



**MEMBER CONDUCT PANEL**

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To: Councillors Hamilton, Murphy, Tassell and Ball (Parish Member) (For attention)

All other members of the Council  
(For information)

You are requested to attend the meeting of the Member Conduct Panel to be held in Committee Room 1 - Council Offices on Friday, 12th July 2019 at 1.30 pm for the following business.

Chief Executive

Southfields  
Loughborough

4th July 2019

**AGENDA**

1. APOLOGIES
2. APPOINTMENT OF CHAIR  
The Panel will appoint a Chair from amongst its members.
3. DISCLOSURES OF PECUNIARY AND PERSONAL INTERESTS

4. DETERMINATION OF COMPLAINTS OF A BREACH OF THE MEMBERS' CODE OF CONDUCT OF QUORN PARISH COUNCIL BY COUNCILLOR ANDREW BROWN

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The Panel is asked to determine complaints of potential breaches of the Members' Code of Conduct of Quorn Parish Council (the Parish Council). A report of the Monitoring Officer setting out details of the complaints and the pre-hearing process is attached.

This report includes an exempt Annex C, circulated to members. If it is necessary for reference to be made to information contained within the annex, members of the public will be excluded for that part of the meeting on the grounds that it will involve the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972.

## MEMBER CONDUCT PANEL – 12TH JULY 2019

### Report of the Monitoring Officer

ITEM 4 DETERMINATION OF COMPLAINTS OF A BREACH OF THE MEMBERS' CODE OF CONDUCT OF QUORN PARISH COUNCIL BY COUNCILLOR ANDREW BROWN (Ref: MC5 and 6 2018/19)

#### Purpose of the Report

1. To enable the Panel to determine complaints of potential breaches of the Members' Code of Conduct of Quorn Parish Council (the Parish Council), which were referred for investigation by the Monitoring Officer in accordance with the Borough Council's arrangements for dealing with complaints about member conduct under the Localism Act 2011.

#### Background

2. In November 2018 two separate complaints were received from Quorn Parish Councillors Roger Price and Carolyn Thornborow, about a statement made by Councillor Andrew Brown at a Parish Council meeting on 6th November 2018.
3. Having undertaken a fact-finding review and having consulted with one of the Independent Persons, Mr Richard Gough, the Monitoring Officer referred the complaints for Investigation.
4. The Investigator concluded in his report that Councillor Brown had breached the Code of Conduct of the Parish Council (the report is attached at Annex B).
5. Having considered the Investigator's report, and after consulting with Mr Gough, the Independent Person, the Monitoring Officer decided that Councillor Brown had a case to answer and that that the Investigator's report should be referred to a Panel of the Member Conduct Committee for a hearing.
6. The concerns in question are that:
  - (i) the statement that Councillor Brown made accused the parish clerk of carrying out a concerted campaign of inappropriate and unprofessional behaviour against a parish councillor.
  - (ii) He also accused the parish clerk of inappropriate behaviour with regard to committee paperwork.
  - (iii) no evidence was provided by him to substantiate his allegations, and some of the comments he made may be slanderous.
7. The relevant sections of the Members' Code of Conduct of the Parish Council are as follows:

*2. Whenever you act, claim to act, or give the impression that you are acting in your capacity as a member or co-opted member of Quorn Parish Council, your*

*conduct will in particular address the statutory principles of the Code of Conduct by:*

*i) Valuing your colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.*

*j) Always treating people with respect, including the organisations and public you engage with and those you work alongside.*

8. The Borough Council has adopted a procedure for determining complaints about the conduct of councillors. The relevant sections within that procedure will be used for this hearing and are set out in Annex A to this report.
9. In accordance with that procedure, the Panel is asked to consider the material facts and decide whether they amount to a breach of the Code of Conduct by Councillor Brown.
10. The Independent Person involved in the case, Mr Richard Gough, will also be present to advise the Panel in relation to his views on the matter.
11. If the Panel finds against Councillor Brown they will then need to consider whether they feel it is appropriate to recommend to the Parish Council that they impose a sanction, which would include the following options:
  - (i) issue a formal letter to the Member setting out the breach of the Code which has been identified;
  - (ii) censure the Member;
  - (iii) to remove the Member from committee(s) and other appointments;
  - (iv) recommend that the Member undertake training or issue an apology.
12. The Panel is also able to make more general recommendations with a view to promoting high standards of conduct.

### Pre-Hearing Process

13. The Monitoring Officer has undertaken a pre-hearing process, which is designed to enable the hearing to take place fairly and as efficiently as is reasonably practicable, through conveying to the Panel those aspects, issues and matters related to the Investigator's report and the observations or representations made or received in respect of it that are relevant to the matter which was the subject of the investigation.
14. Councillor Brown has indicated that he will present his own case at the hearing, and that he does not intend to call any witnesses.
15. The Investigator has indicated that he does not intend to call any witnesses at the hearing and will rely on the written summaries included within his report which have been agreed with all the witnesses interviewed during the investigation.

16. Neither Councillor Brown or the Investigator have indicated that there are any matters relevant to the issues in question which should be considered as being confidential (i.e. which should be considered in 'exempt' session by the Panel).
17. The Monitoring Officer has considered the relevant factors, and the views of Councillor Brown and the Investigator, and his advice is that there are no matters referred to within the Investigator's report that need to be exempt, and that the hearing can therefore be conducted in public.
18. However, there are various comments made within the detailed witness statements that give personal opinions about officers of the Parish Council other than the Parish Clerk. Due to the nature of these views about individually identifiable officers the Monitoring Officer's advice is that the witness statements should be classed as exempt under Paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972, as the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
19. The witness statements will therefore be supplied to the Panel as exempt papers, and if any reference is to be made to them during the hearing consideration will need to be given to excluding members of the press and public during those times.

## ANNEXES

Annex A: Extract from the Council's Arrangements for Dealing with Complaints about Member Conduct under the Localism Act 2011

Annex B: Investigator's Report

Annex C: Witness statements (EXEMPT)

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Monitoring Officer  
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# ANNEX A

## EXTRACT FROM THE ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT MEMBER CONDUCT UNDER THE LOCALISM ACT 2011

### 1. Hearing Principles

Hearings are not a court and, therefore, evidence will not be taken on oath and persons attending the Panel will not be expected to stand when addressing the meeting or giving evidence. However, the Panel remains quasi-judicial and the principles of natural justice will be applied. All comments or questions must be put to, or through, the Chair. The Panel will reach its decisions on the balance of probabilities based on the evidence presented to it.

The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person. The Panel may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Panel should be shared with the Member and the Investigator if they are present.

During the course of the hearing, the Panel can ask the Monitoring Officer to obtain further information if the Panel decides that it requires that information in order to reach a decision. The hearing will be adjourned until the Monitoring Officer provides that information. The Panel can make such a request only once per hearing;

### 2. Hearings by a Panel of Members of the Member Conduct Committee

The Panel will appoint a Chair from among its members. The Chair of the Panel will:

- (i) introduce those present;
- (ii) establish that the hearing is quorate (the Panel's quorum is 3 Borough Council members);
- (iii) deal with any disclosures of interest;
- (iv) ensure that the participants understand the procedure to be followed;
- (v) ensure that the Member, if unaccompanied, was made aware that he or she could have been represented.

Meetings of the Panel are subject to the provisions of Part VA of the Local Government Act 1972. The Monitoring Officer will consider whether the agenda papers include exempt information to which the press and public, including the complainant and the Member, should not have access.

If the Member is not present, the Panel will consider any indication from the Member that he/she would not be present and any reasons provided. The Panel will then determine whether to hold the hearing in the absence of the Member or adjourn the hearing to another date.

The Investigator will put the case against the Member and may call witnesses. The Member and/or his/her representative may ask questions of the investigating officer and any witnesses. The Panel may ask questions of the investigating officer and any witnesses.

The Member and/or his/her representative will put his/her case and may call witnesses. The Investigator may ask questions of the Member and any witnesses. The Panel may ask questions of the Member and any witnesses.

The Investigator will sum up first, followed by the Member and/or his/her representative. No new evidence may be introduced at this stage.

The Panel may withdraw to consider the case and come to a decision in private. The Monitoring Officer and the officer recording the proceedings will remain with the Panel. If it is necessary to recall either party to clarify certain points, both parties will return. On their return, the Chair will announce the Panel's decision in respect of the material facts and whether they amounted to a breach of the code of conduct.

If the Panel finds against the Member, he/she will be asked if he/she wishes to respond to the finding before the Panel considers whether to impose a sanction. If the Panel finds against the Member, the Panel may recommend to the Parish Council that they should impose one or more of the following sanctions:

- (i) issue a formal letter to the Member setting out the breach of the Code which has been identified;
- (ii) censure the Member;
- (iii) remove the Member from committee(s) and other appointments;
- (iv) recommend that the Member undertake training or issue an apology.

