing underhand was occurring.
- he considered the size of the Grange Park SUE development contract to be atypical for the Planning Department to handle and that obtaining external skilled support was necessary.
- he strongly refuted he had made any accusations about any corruption and believed he had acted properly to highlight concerns.

The Investigating Officer had no questions.

Summary Statements

Mr Pearson, in his role as the Independent Person, stated that in his view it was a matter of the words that had been used by Councillor Hayes and that there was a clear distinction between 'rough and tumble' politicking and comments made which referred to officers. He did not consider that Councillor Hayes had introduced any new evidence and that he had crossed the line between political banter and remarks about the integrity of an officer.

The Investigating Officer stated that Councillor Hayes had made reference to his background but this had little relevance to the matter, and that the words used by Councillor Hayes would have suggested, to the ordinary person on the street, that the Head of Planning was involved in corrupt practices whilst in the employment of the Council. Councillor Hayes had also stated he could not alter the way in which others interpreted his statements, but she considered that he should have control over the comments he makes whilst being mindful of the obligations of the Code of Conduct and the need to have regard to the Code whilst exercising his right to freedom of expression. She stated that the Head of Planning and Regeneration did have employment restriction requirements in relation to the membership of his professional body and was fully aware of his professional obligations.

Councillor Hayes summed up by reiterating that he had not made an allegation or suggested that something underhand or corrupt was occurring, and that he would have clearly stated this if he had thought it was the case. He believed he had acted appropriately and had integrity and principles but accepted that his behaviour of being blunt and streetwise may not always suit the audience.

The Panel and the Monitoring Officer withdrew to allow the Panel to consider the evidence in private.

Once all parties had returned to the room, the Chair of the Panel announced the Panel's decision.

RESOLVED that Councillor Hayes has breached the Members' Code of Conduct of Charnwood Borough Council, particularly paragraph 3.1 (you must treat others with respect) and that Councillor Hayes had also breached the Protocol on member/officer relations, section 4 (e) (dealings between officers and members should be based on mutual trust and respect).

Reason

The Panel considered unanimously that, on the balance of probability, Councillor Hayes had breached the Code of Conduct. There was no dispute that Councillor Hayes had made the comments in question and the Panel believed those comments to contravene the Code of Conduct paragraph 3.1 and the Protocol on Member /Officer Relations Section 4(e).

Before the Panel considered whether or not to recommend the imposition of sanctions, the Chair asked if the Investigating Officer, the Independent Person or Councillor Hayes wished to comment. No further comments were made.

The Panel and the Monitoring Officer withdrew to allow the Panel to consider whether or not to impose a sanction.

The Panel and the Monitoring Officer returned to announce the Panel's decision.

RESOLVED that in respect of the breach of the Members' Code of Conduct and the Protocol on Member/Officer Relations by Councillor Hayes it be recommended:

1. that a formal letter be issued to Councillor Hayes setting out the breach of the Code that has been identified;
2. that the breach of the Code of Conduct was of such a serious level that the Panel felt it was appropriate to formally censure Councillor Hayes about his comments towards the Head of Planning and Regeneration, as they had been totally inappropriate and without foundation;
3. that Councillor Hayes be asked to apologise in writing to the Head of Planning and Regeneration about his unfounded comments and a copy be sent to the Monitoring Officer to be made public within 10 working days, subject to an appeal.

Reasons

- 1,2,3. The Panel considered these sanctions to be appropriate, as the matter was of a serious nature, and as the comments about the Head of Planning and Regeneration had been made in public an apology should also be made in public.

The Panel's decision will be published in the form of these minutes, and the Monitoring Officer will also arrange for the publication of a notice of the Panel's findings and Councillor Hayes's right of appeal in a local newspaper and on the Borough Council's website.

Councillor Hayes has a right of appeal which can be exercised within 10 working days of the date of the publication of the Panel's decision.

BREACH OF CHARNWOOD BOROUGH COUNCIL MEMBERS' CODE OF CONDUCT BY COUNCILLOR DAVID HAYES

minute Item 3

At a hearing on 27th February 2019 a panel of the Borough Council's Member Conduct Committee found that Councillor David Hayes made a statement about an officer at a full Council meeting in September 2018 which breached section 3.1 of the Members' Code of Conduct; 'you must treat others with respect', and that the statement also breached section 4(e) of the Protocol on Member/Officer Relations, which requires that dealings between members and officers should be based on mutual trust and respect. The panel concluded that the breach of the Code was of such a serious level that Councillor Hayes should be formally censured, as his comments had been totally inappropriate and without foundation, and they also recommended that he should apologise in writing to the officer concerned with a copy of the apology to be made public.

Councillor Hayes has a right of appeal against the decision of the panel.

Adrian Ward

Monitoring Officer

Charnwood Borough Council

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