

**MEMBER CONDUCT PANEL
4TH JUNE 2021**

PRESENT: The Chair (Councillor Tassell)
Councillors Murphy, Ward and Ball (Parish Member)

Monitoring Officer
Independent Person
Investigating Officer
Democratic Services Officer (NC)

APOLOGIES: none

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

1. APPOINTMENT OF CHAIR

RESOLVED that Councillor Tassell be appointed Chair for the meeting.

2. DISCLOSURES OF PECUNIARY AND PERSONAL INTERESTS

No disclosures of interests were made.

3. DETERMINATION OF A COMPLAINT OF A BREACH OF THE MEMBERS CODE OF CONDUCT OF BIRSTALL PARISH COUNCIL

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

Administration of the Panel

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

It was confirmed that the Investigating Officer and Councillor Howe would not be calling witnesses. However, during the meeting Panel members wished to ask questions of the Clerk for Birstall Parish Council (Mrs Coulson), who was attending as an observer, so the Investigating Officer called her as a witness.

Summary of Proceedings

The Investigating Officer, Mr Oram, thanked Councillor Howe and Mrs Coulson for their cooperation during the investigation. He presented his report and highlighted the salient points as follows:

- the relations with the Clerk had been strained for some time but the investigation had focussed on the period of 2015 to 2017.
- that Councillor Howe's ability to conduct himself as a parish councillor had been limited since 2017 and he not had the opportunity to defend himself due to the sanctions imposed by the Parish Council.
- reference was made to the summary of the complaint on p15 of the report and that the evidence gathered was not in dispute as it was mainly based on written communications.
- that additional comments made by Councillor Howe to the information contained in Section 4 of the report had not had significant impact on the Investigating Officer's recommendations.
- with reference to the Localism Act 2011, it was considered that Councillor Howe had been acting in his capacity as a parish councillor when writing the blog and newspaper article and, at the Broadnook event, as he specifically commented on parish council business.
- that the ACAS definition of bullying was applicable to Councillor Howe's behaviour.
- with regard to the email correspondence, it was difficult to determine if receipt of 27 emails over 10 months was significant, however the impact on the Clerk and the capacity of the Parish Council to manage this quantity was noted. As the emails in question had not been supplied it was difficult to determine the impact but in his opinion the quantity of emails didn't amount to bullying.
- concerns raised by Councillor Howe regarding the alleged conduct of the clerk in the complaint he made to the Borough Council's Monitoring officer about Councillor Marshall did not, in his view, represent a failure to comply with the Code.
- with reference to p47-48 of the report there were concerns about Councillor Howe's behaviour and to conclude, he considered Councillor Howe had failed to comply with paragraph 1 and 2 of the Code of Conduct of Birstall Parish Council in relation to the relevant issues set out in his report.

The Investigating Officer wished to make clear that although it was vital for councillors to scrutinise and hold to account public bodies and that the Clerk should be accepting of this, it was not appropriate for the Clerk to face critical complaints about her competency in a public arena. There were policies in place that should have been used.

Summary of points of clarification received by the Panel Members from the Investigating Officer and the Parish Clerk:

- witnesses attending the Broadnook event had not been interviewed as it had not been believed to be necessary considering the weight of written evidence provided.

- 27 emails over a period of 10 months was not considered excessive by the Investigating Officer. It was highlighted that although both parties had been asked to provide copies of the emails, they had not been presented (*some text had been supplied in part, in Councillor Howe's response in Appendix 3*). The Clerk noted that although 27 emails were not significant, some had contained 14-20 questions per email and therefore required resource to answer.

Clarification was sought by the Panel Members of Councillor Howe and it was confirmed that he did not consider it unreasonable to ask about the reserves held by the Parish Council at a public meeting.

Councillor Howe presented his case and highlighted the salient points as follows:

- he had wished to refer the situation himself to a complaints investigation to try and break the stalemate he had found himself in and had cooperated despite being unaware of all the evidence provided in the report by the Investigating Officer.
- with regard to the email correspondence, he considered only 9 emails of the 27 were asking questions and he had never asked more than 2 questions per email.
- he had raised a concern about minutes of a meeting being incorrect in the blog article and did not perceive this as a mockery (ref paragraph 5.34) when questioning the accuracy of minutes because he believed he had stated the facts.
- his requests for information, made only when he considered necessary, had not been answered and he believed that he did not appear to have the same rights to information as everyone else. Reference was made to the Freedom of Information requests in particular.
- he had been refused legal advice by the Parish Council and he had not alleged fraud yet this had been made public. Critical comments about himself had been made inside and outside of the Parish Council but he had not received an apology.
- he considered it was appropriate as an elected councillor to comment in public about a public meeting if he was telling the truth. He had criticized facts and figures, where policies had not been followed and not made personal accusations. The blog article was factual in his view.
- he had made several suggestions to try and prevent future issues with the accuracy of minutes and the 2020-21 Budget.

He wished to state that irrespective of the outcome of the hearing he sought advice on what information and support he was entitled to.

Summary of points of clarification received by the Panel Members from Councillor Howe, the Investigating Officer and the Parish Clerk:

- the email correspondence had been requested of both parties by the Investigating Officer and this had been referred to in the draft report circulated to both. Cllr Howe stated he had been confused at the time and the Clerk stated she hadn't had time to respond prior to planned sick leave. The content of the emails was therefore not available to the Panel.