Once the Panel has sufficient information to enable it to determine whether a sanction should be recommended and, if appropriate, what the sanction should be, the Panel may withdraw to consider the representations and evidence in private. On their return, the Chair will announce the Panel's decision.

After considering any verbal or written representations from the Investigator, the Panel will consider whether it should make any recommendations to the authority, with a view to promoting and maintaining high standards of conduct among members which will be announced by the Chair.

### **3. After the hearing and appeals**

The Panel will announce its decision on the day. The Panel's decision and reasons will be recorded in the form of the minutes of its meeting having regard for any exempt information that it considered and communicated to the relevant parties by letter. The Panel will, wherever possible, issue its full written decision and reasons within 10 working days of the end of the hearing.

The written decision will be provided to the Member, the complainant, the Investigator and where the Member is a parish/town councillor, the Parish/Town Clerk. The written decision will, if a finding has been made that the Member had failed to comply with the Code of Conduct, provide information as to the Member's right to appeal against the finding

Where the Panel has determined that the Member failed to comply with the Code of Conduct, the Monitoring Officer will arrange for the publication of a notice of the Panel's

findings and the Member's right to appeal in a local newspaper and on the Borough Council's website.

Where the Panel has determined that the Member did not fail to comply with the Code of Conduct, the Monitoring Officer will arrange for the publication of a notice of the Panel's findings in a local newspaper and on the Borough Council's website unless the Member requests that no notice is published.

If the Panel finds against the Member, the Member may ask for that decision to be reviewed by the Borough Council's Appeals and Review Committee. A request for a review must be made in writing, giving the reasons for the request, to the Monitoring Officer within 10 working days of the date of the written notification of the Panel's decision.

The appeal will normally be heard within 20 working days of the receipt of the written request stating the wish for the finding to be reviewed. The appeal will be conducted following the procedure set out in section 2 above, but will consider only material relevant to the reasons for the review request set out by the Member.





# **ch&i associates**

**Investigation into a complaint  
against  
Councillor Andrew Brown  
of  
Quorn Parish Council**

A report for the Monitoring Officer  
of  
Charnwood Borough Council

**18 April 2019**

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## 1 Executive Summary

- 1.1 ch&i associates was appointed by the Monitoring Officer at Charnwood Borough Council (the Borough Council) to investigate two complaints about the conduct of Councillor Andrew Brown, a member of Quorn Parish Council (the Parish Council).

### Scope and focus of the investigation

- 1.2 Councillor Roger Price and Councillor Carol Thornborow, both members of the Parish Council, submitted complaints about Councillor Andrew Brown's conduct during meeting of Quorn Parish Council on **6 November 2018**. During this meeting Councillor Brown read a pre-prepared statement to the members present regarding a proposal by the Parish Council's Park Committee. During his statement it is alleged that Councillor Brown made a number of comments that breached the Parish Council's Code of Conduct (the Code).
- 1.3 As part of our investigation we have considered whether Councillor Brown breached part 2(i) of the Code, which provides that members must value their colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government. We have also considered whether Councillor Brown failed to treat others with respect, contrary to paragraph 2(j) of the Code.

### Recommendation

- 1.4 My approach in this case has been to equip the Council to determine the allegations through any of the routes open to it, namely:
- a. The member *was not* acting in Councillor capacity, therefore the code was not engaged and the member did not breach it;
  - b. The member *was* acting in member capacity, but did not through their conduct breach any Code paragraph;
  - c. The member *was* acting in member capacity and breached the Code.
- 1.5 In my view this matter does fall within the jurisdiction of the standards framework because Councillor Brown was acting in his official capacity as a member of the Parish Council. For the reasons given in section 6 of this report, I recommend that the Council find that Councillor Brown, when making the comments that he did about the Parish Clerk at the meeting of **6 November 2018**, failed to comply with part 2(i) and (j) of the Parish Council's Code.

## 2 Official details of Councillor Brown

2.1 Councillor Brown has been a member of Quorn Parish Council since July 2017. Councillor Brown is currently a member of the following committees and working parties:

- Environment Committee (Chair)
- Finance Committee
- HR Committee
- Old School Project Committee
- Policies and Procedures Working Party

## 3 The relevant legislation & protocols

### Localism Act 2011

- 3.1 By section 27(1) of the Localism Act 2011 (the Act) a “relevant authority” is placed under a statutory duty to “promote and maintain high standards of conduct by members and co-opted members of the authority”.
- 3.2 By section 27(2) of the Act a relevant authority “must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity”.
- 3.3 Under section 28(1) of the Act a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with prescribed principles of standards in public life – the so called “Nolan principles”.
- 3.4 For the purposes of this investigation, the “relevant authority” is Quorn Parish Council.
- 3.5 Under 28(6) of the Act, a relevant authority other than a parish council must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. Paragraph 28(9) provides that an “allegation”, in relation to a relevant authority, means a written allegation -(a) that a member or co-opted member of the authority has failed to comply with the authority's code of conduct, or (b) that a member or co-opted member of a parish council for which the authority is the principal authority has failed to comply with the parish council's code of conduct.
- 3.6 For the purposes of this investigation, the principal authority is Charnwood Borough Council.
- 3.7 By section 28(7), arrangements put in place under subsection 28(6)(b) must include provision by the appointment of the authority of at least one “independent person” whose views are to be sought, and taken into account, by

the authority before it makes its decision on an allegation that it has decided to investigate.

- 3.8 Section 28(11) of the Act provides that if a relevant authority finds that a member or a co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take. In the case of a parish council, its principal authority will make recommendations of action, if any, to the parish council.

#### Quorn Parish Council Code of Conduct

- 3.9 Under Section 27(2) of the Localism Act the Parish Council established a Code of Conduct for members (the Code). The code specifically mentions that members must be committed to behaving in a manner that is consistent with the 'Nolan' principles.

- 3.10 The Code adopted by the Parish Council includes the following paragraphs:

*2. Whenever you act, claim to act, or give the impression that you are acting as a member or co-opted member of Quorn Parish Council your conduct will in particular address the statutory principles of the Code of Conduct by:*

- i) Valuing your colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.*
- j) Always treating people with respect, including the organisations and public you engage with and those you work alongside.*

## **4 The investigation**

- 4.1 This investigation was conducted by Alex Oram, assisted by Mark Hedges, on behalf of the Council's Monitoring Officer. Alex is a director of ch&i associates, a company with a successful track record of conducting complex investigations, assessments and case reviews within the regulatory, charity, NHS and local government sectors. Alex has been conducting member conduct investigations since 2003. He was previously employed by Standards for England as a principal investigator responsible for conducting many of their most complex, politically sensitive and high-profile investigations into member conduct. Mark previously served as a Detective in the Police Service for over 20 years and has considerable experience in investigative interviewing, evidence gathering and report writing.

- 4.2 During the course of this investigation we have considered oral evidence given by Ms Christine Gibbs (the Clerk), Councillor Roger Price, Councillor Carolyn Thornborow, Councillor Jane Hollingworth, Councillor David Cawdell, Councillor Ken Brown and Councillor Andrew Brown (all members of the Parish Council). We have also viewed a copy of the statement read out by Councillor Brown

during the meeting of the Parish Council on 6 November 2018 and reviewed several documents associated with the relevant Parish Council meetings and policies.

## 5 The evidence

### Background

- 5.1 Councillor Jane Hollingworth is a keen horticulturist and has been carrying out work as a volunteer in Quorn for many years; it was Councillor Hollingworth who created the Memorial Gardens in Quorn in **1998** (in conjunction with the Parish Council) and has maintained it for twenty years. Councillor Hollingworth is the founder and primary contact for Quorn in Bloom, an organisation partly funded by the Parish Council to improve and maintain various areas around Quorn.
- 5.2 During **2008**, the Parish Council were awarded a grant of £750k to completely refurbish Stafford Orchard Park in Quorn (the Park). The Parish Council set up the Park Management Committee to manage the redevelopment; they approached Councillor Hollingworth<sup>1</sup> and asked her to formulate a planting plan for part of the park and oversee the planting, which would be carried out by a group of volunteers.
- 5.3 During **2010**, Christina Gibbs was appointed as the Clerk to the Parish Council. Ms Gibbs told us that one of the terms of the lottery grant funding was that the Parish Council employ a full-time groundsman for a minimum of ten years; as a result, the current groundsman was appointed (around the same time as Ms Gibbs) and she was given responsibility for managing him.
- 5.4 The new groundsman assisted with the redevelopment of the Park alongside the work that was being carried out by Councillor Hollingworth. The project was completed in **May 2011**, when the new Park was officially opened. Councillor Hollingworth told us that at this time she spoke with the groundsman and told him that from that point onward the responsibility of maintaining the park was his.
- 5.5 Councillor Hollingworth told us at interview that within 6-7 months it became apparent that the groundsman was not properly tending to the Park, which she found particularly upsetting given all her own hard work. Councillor Hollingworth said that she spoke with the Clerk and the Chair of the Council about her concerns, however in her view they did nothing to address the situation and the groundsman continued to neglect the Sensory Garden in particular. Councillor Hollingworth said that she eventually decided to just carry out the work herself, which she did for three years. Councillor Hollingworth told us that during this period she never received any criticism of her work and was in fact asked to sit on the Park Management Committee, which is comprised of two Parish Councillors and five volunteers. Councillor Hollingworth said that at one point the Chair of the Park Management Committee asked her to look after the rest of the

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<sup>1</sup> Although I refer to Councillor Hollingworth, it should be noted that she did not become a member of the Parish Council until 2015.

planting because he was not happy with how the groundsman was doing it. Councillor Hollingworth said that she was told that she would start receiving payment for her work and that the necessary arrangements would be made by the Clerk; Councillor Hollingworth asserted that she subsequently heard no more about it and then three months later she was informed that she had been 'kicked off the park'.

