

## 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)

Officer to Contact: Adrian Ward  
Monitoring Officer  
(01509) 634573  
adrian.ward@charnwood.gov.uk

# **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.