- examples of email questions were requested of the Clerk who provided an example relating to challenging a decision about a ditch.
- the resolution at the Committee's meeting of 22 December 2014 (ref paragraph 4.22 of the report) had been by a show of hands and a letter had been sent.
- with regard to the blog article, it was part of a forum where councillors shared best practice and it had not included Councillor Howe's name or the name of the Parish Council. The blog had been concerned with occurrences at a public meeting which had been recorded by Councillor Howe.
- with regard to Councillor Howe's FOI requests, the Clerk confirmed that the first request had not been dealt with as it had been her first experience of FOI requests and she had not had the time. A policy had now been put in place whereby all FOI requests were forwarded to the data protection officer for consideration.
- with regard to the budget, suggestions had been made by Councillor Howe to review the budget quarterly and to create a finance committee. He believed he had not been able to ask questions until the budget meeting or to obtain information regarding whether the budget provided value for money.
- Councillor Howe had been unaware of a request for a face-to-face meeting with the Clerk and an adjudicator or the amount of evidence being provided until he saw the final report.
- the article had been written for the Birstall Post out of a sense of frustration that details of a big project had not been shared with residents. Councillor Howe considered he had not been treated with respect.
- Councillor Howe had attended the Broadnook event but had no memory of making critical comments at the event about the Clerk.

Summary Statements

Mr Gough, the Independent Person stated that he was completely independent of the Borough Council and Birstall Parish Council. He noted that Councillor Howe had self-referred a complaint about himself as he considered that the restrictions that had been placed on him since 2017 gave him little opportunity to defend himself. There was a long history of concerns and it was not clear why issues had not been raised previously. Councillor Howe had signed Birstall Parish Council's Code of Conduct and that in his view Councillor Howe's behaviour had breached the Code of Conduct.

The Investigating Officer stated that he had sympathy for Councillor Howe and, in his view, he had not been treated as he should have been by the Parish Council. He considered that on occasion the Councillor's frustrations had been expressed in a disrespectful manner, but that he should respect the Clerk's role to implement policies and it was unfair to publicly criticise her competence.

Councillor Howe thanked the Panel and Investigating Officer and stated that he was still concerned about references to scare mongering being in the public domain and that he considered the residents were the ones who were suffering from this situation.

The Panel and the Monitoring Officer withdrew to allow the Panel to consider the evidence in private. Once all parties had returned to the meeting the Chair of the Panel announced the Panel's decision in relation to the material facts.

RESOLVED

1. That in relation to the Broadnook event the Panel's finding was that on the balance of probability it had not been proven that Councillor Howe made the comments as alleged, and therefore the Panel concluded that Councillor Howe had not breached the Members Code of Conduct of Birstall Parish Council;
2. That in relation to the two blog articles and the article in the Birstall Post newspaper, the Panel concluded that Councillor Howe did write the articles which contained personal comments about the Clerk that a reasonable person would regard as being disrespectful. The Panel therefore found that in writing those articles Councillor Howe had breached paragraph 1 of the Code of Conduct of Birstall Parish Council. However they considered that this did not amount to a breach of paragraph 2 of the Code of Conduct.
3. The Panel supported the Investigating Officers conclusions that 27 emails sent over 10 months by Councillor Howe to the Clerk did not amount to a breach of the Code of Conduct of Birstall Parish Council, the Panel considered the volume of emails was not excessive but noted that not all the contents of those emails were made available.

Reasons

1. Having considered the evidence and the relevant submissions during the hearing, the Panel considered there was insufficient evidence that Councillor Howe had made the alleged comments.
2. Having considered the evidence and the relevant submissions during the hearing, the Panel considered that Councillor Howe was entitled to comment on parish council matters but had shown disrespect in criticizing an individual officer in the blog and newspaper articles.
3. The Panel considered that 27 emails over the period in question was not excessive, but evidence relating to the content of the emails had not been available to further determine the impact.

Recommendations for the imposition of sanctions

Before the Panel considered whether to recommend the imposition of sanctions, the Chair asked if the Investigating Officer and the Independent Person wished to comment.

The Investigating Officer stated he considered recommendations to improve communications within the Parish Council would be beneficial.

The Independent Person had no further comments.

The Panel and the Monitoring Officer withdrew to allow the Panel to consider whether or not to recommend the imposition of sanctions.

The Panel returned to announce the Panel's decision and

RESOLVED

1. That it be recommended to Birstall Parish Council to issue a formal letter to Councillor Howe setting out the breach of the Code of Conduct which had been identified. The Panel did not consider that any other sanctions were justified.
2. That it be recommended to Birstall Parish Council that Councillor Howe should be afforded the same access to information and support that is afforded to other members of Birstall Parish Council, in light of its findings regarding the emails.
3. That the Panel noted that evidence arising during the investigation suggested that there was some confusion over roles and responsibilities of the Clerk and parish councillors and that there were some questions over issues of transparency, scrutiny and public accountability relating to financial and budgetary matters amongst other things. Therefore, the Panel recommended that the Parish Council should consider commissioning an independent Governance Review such as is available from LRALC.

Reasons

1. The Panel considered this sanction was appropriate.
2. The Panel considered that in order to be able to effectively perform his parish councillor responsibilities, Councillor Howe should be able to seek information regarding parish council matters and challenge and scrutinise them in the same way as other parish councillors.
3. The Panel considered that there were wider issues relating to the governance and administration of Birstall Parish Council that may benefit from being independently reviewed.

It was confirmed that Councillor Howe had the right of appeal which could be exercised within 10 working days of the date of the publication of the Panel's decision.

NOTES:

No reference may be made to these minutes at the next ordinary Council meeting unless notice to that effect is given to the Democratic Services Manager by five members of the Council by noon on the fifth working day following publication of these minutes.