- 5.6 The Clerk told us that it was apparent from very early on that there were problems in the relationship between the groundsman and Councillor Hollingworth. The Clerk, who described Councillor Hollingworth as a great asset to the village and a well-respected horticulturist, said that from her perspective Councillor Hollingworth struggled to relinquish control of the Park and very quickly began to complain that the Park was not receiving the attention it deserved from the groundsman. The Clerk said that the groundsman increasingly objected to Councillor Hollingworth's interference, attempts to instruct him and constant criticism; the Clerk said that Councillor Hollingworth presented her with photographs which suggested that on occasion she watched him covertly while taking pictures; to the extent that the groundsman felt harassed<sup>2</sup>. The Clerk told us that she felt as if she was in a difficult position, being effectively '*stuck in the middle*', and so in **2013** she referred the matter to the Parish Council's HR Committee; they in turn sought advice on how to deal with the situation from Voluntary Action Leicester (VAL).
- 5.7 At a meeting of the Parish Council's HR Committee on **15 August 2013**, members were presented with VAL's report. Members of the Committee noted that Councillor Hollingworth was a very valuable contributor to the village and to some, a close friend. Members commented though that it appeared that Councillor Hollingworth was not used to working as part of a team; was '*difficult to control*' and had resigned from the Park Management Committee because she was dissatisfied with her budget. The Clerk told members that the situation had become so out of hand that both Councillor Hollingworth and groundsman were unhappy with their working arrangements; Councillor Hollingworth had taken to issuing lists of tasks to be done via the Park Management Committee to the groundsman, who resented her dictating his work schedule. The Clerk said that she felt unable to offer adequate support to either party. A representative from VAL, who was present at the meeting, told members of the HR Committee that the current arrangements were unusual and unworkable. She suggested that clear lines of responsibility be drawn up because the evidence suggested that Councillor Hollingworth was dictating to the Parish Council and that rather than supporting the work of the groundsman and the Parks Committee, she seemed to be following her own agenda. VAL expressed the view that the perception that Councillor Hollingworth was doing '*all the giving*' was not entirely correct and that the reality was that the Parish Council seemed to be inadvertently facilitating her extreme passion for gardening on a large scale. It was noted that Councillor Hollingworth had given a tremendous amount of her time and expertise to the village: "*but if every volunteer, councillor and committee member adapted her approach the entire system would be unworkable*". Members resolved to instruct

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<sup>2</sup> The Clerk gave us examples where Councillor Hollingworth directly interfered with the groundsman's work against his express wishes.

the Clerk to make Councillor Hollingworth aware that her role as a volunteer was to simply support the Groundsman and the Park Committee and that she did not have any authority over the Park or the Sensory Garden. This was confirmed by the Park Management Committee in **October 2013**.

- 5.8 From this point onwards Councillor Hollingworth no longer volunteered in the Park<sup>3</sup>; she continued to volunteer on other areas of council owned land in the village though. Relations between Councillor Hollingworth and the Clerk were such that they no longer communicated with each other. Both parties confirmed that Councillor Hollingworth's absence from the Park led to members of the public expressing their own concerns about what was perceived to be her marginalisation; the Clerk told us that the groundskeeper was made to feel as if *'the village had turned against him'*. The Clerk added that Councillor Hollingworth continued to criticise the groundsman's work, though now she did so directly to Parish Council members rather than through her as Clerk.
- 5.9 Councillor Hollingworth told us that the breakdown in relations between her and the Clerk was in part due to the verbal abuse she received; Councillor Hollingworth alleged that the Clerk had said that nobody liked her, that she was surprised that Councillor Hollingworth had any friends and that the Borough Council had described her as a volunteer who was completely out of control.
- 5.10 During **2015**, Councillor Hollingworth became a member of the Parish Council. Councillor Hollingworth told us that her motivations for joining were to ensure that the Parish Council properly funded the Memorial Garden and to stop the Clerk from side-lining her further from doing her voluntary work. Councillor Hollingworth told us that her budget for maintaining the Memorial Garden had been cut to £100 prior to her becoming a councillor (she alleged that the Clerk had arranged for the Environment Committee to make this decision; she told us that since becoming a councillor she has managed to have it increased to £500); *"bearing in mind that I cut the grass there which saves them £1000 a year and I empty the waste bin which saves them a further £250. I found it derisory and believed it to be a deliberate attempt to try and make me give up"*. Councillor Hollingworth told us that in addition: The locks on the Park's building were changed and her request for a new key were denied by the Clerk; the Clerk told her that she could not use a Parish Council wheelbarrow for her work on the Memorial Garden; and that there were issues with her drawing water to tend the plants. Councillor Hollingworth believes that these barriers were all deliberately and unnecessarily put in place by the Clerk.
- 5.11 Councillor Hollingworth told us that the Clerk was rattled when she became a councillor. She recounted that when she first went to see the Clerk as a member of the Parish Council, she tried to draw a line under their difficult past by telling the Clerk that she *'forgave her'*. Councillor Hollingworth said that in response, the Clerk *'exploded'*. Councillor Hollingworth told us that that since she became a member of the Parish Council, the Clerk has tried to make everything difficult for her. She alleged that any actions she suggests are not carried out by the Clerk or

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<sup>3</sup> The accounts we received differed as to whether Councillor Hollingworth chose to leave as a result of the advice received or was instructed to



are deliberately done in a tardy fashion. She also contended that there have been occasions when she did not receive a paper agenda for meetings because not enough postage had been paid by the Clerk, no other councillors had encountered such problems.

- 5.12 Councillor Hollingworth also alleged that the Clerk's 'vendetta' against her has now extended to Quorn in Bloom. Councillor Hollingworth alleged that that areas of grass surrounding places tended to by Quorn in Bloom have remained uncut by the Council contractors' despite several other areas of grass being mown; that the Clerk failed to record references to Quorn in Bloom and the Memorial Garden winning awards and that the renewal of a lease for an area of land which the Clerk was supposed to action was not carried out expediently. Councillor Hollingworth also recounted an incident where she claimed that the Clerk had removed posters which she had put up to try to prevent plants being trampled on; and an occurrence when the Clerk placed an advert in the village magazine requesting volunteers for help in the Memorial Garden (which has always been her responsibility). Councillor Hollingworth said that from her perspective Ms Gibbs has a vendetta against her that goes beyond the disagreements and criticisms she had made about the groundsman. Councillor Hollingworth said that she had made complaints about the Clerk's conduct to the HR Committee but as with the numerous complaints she has made about the groundsman, nothing had been done.
- 5.13 Ms Gibbs told us that although they did not get on well, she did not have a vendetta against Councillor Hollingworth and that she generally applauded the work that Councillor Hollingworth carried out round Quorn. Ms Gibbs told us though that as Clerk she had to deal with numerous complaints from the groundsman about Councillor Hollingworth interfering; *"One particular incident that highlights the problem is the very first task he took on. An area in the village was looking very run down so his task was to remove excess soil which he put in the Park to deal with later. Jane [Councillor Hollingworth] immediately went to him and told him he must spread it round the Park and he responded saying that it wasn't a priority as he had plants arriving the next day, but he would do it at a later date. Jane henceforth went and got a wheelbarrow and started distributing the soil around the Park.... There have been incidents where the groundsman has planted trees and at the weekend she has dug them up and replanted them. She has constantly interfered with his work and it has certainly hindered his performance and lessened his enthusiasm."*
- 5.14 The Clerk also acknowledged that there is an ongoing issue over the relationship between the Parish Council and Quorn in Bloom. She told us that during **2015**, Councillor Hollingworth approached the Environment Committee to see if the Parish Council wished to enter the village in the Britain in Bloom competition. The Committee decided against the idea but invited Councillor Hollingworth to enter the competition herself, with some financial support provided from the Parish Council's grant scheme. The Clerk stated that this invitation seems to have been misunderstood by Councillor Hollingworth, who appeared to think that she was being invited to create an 'In Bloom team' under the auspices of the Environment Committee. The Clerk said that this confusion continues not only with Councillor Hollingworth, but also with Councillor Andrew Brown. Councillor

