

## APPEALS & REVIEWS COMMITTEE – 12TH APRIL 2019

### Report of the Monitoring Officer

ITEM 3 DETERMINATION OF AN APPEAL BY COUNCILLOR DAVID HAYES AGAINST A FINDING OF A BREACH OF THE MEMBERS' CODE OF CONDUCT OF CHARNWOOD BOROUGH COUNCIL BY A PANEL OF THE MEMBER CONDUCT COMMITTEE (Ref: MC4a, b & c 2018/19)

#### Purpose of the Report

1. To enable the Committee to determine an appeal by Councillor David Hayes against a determination of a breach of the Members' Code of Conduct of Charnwood Borough Council by a Panel of the Member Conduct Committee on 27th February 2019.

#### 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 was required in respect of that matter. Elements of the Investigator's report which refer to that concern have therefore been redacted from her report (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 had 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 were 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. A Member Conduct Committee Panel undertook a hearing on 27th February 2019, and resolved that Councillor Hayes had breached the Members’ Code of Conduct of Charnwood Borough Council, particularly paragraph 3.1: *‘you must treat others with respect’*. and that Councillor Hayes had also breached the Protocol on member/officer relations, section 4 (e): *‘dealings between officers and members should be based on mutual trust and respect’*.
11. The reason for the Panel’s decision was that they considered unanimously that, on the balance of probability, Cllr Hayes had breached the Code of Conduct. There was no dispute that Councillor Hayes had made the comments in question, and the Panel believed those comments to contravene the Code of Conduct paragraph 3.1 and the Protocol on Member /Officer Relations Section 4(e).
12. The Panel made the following decision in terms of sanctions that should be imposed against Cllr Hayes, for the reasons as set out:

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

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

### Reasons

- 1,2,3. The Panel considered these sanctions to be appropriate, as the matter was of a serious nature, and as the comments about the Head of Planning and Regeneration had been made in public an apology should also be made in public.
13. Councillor Hayes has appealed against the decision of the panel, and has given the following reasons:

*'I am disappointed that my request on the 6<sup>th</sup> March for a transcript to be made available was refused, even though a recording is available, I have already stated that I don't recognise these minutes or could be described as being sanitised to the ordinary person in the street would recognise. (this view has been reached by carrying out a local survey)*

*Clearly a number of assumptions are being applied to evidence which has created a totally direct "spin" on the context of what I said as per the transcript and what element has been plucked out, rather than consider the wider issues of an administration as not being appropriately managed in the form of ensuring our employees operate under up to date T&Cs. I personally introduced a large number of new processes and systems into Charnwood as they were both new ideas and systems that were not meeting legislation. The failure of management to develop system interface, meant that my company paid for the external development to ensure contract instructions could be carried out as laid down within the contract documentations. The use of Restricted Trade agreements should have already been in place, departments have already lost income for not having these in place.*

*A decisions based the on balance of probability is open to interpretation, for example the lack of Monitoring of the CE over many years has a contributing factor, using a different interpretation would mean that Charnwood's IIP accreditations would not be valid as the CE has not had a performance review for some years. Ideas and suggestions from the wider outside world, can create a lack of knowledge within a local and inwardly focused point of view and*

*perception. There is also an issue when comments are made from Management experience with a sharp regional dialect being miss understood. As no accusations of wrong doing has been said or suggested.*

*If the words “differed on the intention and meaning of the statements” were applied, then calls for the CE to carry out a review and investigation to the management of the Decent Homes contract, Management using the incorrect property data, incorrect posting of allowances on the website and HMRC! Then we could just draw a line under events and look the other way or would that be a perception?*

*I acknowledge and confirm that this appeal has no bearing on my current situation of not being allowed to stand for re-election as a Conservative Candidate for Loughborough Shelthorpe Ward in the May Elections’.*

### Appeal Hearing Process

14. The order of proceedings for the appeal process for the Committee are set out in Annex 1.
15. The arrangements for dealing with appeals specify that they ‘will consider only material relevant to the reasons for the review set out by the Member’. Therefore, the Committee should restrict itself to the reasons for appeal submitted by Councillor Hayes.
16. As part of the pre-hearing process, the Monitoring Officer informed Councillor Hayes that it was unclear how the reasons he had submitted within his appeal were relevant to the decision of the Member Conduct Panel, as that decision related only to the comments he made about the Head of Planning and Regeneration at the Council meeting on 3<sup>rd</sup> September 2018. The Monitoring Officer therefore invited Councillor Hayes to consider whether he wished to restate the reasons for his appeal so that they related to matters that were relevant. However, Councillor Hayes did not respond to that approach from the Monitoring Officer.
17. The Monitoring Officer has therefore set out in Annex 3 his views on the relevance of the issues raised within Councillor Hayes’ appeal submission.
18. It will be a matter for the Committee to determine whether the reasons included within Councillor Hayes’ appeal are relevant to the decision of the original Panel. The Monitoring Officer’s advice is that only those matters that are relevant to that decision should be considered as part of the appeal process.

## ANNEXES

- Annex 1: Order of Proceedings
- Annex 2: Investigator's Report (with redactions)
- Annex 3: Monitoring Officer's views on the relevance of the issues raised by Councillor Hayes within his appeal.

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**ORDER OF PROCEEDINGS**

1. The Monitoring Officer will summarise his report.
2. Councillor Hayes or his representative will present his case.  
  
Persons to ask questions:
  - The Investigator
  - Committee members
3. It is understood that Councillor Hayes will not be calling any witnesses, but if he does:  
  
Persons to ask questions
  - Councillor Hayes
  - The Investigator
  - Committee members
4. The Investigator to present her case.  
  
Persons to ask questions:
  - Councillor Hayes
  - Committee members
5. The Investigator to call Councillor Draycott (Chair of the Member Conduct panel) as a witness:  
  
Persons to ask questions
  - The Investigator
  - Councillor Hayes
  - Committee members
6. The Independent Person to provide his comments regarding the appeal.
7. Councillor Hayes to sum up regarding his appeal.
8. The Investigator to sum up regarding the appeal.
9. Once all the grounds for appeal have been considered, the Chair will adjourn the meeting and the Committee will leave the room to deliberate.

10. The Chair will then reconvene all parties to announce the decisions regarding facts and whether any or all of the grounds within the appeal are upheld. If none of the grounds for appeal are upheld, the original sanction recommendations will stand as Councillor Hayes has not appealed against them.
11. If any or all the grounds for appeal are upheld, the Chair will ask Councillor Hayes, the Investigator and the Independent Person if they have any views regarding the original sanctions.
12. The Chair will adjourn the meeting and the Committee will leave the room to deliberate.
13. The Chair will reconvene the Committee to announce the decisions regarding whether recommendations made by the original Panel should be amended or withdrawn.
14. The Committee's decisions and reasons will be recorded in the form of the minutes of the meeting which will be issued within 10 working days of the end of the hearing.
15. There is no further right of appeal for Councillor Hayes against the decisions of the Committee.