

MEMBER CONDUCT PANEL – 27TH FEBRUARY 2019

Report of the Monitoring Officer

ITEM 4 DETERMINATION OF COMPLAINTS OF A BREACH OF THE MEMBERS' CODE OF CONDUCT OF CHARNWOOD BOROUGH COUNCIL BY COUNCILLOR DAVID HAYES (Ref: MC4a, b & c 2018/19)

Purpose of the Report

1. To enable the Panel to determine complaints of potential breaches of the Members' Code of Conduct of Charnwood Borough Council (the 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 September 2018 three complaints were received from Councillor Eric Vardy, Councillor Hilary Fryer, and Mr Geoff Parker (Chief Executive of the Council), about statements made by Councillor Hayes at a Borough Council meeting on 3rd September 2018. Councillor Vardy's complaint was also supported by Councillor Leigh Harper-Davies.
3. The complaints all related to supplementary statements made by Councillor Hayes in relation to two Questions on Notice he had submitted, and which were included on the agenda for the Council meeting.
4. Having undertaken a fact-finding review and having consulted with one of the Independent Persons, Mr Michael Pearson, the Monitoring Officer referred three concerns arising from the complaints for Investigation.
5. The Investigator concluded in her report that Councillor Hayes had not breached the Code of Conduct in respect of the first concern, and so no further action is required in respect of that matter. Elements of the Investigator's report which refer to that concern have therefore been redacted from her report for this hearing (attached at Annex 2).
6. However, having considered the Investigator's report, and after consulting with Mr Pearson, the Independent Person, the Monitoring Officer decided that in respect the other two concerns that Councillor Hayes has a case to answer and that that the Investigator's report in respect of those matters should be referred to a Panel of the Member Conduct Committee for a hearing.
7. The two concerns in question are that at the Council meeting on 3rd September 2018:

'Councillor Hayes stated that the Head of Planning should be stopped from employment with a developer in future, and that officers' personal bank accounts should be made available for inspection. This implies that the Head of Planning has been involved in dubious or nefarious activity which brings

the reputation of the Council and its officers into question without any substantiating evidence which could be construed as being slanderous’.

And:

‘Elements of the statements made by Councillor Hayes were in breach of some of the General Obligations contained within the Members’ Code of Conduct of Charnwood Borough Council’.

8. The relevant sections of the Members Code of Conduct are as follows:

Paragraph 3.1: You must treat others with respect.

Paragraph 3.5: You must not conduct yourself in a manner which could reasonably be regarded as bring your office or your authority into disrepute.

Paragraph 3.11: You must follow the adopted corporate operational policies of the authority.

9. Paragraph 3.11 of the Code (as set out in section 8 above) imposes a duty on Members to follow the Protocol on Member / Officer Relations, which has been adopted by the Council and forms part of the Constitution, and which includes the following requirements:

Section 4(e): Dealings between officers and members should be based on mutual trust and respect.

Section 6(e): Members are able to ask questions about the Council’s decision and performance at both formal meetings and informally. Members will have regard for an officer’s level of seniority and area of responsibility in determining what are reasonable comments and questions.

10. 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 1 to this report.
11. 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 Hayes.
12. The Independent Person involved in the case, Mr Michael Pearson, will also be present to advise the Panel in relation to his views on the matter.
13. If the Panel finds against Councillor Hayes they will then need to consider whether they feel it is appropriate to 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) make recommendations to full Council to remove the Member from committee(s) and other appointments unless these are subject to political balance requirements (NB. the only committee that Councillor Hayes is a member of is the Loughborough Area Committee, from which he cannot be removed as he represents a Borough ward in Loughborough);
 - (iv) where political balance requirements apply make recommendations to the relevant Group Leader to remove the Member from committee(s) and other appointments (NB. this does not apply to Councillor Hayes);
 - (v) make recommendations to the Leader to remove the Member from Cabinet or from the role of Cabinet Support Member (NB. this does not apply to Councillor Hayes);
 - (vi) recommend that the Member undertake training or issue an apology.
14. The Panel is also able to make more general recommendations with a view to promoting high standards of conduct.

Pre-Hearing Process

15. 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.
16. Councillor Hayes has informed the Monitoring Officer verbally that he will present his own case at the hearing, and that he does not intend to have representation.
17. The Investigator has indicated that she does not intend to call any witnesses at the hearing and will rely on the written summaries included within her report which have been agreed with all the witnesses she interviewed during the investigation.
18. Neither Councillor Hayes 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).
19. The Monitoring Officer has considered the relevant factors, and the views of Councillor Hayes and the Investigator, and his advice is that there are no documents or matters that need to be exempt, and that the hearing can therefore be conducted in public.

ANNEXES

Annex 1: Extract from the Council's Arrangements for Dealing with Complaints about Member Conduct under the Localism Act 2011

Annex 2: Investigator's Report (with redactions)

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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 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) make recommendations to full Council to remove the Member from committee(s) and other appointments unless these are subject to political balance requirements;
- (iv) where political balance requirements apply make recommendations to the relevant Group Leader to remove the Member from committee(s) and other appointments;
- (v) make recommendations to the Leader to remove the Member from the Cabinet;
- (vi) 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 applied 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.