Andrew Brown is friends with Councillor Hollingworth; he and his wife are active members of Quorn in Bloom. The Clerk said: "*Councillor Andrew Brown has made the suggestion that the Environment Committee are with Quorn in Bloom and when I have corrected him, he has looked at me as though he could kill me.*"

- 5.15 Councillor Andrew Brown told us that he is a supporter of Quorn in Bloom and the efforts of Councillor Hollingworth, which he regards as being hugely beneficial to the village. Councillor Brown said that he became aware of the problems between the Clerk and Councillor Hollingworth soon after moving to the village in **2013**; he has witnessed it himself first-hand since he became a member in the summer of **2017**. Councillor Brown said that soon after he joined the Council, the Clerk made the mistake of telling him what an awful person Councillor Hollingworth was. Councillor Brown said that since becoming a councillor he has witnessed the Clerk bully, harass and victimise Councillor Hollingworth<sup>4</sup>. Councillor Brown added that while in most other aspects the Clerk is very efficient and effective, she is overly defensive of the groundsman and does not manage him effectively.
- 5.16 It is apparent from the accounts given by Councillor Hollingworth and the Clerk that their relationship has never been good and that the friction between them has if anything increased since 2010/2011. I note that the issue has already been included in a report compiled by the Leicestershire and Rutland Association of Local Councils (LRALC) and that they have made several recommendations to the Parish Council regarding this and other issues (including mediation; their report is attached at annex 1). It is not necessarily within the scope of my investigation to make many conclusions one way or the other with regards the Clerk or Councillor Hollingworth's conduct during this period. This issue is relevant though because Part 2 of Councillor Brown's statement of **6 November 2018** directly referenced what he referred to as '*this vendetta by the Clerk*'; Councillor Brown made it clear at interview that he felt his comments about the Clerk were more than justified by the way in which Ms Gibbs had behaved toward Councillor Hollingworth since becoming Clerk. I provide my own views on this later in the report.

#### Councillor Andrew Brown's conduct prior to **6 November 2018**

- 5.17 Councillor Andrew Brown told us that he thought it disgraceful that members of the Parish Council had turned a blind eye to the Clerk's treatment of Councillor Hollingworth for so many years: "*Other misdemeanours by the Clerk include faking minutes. Last autumn in 2017, the Council's tree policy was being used by Christina [the Clerk] to obstruct the removal of a couple of trees that Jane [Councillor Hollingworth] and Quorn in Bloom wanted gone. I was asked to redraft the policies and eventually the Council took the tree policy and approved it. The minutes came out and they said 'tree policy not approved.'* It was absurd

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<sup>4</sup> 1As an example, Councillor Andrew Brown told us: "*Two or three months ago we were discussing a mowing regime on the bypass and Jane [Councillor Hollingworth] came up with a very good modification to make it easier to manage. Christina's [Ms Gibbs'] instant reaction was to sink it and said that every household on the estate would need to be consulted. It didn't get her anywhere, but her kneejerk reaction always seems to be to find a problem with the suggestions Jane makes. It is borne from a personal animosity and is not professional.*"

*since we had all voted on it.”* Councillor Brown said that as far as he was concerned the matter needed dealing with and so he took it upon himself to act.

- 5.18 Councillor Brown told us that the first thing he did was to talk privately to councillors to ensure that he was not exaggerating the problem in his own mind. Councillor Brown said that he spoke to all members except Councillor Price; all he spoke to except Councillor Thornborow agreed that there was a serious problem with the Clerk’s conduct.
- 5.19 Councillor Brown said that in order to address the matter he initially approached Councillor Gary Hughes, who was Chair of the Parish Council at the time. Councillor Brown told us that Councillor Hughes refused to take any definitive action, saying that it was simply *‘one of those things’*. In **May 2018**, Councillor Hughes was replaced as Chair of the Parish Council by Councillor Cawdell. Councillor Brown told us that he raised his concerns with Councillor Cawdell and that unlike his predecessor, Councillor Cawdell actually did seem to want to get the issue resolved. Councillor Brown subsequently felt though that Councillor Cawdell’s approach was too cautious and so he decided to try and address the matter directly with the Clerk.
- 5.20 Councillor Brown told us: *“In **July 2018**, I went to see Christina [the Clerk] in her office to speak about her behaviour against Jane [Councillor Hollingworth]. She blew up completely, rising to her feet and threatening to call the police. I left within ten minutes of arriving and sent an email to David [Councillor Cawdell] as soon as I got home. I said that Councillors have put up with this bad behaviour for too long and that I didn’t think we had any option but to put it on the agenda. I understand that it is difficult for David as he does have his hands full with more pressing matters so I have tried to confront the issue myself. I have gone through all the correct channels and requested to take the matter to HR but received no response. I have been trying to deal with this for a year now and got nowhere trying to do it privately. I feel I have been forced to take this on in the manner I did.”*
- 5.21 The Clerk confirmed at interview that Councillor Brown visited her office about his concerns and that she refused to discuss it. The Clerk said that Councillor Brown’s manner during their exchange had been immediately confrontational and that he accused her of conducting a personal vendetta against Councillor Hollingworth. The Clerk said that prior to his arrival in her office she was given no notice as to his intentions or any opportunity to have a representative with her; that there was nobody else in the office and that she had been *‘taken aback and quite frightened’*. She acknowledged that she did shout at Councillor Brown, telling him he should leave.
- 5.22 Councillor Cawdell was interviewed as part of this investigation, however he decided that he was not prepared for his evidence form part of this report. Councillor Cawdell’s decision appears to have been primarily motivated by his view that a ‘backward looking’ investigation might raise historical issues that

jeopardise the more constructive work that is being carried out by the LRALC.<sup>5</sup> While I have some sympathy with his position and consider it essential that the Parish Council implement the recommendations made by LRALC, it is also important that the Borough Council are able to deal with the complaints against Councillor Brown in line with the Localism Act and its own procedures. With that in mind, I consider it necessary to rely on aspects of Councillor Cawdell's evidence. This includes his confirmation that Councillor Brown did raise his concerns about the Clerk's conduct with him formally prior to the Parish Council meeting of **6 November 2018**. Councillor Cawdell told us that despite his personally believing that Councillor Brown's concerns were wholly justified, he failed to progress what were serious accusations about the Clerk's conduct because he believed that the matter would be better dealt with as part of LRALC's work with the Parish Council.

#### New Flower Bed proposal

- 5.23 Quorn Old School, which is located next to the Park, was renovated in **2018** and now offers a café, library and a community room that is available to hire for classes and small functions. Councillor Andrew Brown is Chair of the Old School Trust. The Parish Council also had an Old School Project Committee, which consisted of four members of the Parish Council and four members of the Trust.
- 5.24 During **2018** Councillor Ken Brown, a member of the Parish Council and Old School Project Committee, came up with the idea of creating a border along the outside off the Old School wall. Because this area was technically in the Park, Councillor Andrew Brown submitted a 'tentative proposal' to the Parks Management Committee via email on **31 August 2018**, asking that they approve it at their forthcoming meeting on **10 October 2018**. In his email, Councillor Andrew Brown confirmed that he had already discussed the proposal with the Old School trustees and representatives of Quorn in Bloom and that they were *'very willing to plan, create and maintain this bed with their volunteers. Quorn in Bloom will also raise the funds (approximately £1,500) for the plants. Whilst there has been no applications made yet, the trustees of the Quorn Old School charity have informally discussed this and, in my opinion, are likely to consider an application with sympathy.'*
- 5.25 Prior to the Parks Management Committee meeting on **10 October 2018**, the Parish Council's new assistant grounds person submitted a proposal which included the introduction of a new border in the same place as that being proposed in Councillor Brown's email of **31 August 2018**. As a result, members of the Committee considered both proposals at their meeting. Members concluded that they preferred the proposal from the grounds staff and resolved to go ahead with their scheme using existing Parish Council budgets; as such, Councillor Brown's proposal was rejected.

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<sup>5</sup> Shortly after his appointment, Councillor Cawdell asked LRALC for advice in relation to several issues, including longstanding issues involving the Clerk and Councillor Hollingworth. I have attached a copy of their considerations at annex 1

5.26 As a result of the decision made by the Parks Management Committee, the Old School Project Committee produced a report for the Parish Council's consideration: *"To prevent unsupported and unapproved expenditure and development of an area adjacent to the Old School wall as follows. We are concerned that the idea that we the OS group/and Trust originally had to develop a small flower bed against the OS wall has been 'taken over ' by the Park Committee and turned into something that we don't want to see".* ('The report') The report was included on the Parish Council's agenda for the meeting scheduled to take place on **6 November 2018**.

Parish Council meeting, 6 November 2018

5.27 The Parish Council meeting started at 7pm in the Council Chambers at Quorn Village Hall. The meeting was chaired by Councillor Cawdell. After the usual apologies for absence, the Chair asked for any declarations of interest to be made. Councillor Andrew Brown declared an interest as a Director of Leicestershire and Rutland Association of Local Councils (LRALC) and stated he would not be voting on certain agenda items which related to that position<sup>6</sup>.

5.28 When the meeting was adjourned to allow public participation, Mr. Phil Childs, a former member and Chair of the Parish Council, addressed Councillor Cawdell as Chair. The minutes record that he questioned the validity of documents published in the name of the Old School Project Committee, stating they contained misinformation, deceit and untruths with the purpose of misleading councillors. Mr Childs called for the Chair to withdraw this item from the agenda, saying it was in contravention of the Code of Conduct. Mr Childs finished by saying the good name of the Council had been brought into disrepute and called for resignations. The public participation was then closed and the meeting reconvened.

5.29 When the agenda item relating to 'the report' was reached, Councillor Thornborow expressed the view that it was highly subjective, misleading and insulting to the Park Management Committee's councillors and volunteers. She asked for it to be rewritten in an objective manner, with accurate information and only then for it to come back to the Parish Council.

5.30 Councillor Andrew Brown then spoke and read a two-part, pre-prepared statement. Part 1 of his statement dealt with those aspects of the Park Management Committee's decision to which he objected, during which he expressed the belief that the proposal from grounds staff had only been formulated after the Chair of the Park Committee had received the proposal he had emailed. This proposal would have been funded by a grant (so at no cost to the Parish Council) and carried out by Quorn in Bloom.

5.31 Part two of Councillor Brown's statement was read as follows:

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<sup>6</sup> While this is not a matter that forms part of the two complaints, I note that Councillor Andrew Brown did not declare in interest in the Old School Committee report despite being a Trustee of the Old School Trust and despite he and his wife being active members of Quorn in Bloom. I also note that Councillor Hollingworth did not declare in interest in the item. I am informed that this is not unusual and has been referred to in LRALC's report.

*“When I first saw the paper from the Grounds staff with the proposals which were later approved by the Park Committee I immediately concluded that this paper had not been instigated by the Grounds staff and probably not written by them, but by the Parish Clerk as part of her ongoing vendetta against Cllr Jane Hollingworth who leads Quorn in Bloom and was arranging the hanging baskets and tubs on behalf of the Environment Committee. Having seen what has happened since, I now have no doubts whatever that this was the source and intention of the paper - it was a spoiling action to spite Jane.*

*This vendetta by our Clerk has been conducted at the expense of this Council, and in particular at the expense of the efficiency of the Environment Committee which I now chair. It has been conducted for at least five years according to those Councillors who have served that long. Having talked about this problem to my fellow Councillors I know that with one possible exception every Councillor around this table is aware of this vendetta and deplures it, but it continues.*

*The continuation of this vendetta wastes Councillors' time and costs tax payers' money. But it is worse than that. The Director of Public Prosecutions has published much advice on the criminal offence of Misconduct in Public Office. His advice is very plain and in my opinion this misbehaviour by our Clerk clearly falls within the definition of Misconduct in Public Office.*

*You may reasonably ask why I have not raised this matter at the HR Committee of which I am a member. That is because our HR Committee has not traditionally been used to address important HR matters but to sweep dirt under the carpet and prevent it being dealt with. I hope that will now change.”*

- 5.32 Councillor Thornborow and Councillor Price both tried to stop Councillor Andrew Brown from finishing the statement and demanded that Councillor Cawdell, as Chair, intervene; Councillor Cawdell refused. Councillor Thornborow told us that Councillor Brown's statement angered her, in part because he read it in such 'a hateful manner'. She acknowledged that she was unaware of the full history of the relationship between Councillor Hollingworth and the Clerk, however she did not believe that there were any circumstances that could warrant such a personal attack on an employee during a public meeting. Councillor Thornborow commented that she had previously worked with Councillor Brown on the Neighbourhood Plan Committee, where he had told her that there was an 'issue' between the two and that the Parish Council needed to retain Councillor Hollingworth and get rid of the Clerk. Councillor Thornborow was clear that she thought Councillor Brown's statement very disrespectful to the Clerk and that she did not regard it as true. Councillor Thornborow said that she believes it was made in an attempt to get rid of the Clerk and does not consider that there was any justification for this course of action.

- 5.33 Councillor Thornborow also told us that there is an ongoing tension with regards the relationship between the Parish Council and Quorn in Bloom, with some members seemingly of the belief that they are one and the same. Councillor Thornborow said that she knew that Councillor Hollingworth ran Quorn in Bloom (despite the fact that she had never declared an interest in matters related to it) and that Councillor Andrew Brown was also a member.
- 5.34 Councillor Price told us that like Councillor Thornborow, he had some governance concerns surrounding the way this matter and others were dealt with; he pointed out that he was a member of the Old School Committee and yet the proposal that purported to come from them regarding the flowerbeds had not been discussed with him or agreed at their Committee meeting. Councillor Price said that in his experience members of the Old School Committee sometimes made decisions on behalf of the Committee and then simply let the rest of the Committee know later; he commented that two members of the Committee work at the Old School 2-3 days a week<sup>7</sup>. Councillor Price said that in his view it was part of a larger problem where members felt emboldened to get directly involved in the operational side of Parish Council business, thereby risking undermining the officers responsible for delivering Parish Council policy.
- 5.35 Councillor Price said that while he hopes that the governance concerns may now be addressed as part of LRALC's work, *"the greatest issue I have is a councillor insulting the appointed officer in a situation where the Clerk was not in a position to defend herself. This is something that simply cannot happen. Any speech must be about the agenda item, which Andrew's [Councillor Brown's] started out to be but then he went off on this tangent about the Clerk. The inference was that Christina was bullying Jane Hollingworth. I do not have any first-hand experience of this, though in fact the Clerk strikes me as hard working and well intentioned. I have known her since I first started on the Council and she seems to be committed to doing her job properly."* Councillor Price added that he held Councillor Hollingworth in high regard as a horticultural volunteer; he did though express reservations about Councillor Hollingworth's contribution to Parish Council meetings because in his experience she failed to differentiate between her role as a councillor and her activities with Quorn in Bloom.
- 5.36 Councillor Andrew Brown was adamant at interview that he believed everything in his statement to be true and as such, he would not withdraw it or apologise for having made it. Having said that, Councillor Brown acknowledged that no councillor should make this sort of statement in a Council meeting; in his view he had been forced into doing so because the Parish Council had routinely failed to deal with eight years of misbehaviour from the Clerk. Councillor Brown was also adamant that, with the possible exception of Councillors Price and Thornborow, every other member of the Council was aware of the Clerk's bullying of Councillor Hollingworth and as such he found it deplorable that they had allowed it to continue unchallenged. Councillor Brown said that experience had taught

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<sup>7</sup> I note that the LRALC also raised serious concerns about governance, delegated authority and the respective roles of councillors and officers; *"we advised QPC 2 years ago that there was a risk of it being perceived that agreements being made with specific councillors at this time in relation to their activities as a "volunteer" were being made as a direct result of them being a councillor on the council"*

him that when there was an HR problem with a member of staff it should be dealt with and not swept under the carpet.

- 5.37 Councillor Brown told us: *“When my speech was made, it wasn’t a complete surprise to everyone. I had alerted David [Councillor Cawdell] that I was going to say something fairly blunt and the claim that it was made with venomous hatred is not true. Christina [the Clerk] made no reaction that I saw but then I hardly looked at her when I delivered this. I was focussed on delivering the words against the barrage of noise from two councillors who were trying to prevent me from being heard. I was certainly not trying to bring the Council into disrepute but rather was identifying a real problem that needed to be scrutinised... I was trying to provide leadership because everyone else seems to have ducked it for eight long years. You could argue that I treated Christina with disrespect by bringing it up the way I did, but given the amount of time this has gone on for, I would disagree. I was just trying to raise the issues. Professionally, I have a lot of respect for her and most of the time, she’s pleasant. This piece of misbehaviour I totally disrespect and if she stopped it, I would respect her a whole lot more and she would be a great clerk.”*
- 5.38 Councillor Hollingworth fully supported Councillor Andrew Brown’s statement, telling us that it accurately reflected her own experiences regarding the Clerk’s behaviour. Councillor Hollingworth said that she believed that Councillor Brown had tried to address the issue through more conventional means, both with the Clerk herself and through the HR Committee. Councillor Hollingworth commented that the ineffectiveness of the HR Committee had been demonstrated by their failure to properly deal with the issues she had raised for many years about the quality of the groundsman’s work. Councillor Hollingworth said that she believed everyone on the Parish Council was aware of the Clerk’s conduct (with the exception of Councillors Price and Thornborow) but no one was addressing it. Councillor Thornborow felt that Councillor Brown, in making the statement that he did, showed courage and leadership.
- 5.39 Councillor Ken Brown works with Councillor Andrew Brown on the Old School Project Committee. He told us that whilst he did not agree with all the sentiments expressed in Councillor Andrew Brown’s statement, he was aware of a certain amount of friction between the Clerk and Councillor Hollingworth which had been evident since before he joined the Council. His opinion was that Councillor Andrew Brown had worked closely with Councillor Hollingworth on various environmental projects and that his statement had been borne out of frustration that under several different Chairs, the situation had never been satisfactorily resolved. Councillor Ken Brown’s view was that whilst the content of the statement may have been unpalatable and uncomfortable for a lot of councillors to hear, Councillor Andrew Brown had the right to voice his opinion. He stated that he had high regard for the work done by both the Clerk and Councillor Hollingworth and he had found Councillor Andrew Brown to be a man of integrity and high moral standards with the good of the village at heart.
- 5.40 In the first instance, Christina Gibbs was adamant at interview that she had not been involved in a ‘conspiracy’ with regards the flowerbed proposal and therefore for Councillor Andrew Brown to suggest as much was actually very disrespectful



towards the new assistant groundskeeper (who was relatively new and who had shown the initiative to submit it)<sup>8</sup>. Ms Gibbs commented that it is not unusual for the Parish Council to be called on to consider competing proposals / tenders when deciding on works and in this instance, the decision on whether to go with the proposal from the Old School Committee or the grounds staff rested with the Parks Management Committee. With regards Councillor Andrew Brown's allegation of her having a vendetta against Councillor Hollingworth; the Clerk said that it was simply not true: *"His suggestion that I have committed a criminal offence in my actions towards Jane is absurd. Whilst there have been difficulties in our relationship, I have always acted in a perfectly professional manner."*

- 5.41 In terms of Councillor Brown's comments about her; the Clerk said that she was disappointed that he chose to speak publicly and in such an inflammatory manner: *"I don't believe it was something that should have been raised in public forum. He completely ignored the protocol but that does seem to be his style. He has a tendency to throw a bomb and then waits to see what happens."* The Clerk said though that she was not hugely perturbed by either Councillor Brown's statement or the fact that she had no right of reply; *"In all honesty, I didn't worry about it too much because I felt it reflected more on him than it did on me. I felt quite reassured that there were people there who have known me for years and are supportive of me. In my eight-year career, I have watched clerks bullied out of their jobs. I love my job and am very confident in the integrity of my own work."* Ms Gibbs also commented that Councillor Brown's allegation that the HR Committee were not fit for purpose was unfair because they had not been given the opportunity to deal with his concerns about her conduct; it had never been put before them.

## 6 Have there been failures to comply with the Code?

### Official Capacity

- 6.1 Before I make a recommendation as to whether Councillor Brown's conduct amounts to a failure to comply with the Code of Conduct, I need to decide if he was acting as a Councillor (i.e. acting in his official capacity). Section 27(2) of the Localism Act 2011 requires all relevant authorities to adopt a code of conduct *"dealing with the conduct that is expected of members ... when they are acting in that capacity."* Quorn Parish Council have reiterated this in their Code:

*2. Whenever you act, claim to act, or give the impression that you are acting as a member or co-opted member of Quorn Parish Council your conduct will in particular address the statutory principles of the Code of Conduct....*

- 6.2 In my view there can be no question that Councillor Brown was acting in his capacity as a councillor when he addressed members of the Parish Council on 6

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<sup>8</sup> Ms Gibbs acknowledged that she probably had mentioned Councillor Andrew Brown's proposal to the groundsman and therefore it may be that he then mentioning it to his assistant prompted her own proposal. Ms Gibbs was clear though that she neither solicited the proposal or assisted with it.

**November 2018.** The statement he made was at a meeting of the Parish Council and the subject of his statement was recorded as an item on the official agenda of the meeting. As such I am confident that his conduct fell within the jurisdiction of the standards framework.

Did Councillor Brown fail to comply with the Code?

- 6.3 The intention of the Code is to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy. In adhering to the principles set out in the Code there is an expectation that members will treat their fellow councillors and Council officers with respect. This is not to say that councillors should not be encouraged to engage in vigorous public debate on matters pertaining to the Council; however, the impact of such debate is diminished, rather than accentuated, when it is cast in abusive or offensive terms.

**Code Principles**

- 6.4 The allegations under consideration in this report are that in making his statement to Council on **6 November 2018**, Councillor Brown breached the Parish Council's Code of Conduct under part 2 i and j:

*i) Valuing your colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.*

*j) Always treating people with respect, including the organisations and public you engage with and those you work alongside.*

- 6.5 Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurred are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.

**Freedom of Speech**

- 6.6 Any consideration as to whether Councillor Brown failed to comply with the Code must also take into account his right to free speech. In *Heesom v Public Service Ombudsman for Wales* Mr Justice Hickinbottom considered a councillor's right to free speech in some detail. His considerations drew attention to a number of earlier cases in which the following propositions could be derived:

- a. While freedom of expression is important for everyone, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests.
- b. The enhanced protection applies to all levels of politics, including local.

- c. Article 10 of the European Convention on Human Rights protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.
- d. Whilst, in a political context, Article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false.
- e. The protection goes to “political expression”; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others.
- f. Past cases draw a distinction between fact on the one hand, and comment on matters of public interest involving value judgment on the other. As the latter is unsusceptible of proof, comments in the political context amounting to value judgments are tolerated even if untrue, so long as they have some – any – factual basis. What amounts to a value judgment as opposed to fact will be generously construed in favour of the former; and, even where something expressed is not a value judgment but a statement of fact (e.g. that a council has not consulted on a project), that will be tolerated if what is expressed is said in good faith and there is some reasonable (even if incorrect) factual basis for saying it, “reasonableness” here taking account of the political context in which the thing was said
- g. As article 10(2) expressly recognises, the right to freedom of speech brings with it duties and responsibilities. However, any restriction must respond a “pressing social need”.
- h. Politicians are required to have a thick skin and be tolerant of criticism and other adverse comment. Civil servants are, like politicians, subject to the wider limits of acceptable criticism. However, unlike politicians they are involved in assisting with and implementing policies, not making them. As such they must enjoy public confidence in conditions free from perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive attacks when on duty.

6.7 In considering whether a breach finding would amount to a disproportionate restriction on Councillor Brown’s right to freedom of expression, I am mindful that under the Localism Act the range of sanctions is very limited; as such, any interference of his rights is likely to be minimal. In addition, I consider that the circumstances of this case warrant intervention; while much of Councillor

Brown's conduct would receive the higher level of protection afforded political debate, I place weight in particular to paragraph 6.6(h).

### **Councillor Andrew Brown's conduct**

- 6.8 The words used by Councillor Brown during his statement on **6 November 2018** are uncontested and the offending comments are reproduced in this report at paragraph 5.31. In my view, part 1 Councillor Brown's statement was entirely relevant to the agenda item under discussion and contains nothing that would be considered rude or disrespectful.
- 6.9 Councillor Brown said that he drafted and read out Part 2 of his statement with the express intent of exposing the Clerk's misbehaviour and ensuring that the Parish Council finally dealt with the matter. In considering whether by doing so Councillor Brown failed to comply with the Code, a line must be drawn between the requirement for members to treat those they deal with respectfully and the freedom members have to disagree with the views, opinions and actions of others. The Clerk is the most senior officer within the Parish Council and therefore would be expected to deal with difficult situations and engage with members of the authority in a confident manner. Further, it is my view that members should be able to express in forceful terms concerns that they have about any aspect of the running of the council. Robust language can sometimes be appropriate to ensure that matters are dealt with properly. The Code is not intended to stifle the expressions of passion and frustration that often accompany discussion about the efficient running of a council.
- 6.10 Having said that, while ideas, policies, recommendations and decisions may be challenged and criticised, individuals should not be subject to unreasonable or excessive personal attack. The complainant's have described Councillor Brown's statement as a '*hateful*' and disrespectful attack on the integrity of the Clerk. Certainly, any councillor is likely to be found in breach of the Code when they direct unreasonable or demeaning behaviour against or about another.
- 6.11 The comments made by Councillor Andrew Brown in his statement included allegations that:
- The Clerk was responsible for the competing proposal that was submitted by the grounds staff;
  - That this was part of an ongoing vendetta by the Clerk against Councillor Hollingworth that has been ongoing for five years
  - That this vendetta has been conducted at the expense of the Parish Council and tax-payers money
  - That all but one of his colleagues on the Council are aware of the vendetta and deplores it
  - That the Clerk's conduct amounts to a criminal offence; misconduct in public office
  - That he did not raise the matter at the HR Committee because they traditionally sweep dirt under the carpet.

- 6.12 The words used by Councillor Brown were deliberately provocative and he clearly expected there to be a strong reaction, having alerted the Chair to the fact that he intended to speak bluntly. Councillor Brown has justified his decision to make the statement at that particular meeting by pointing out that the alternative routes to getting his concerns addressed had failed.
- 6.13 Councillor Brown was fully aware when reading his statement that his allegations against the Clerk were serious. Taking account of the Nolan principle of leadership, there is general ethical obligation on councillors to consider carefully, when using their position as councillors to make an allegation about another person, whether they can substantiate any assertions made with evidence<sup>9</sup>. Councillor Brown clearly felt that he had enough evidence and that the Clerk's most recent action (trying to spite Councillor Hollingworth by arranging for the grounds staff to submit a proposal in competition to his own) was just another example of her misconduct.
- 6.14 The background evidence set out in this report demonstrates that there have been longstanding difficulties between Councillor Hollingworth and the Clerk. The Clerk's position is that these difficulties arose as a result of poor relations between Councillor Hollingworth (when she was a volunteer) and the groundsman; her responsibilities as his manager led to conflict between her with Councillor Hollingworth. Councillor Hollingworth and Councillor Brown on the other hand have provided several examples of what they consider evidence that the Clerk is deliberately trying to frustrate Councillor Hollingworth by improper means. It does not fall within the scope of this investigation to consider whether the Clerk pursued a vendetta against Councillor Hollingworth. The key issue ethically is whether Councillor Brown made his accusations in good faith, and not whether his concerns are subsequently found to have been well-founded. (A complaint made in good faith may, after investigation, be found to have been ill-founded for many reasons.) Without making any comment on the veracity of his concerns, I am satisfied that Councillor Brown genuinely believed what he was saying and felt that he had enough evidence to back it up.
- 6.15 Turning now to the forum chosen by Councillor Brown to make his accusations: The Parish Council has adopted a complaints procedure which provides that any complaint against a member of staff should be given in writing to the Clerk. If the complaint relates to the Clerk (as in this case), then the complaint should be submitted in writing to the Chair of the Council. If the complaint relates to a disciplinary or grievance matter, then it will be dealt with under the disciplinary and grievance policy. Quorn Parish Council has adopted a clear disciplinary and grievance policy for employees. This policy is easily available from the Quorn

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<sup>9</sup> If a councillor uses his position to make allegations in bad faith, for an improper motive, then the councillor is likely to be in breach of the members' code of conduct. In the case of Buchanan (APE0417 2009)<sup>9</sup> the First-Tier Tribunal found that the councillor could not have reasonably believed in the truth of the serious misconduct allegations he had made about an officer. The Tribunal found that the councillor had acted maliciously, as he had made his complaints as an act of revenge to cause damage to the officer because the officer had complained about him and damaged his political career. The Tribunal concluded that the councillor's conduct was disreputable and disqualified him from office.

Parish Council website. This Policy gives full details of how any issue regarding a member of staff's performance should be investigated.

- 6.16 It is evident from the investigation that Councillor Brown did attempt to follow proper procedure by submitted his concerns about the Clerk's conduct to two different Chairman. They, for different reasons, failed to then properly deal with the matter. It appears that most recently Councillor Cawdell hoped that the LRALC process would somehow incorporate and resolve the concerns raised; that being the case, he needed to ensure that Councillor Brown was satisfied with that approach. To an extent I can understand Councillor Brown's frustration; for the reasons given below however I do not think that it excuses his subsequent behaviour.
- 6.17 The relationship between a Clerk and a Parish Council (and by extension, the Clerk and individual councillors) while legally explicit, will in practice vary and can become complex. In law, the Parish Council is a Corporate Body. In other words, it functions legally as a single entity. All its formal decisions are therefore the responsibility of the Parish Council as a whole, and not those of individual councillors, whatever their personal views or how they voted on a particular issue. In this system, the only 'executive power' resides with the Parish Council as a legal entity. The Clerk reports to the Parish Council as a body, and not to any individual councillor, even the Chair. This creates the unusual employment position because the Clerk does not have a line manager in the conventional sense. As a consequence, the relationship between the Clerk and members must be professional, with an obligation on all parties to remain at arm's length to maintain *a demonstrable separation of respective roles and responsibilities*. The Parish Council as a body must be extremely mindful of its responsibilities as an employer. The actions of individual councillors can have a positive or detrimental effect on the position of the Council in this legal relationship, and councillors should act accordingly in their dealings with all members of staff.
- 6.18 In the Borough Council's decision notice the Monitoring Officer referenced the LRALC report as follows: '*Councillors are collectively responsible for employment matters, and the comments and behaviour of individual (or groups of) councillors can create risks for the council corporate, up to and including legal action being brought through an employment tribunal. The standards expected of public office holders are high, and employees have a right to expect the same level of behaviour and professionalism from their employers as in any work place environment*'. Given the seeming lack of action by the Chair, Councillor Brown felt that he had no choice but to raise the concerns in the manner that he did. He also considered it necessary to use polemic language in order to force other councillors to act. Given his responsibilities as a councillor and employer, while I can understand the argument for his actions, I do not believe that it excuses them. Rather it is my view that by behaving in the manner that he did, Councillor Brown paid scant regard to the Clerk's feelings, the reputation of the Parish Council, his own responsibilities as an employer and his duty to adhere to the Code of Conduct.
- 6.19 Councillors have a responsibility to treat others with respect regardless of the standards of conduct they perceive in others. Ms Gibbs understandably felt

targeted and under personal attack during Councillor Brown's statement; Councillor Brown's accusations if proven would not only have likely resulted in the Clerk's dismissal, but (according to Councillor Brown himself) a criminal prosecution. To present such accusations as facts during the public part of a Council meeting and to attack the integrity and reputation of the Clerk, who had no right of reply, was completely unacceptable.

- 6.20 Further, I find Councillor Brown's suggestion that his comments were made in an effort to genuinely resolve the situation somewhat disingenuous. Councillor Brown could have presented his concerns in a far more temperate manner, maybe at an HR Committee meeting / Parish Council meeting with the press and public properly excluded; using inflammatory language tends to cast more heat than light onto a debate. He could have given the Clerk notice of his intentions and an opportunity to formally respond. His failure to do either suggests to me that his statement was designed in part to embarrass and humiliate the Clerk, maybe because he was angry at what he perceived to be the Clerk's attempt to spoil his own proposal (and Quorn in Bloom's work) in the Park. Councillor Brown may not be an experienced councillor; he does though have considerable experience working with Committees and in similar organisations (I note he is now a Director of LRALC). I believe that Councillor Brown knew that his statement 'crossed the line' before he made it but appears to have decided that two wrongs might make a right. Regardless, I consider that Councillor Brown's comments about the Clerk amount to a clear failure to comply with paragraphs 2(i) and (j) the Code.
- 6.21 While I consider there to be some mitigation to Councillor Brown's actions (as set out above), I also consider there to be a number of aggravating factors that should also be noted in this report. Councillor Brown's comments about the Clerk were not made in the heat of the moment but were carefully thought through and drafted to ensure that they had the impact he desired. Further, the matter under consideration when he made his statement was not the Clerk's conduct, but the decision that had been made by the Parks Management Committee with regards the future works in the Park. Despite being a Director of LRALC and aware that the Parish Council were working towards implementing their recommendations (which included addressing the relationship between the Clerk and Councillor Hollingworth), Councillor Brown chose to inflame the situation. Not only did Councillor Brown decide to make a serious allegation of criminality against the Clerk, he seemed to imply that he had conducted a rudimentary investigation which had established that the rest of the Parish Council bar one all agreed with him; thereby supposedly adding credibility to his accusations. Finally, he suggested that the Parish Council's HR Committee was not fit for purpose. Again, Councillor Brown may have had an honestly held belief about the capabilities of the HR Committee, but a public meeting at which the matter was not an item for consideration is a wholly inappropriate place to air these views and could only serve to have damaged the reputation of the Parish Council as a whole.

## 7 Recommendations

- 7.1 In my view this matter does fall within the jurisdiction of the standards framework because Councillor Brown was acting in his official capacity as a member of the Parish Council. For the reasons given in section 6 of this report, I recommend that the Council find that Councillor Brown, when making the comments that he did about the Parish Clerk at the meeting of **6 November 2018**, failed to comply with part 2(i) and (j) of the Parish Council's Code.



## Annex 1

LRALC were approached for advice on a number of issues by the Chairman and Vice-Chairman of Quorn Parish Council. This is in line with LRALC's protocol for member councils placing queries with the Association.

### Summary

QPC makes decisions through a combination of Council and Committee Meetings. It has an HR Committee, and although I was informed this committee is only advisory (i.e. that it cannot make decisions, only recommendations), this appears not to be the case (see [here](#)). This lack of clarity on such a key point is one example of what I believe are a number relating to both council governance and staffing matters, i.e. where there is not a consistent and shared understanding amongst key individuals of current structures and authority. This poses a risk to the council in the form of ultra vires decision making.

The council has an ambitious range of current and planned projects which will place a high resource demand (including human resources, specifically staff) upon the council going forward even once the project is "completed". Many of these projects will have a high impact on the wellbeing of those living in the parish. There is much to be proud of in terms of recent achievements and activities undertaken for the benefit of the community at large, but this is at risk of being overshadowed by long standing and entrenched issues.

The council has requested support and advice from LRALC on a relatively large number of occasions in the last few years, i.e. it is regularly taking advice from an appropriate source on a range of issues, though most of these queries are placed by the clerk. A number of these queries have required further information to be provided to LRALC in order to deal with them which has not been forthcoming and the query has gone no further. These queries have in some cases related to the issues raised on 2nd August (e.g. staff restructuring, Feb 2018, and non-compliance with the Old School grant funding agreement, May 2018).

It is not clear how widely LRALC advice and information is being utilised and absorbed within the council as a number of issues that were raised on the 2nd August have been the subject of LRALC advice previously in recent years, and the Chairman and Vice-Chairman were, for example, unaware of the LRALC Internal Audit service which was first announced a year ago despite the need for the Council to appoint an Internal Auditor being considered at a council meeting as recently as June.

The council could potentially be benefitting far more from its LRALC membership if councillors were making more effective use of existing resources and support (e.g. newsletters, attendance at training courses, etc).

A number of the queries placed with LRALC relate to governance, delegated authority, and the respective roles of councillors and officers. This latter point seems to raise its head relatively regularly in the queries placed by QPC with LRALC, and a number of issues raised on the 2nd August also relate to this area of concern. I would suggest this is a key area of need for advice, review and training, especially as it relates closely to issues such as councillor interests and conduct, including the Nolan

Principles, which are enshrined in statute. On the issues of councillor interests and conduct, we advised QPC 2 years ago that there was a risk of it being perceived that agreements being made with specific councillors at this time in relation to their activities as a “volunteer” were being made as a direct result of them being a councillor on the council (the Nolan Principles, which are legally binding for councillors, in essence mean that councillors should not seek benefit (not just financial) for themselves, family, friends or close associates, and there is a continuing risk of a Code of Conduct complaint against a Councillor where there is a perception they have used their influence as a Councillor on such a matter).

An example of areas where decisions have been taken by councillors which goes beyond their legal power is the recent “removal of power” for certain tasks and duties from the clerk by the Chairman, reported at our meeting on 2nd August, or the previous decision approximately 2 years ago by the Chairman at the time to suspend the HR Committee, none of which are allowable or proper. As “The Essential Clerk” says in its guidance for such officers, “It helps to remember that you are answerable to the council as a whole and not to any individual councillor, not even the chairman”. The long- standing Hillingdon case law (1986) tells us with absolute certainty that neither a Chairman (nor any other councillor) can take a decision on behalf of the council corporate under any circumstances.

Such well-meaning short term steps can often have long term negative results. The flip side of this is that Councillors are collectively responsible for employment matters, and the comments and behaviour of individual (or groups of) councillors can create risks for the council corporate, up to and including legal action being brought through an employment tribunal. The standards expected of public office holders who employ staff to assist them in their duties are high, and employees have the right to expect the same level of behaviour and professionalism from their employers as in any work place environment. To this end I would recommend that training for the HR Committee at the very least, and potentially the whole of council, on employment matters is organised. From what I have been told there are some long rumbling HR issues which pose a considerable risk to the council if not addressed.

There is anecdotal reporting that the clerk wishes “to do 3 more years”, seeing a number of projects to conclusion. However, this is not certain and organisational staffing decisions should not be made based on the informal thoughts of one officer. In addition, the clerk's role has been “tweaked” in a number of ways in recent times in an attempt to avoid a flare up of long running issues between certain councillors and the clerk, which have been left unresolved for a number of years. The above is even more important to get address internally through interventions such a mediation in the light of the recent Ledbury Town Council case, heard in the High Court, which means that it will now be more difficult for local (parish and town) councils to resolve disputes between councillors and their employees using formal processes.

Although the actions taken by the current Chairman have been well meaning they are not tackling the root cause of these issues, merely the symptoms. In addition, there is a feeling amongst those with whom I met on 2nd August that the clerk currently has more duties than they can satisfactorily undertake. I did not get the sense that this was a reflection of the competency of the clerk, and my advice is based on that assumption. As a result of attempting to reduce work load and avoid conflict with certain councillors, it appears that the clerk's role has been somewhat fragmented,

and councillors are in many cases undertaking roles and tasks which should sit with the clerk as proper officer/RFO.

Councillors are becoming far more involved in operational matters than is normal, especially in relation to staff supervision/direction and council projects. Solutions identified and implemented are often based on the skills set or personal interests of a specific councillor or councillors, rather than considerations of whether a role is an officer of councillor one in the first place. This is symptomatic of what seems to be a culture within the council of councillors becoming involved in council matters and projects at a macro level, rather than having an overall strategic focus and making high level decisions at an organisational level which enable professional staff to get on with managing the day to day operation of the council, its services, and projects. An example of this is arguments between councillors and officers about individual flower beds and types of plants used.

Some concern has been expressed by different councillors at different times in relation to the performance and capability of a range of staff. However, these issues seem not to be addressed in a clear, formal, and transparent manner through recognised and adopted processes, systems, and delegated authority. For example councillors appear to be getting heavily involved in the performance management and task allocation of a manual worker employed by the council, up to and including undertaking certain tasks themselves which are the responsibility of this employee in an ongoing war of attrition which sometimes sees a councillor undoing the work of the employee and vice versa. Councillors are NOT doers, they govern the council, they set its priorities, objectives, and policies, they are decision makers and the officers then put those decisions, priorities, and objectives into practice within frameworks adopted and set by councillors.

I would advise that the human resource needs of the council need to be independently reviewed and a staffing structure put in place which ensures enough officer resource is available to manage and deliver the councils services, assets, and priorities in a sustainable way for the long term. This would also allow business continuity considerations to be considered before recommencing attempts to recruit a Deputy Clerk, which the council has been trying to do unsuccessfully since early 2018. Another current piece of work which I need to reference is the QPC working party which has been tasked with reviewing council policies and procedures. LRALC can assist this group by providing a copy of our Policies and Documents Checklist which helps councils map what they should have and where model documents can be sourced.

Finally, I do have to raise a couple of financial issues, namely the level of council reserves and the setting of the precept. I was informed that there is only £15,000 in general reserves. Sector practices say that the general reserves carried by a parish or town council should be equal to between 3 to 12 months net revenue expenditure for the council (I would suggest that a figure equal to approximately 6 months would be appropriate for QPC specifically). This needs addressing as part of the council's budgeting activities for 2019-20 which are due to commence in the next few months. In terms of setting the precept, the council is in breach of the law as a QPC council meeting has not explicitly agreed the 2018-19 precept (the 1972 LGA specifies that a precept must be set by a full council meeting and cannot be set by a committee or any

other body). There is no record of such a decision having been taken, other than agreement by the Finance Committee.

This is a relatively serious oversight, both legally and in terms of transparency on precepts and council tax. The council needs to be explicit and open in terms of the precise level of precept it is agreeing each year, especially in the context of the current range of projects it is involved in, and councillors should be aware of the resulting council tax level and any increase/decrease caused by the precept which is being set.

#### Main recommendations

1. The council commissions a full governance health check for the council. This would be undertaken against good governance principles for local councils and be based on legislative requirements and good practice. It would make recommendations about systems and policies in place or needed which are good practice, adequate and appropriate for good performance in terms of governance and decision making. LRALC could provide this at a cost of roughly £1,500 (dependent on precise remit, etc).
2. The council commissions a full organisational staffing review for the council. This would review the staffing needs of QPC now and into the future against current staffing structures and levels, and make recommendations regarding any changes to the current structure and roles, as well as staffing levels (based on full time equivalent posts required to properly support and service the council's full range of activities. LRALC could signpost to commercial providers of such a service.
3. The council undertakes medium to long term priority and objective setting activities to assist with the above two activities and provide a strategic focus for councillors and staff alike in order to assist in the focussing of minds and activities, and also assist with proper financial planning and governance. LRALC could facilitate strategic planning/priority setting sessions for the council at a rate of £60 per hour (plus preparation and content setting).
4. The council undertakes a training needs analysis (TNA) and budgets properly to ensure the needs of councillors, officers, and volunteers are properly met. This would likely include performance management and staff supervision training for key officers, HR training for councillors, finance for councillors, code of conduct and interests training for councillors, general councillor training, etc. LRALC can assist with this TNA and provides training as part of the core membership offer.
5. The council considers engaging LRALC's support to assist in the recruitment and selection of a Deputy Clerk. LRALC can provide consultancy support for recruitment and selection to the council at a rate of £60 per hour.
6. The council considers bringing in external professional mediation services to address the long standing tensions between the clerk and a small number of councillors. LRALC can signpost to commercial providers of this service.