

MEMBER CONDUCT PANEL – 8TH OCTOBER 2020

Report of the Monitoring Officer

ITEM 4 DETERMINATION OF A COMPLAINT OF A BREACH OF THE MEMBERS' CODE OF CONDUCT OF MOUNTSORREL PARISH COUNCIL BY COUNCILLOR MICK LEMON (Ref: MC7 2019/20)

Purpose of the Report

1. To enable the Panel to determine a complaint of a breach of the Members' Code of Conduct of Mountsorrel Council (the Parish Council), which was 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 February 2020 a complaint was received from Councillor Beth Benner (also a member of Mountsorrel Parish Council), that Councillor Lemon had called a special motion relating to an employee, who is the Mountsorrel Memorial Centre's Cafe/Bar Manager, to overturn decisions taken at a sub-committee meeting.
3. Councillor Benner stated that she had checked Councillor Lemon's disclosable pecuniary interests and that he had failed to declare that he is the current contractor for the Memorial Centre's bar supplies. She complained that he had failed to declare a disclosable pecuniary interest and act on it correctly, and that he had called a meeting whereby he will personally gain financially by the full time employment of a person who will be placing orders directly with him, and that this is unlawful.
4. At the initial fact-finding stage, the Monitoring Officer ascertained that Councillor Lemon's published registered of interests includes the following item as a disclosable pecuniary interest (DPI):

'Supplier of drinks to the Mountsorrel Memorial Centre'.

It was therefore apparent that Cllr Lemon had complied with the requirements of the Localism Act in relation to making a declaration to the Monitoring Officer that he has a DPI in this regard.

5. However, the Monitoring Officer concluded that in relation to Councillor Lemon's involvement in the submission of the special motion referred to within the complaint, that did merit further investigation due to him having a contract for the supply of drinks to the Memorial Centre.
6. The Monitoring Officer also concluded that further investigation was merited due to Councillor Lemon remaining in meetings relating to the payment of accounts, including payments to his own company for bar supplies.

7. The Independent Person, Mr Gordon Grimes, was also consulted, and he agreed with the conclusion of the Monitoring Officer that an investigation into some of the issues raised within the complaint was required. The Monitoring Officer therefore appointed Mr Dave Gill as the Investigator.
8. At the conclusion of the investigation, the Investigator's report (which is attached as Annex 2) was considered by the Monitoring Officer who, having consulted again with the Independent Person, decided that Councillor Lemon had a case to answer in respect of his involvement in the submission of the special motion, and that the report should be referred to a Panel of the Member Conduct Committee for a hearing. The Independent Person agreed with this decision.
9. With regards to the element of the investigation relating to Councillor Lemon remaining in meetings at which matters that he had a DPI in were considered, the investigator concluded that as the Clerk had granted a dispensation and had given advice that this was acceptable, that counted as a 'reasonable excuse' for Councillor Lemon, and therefore that element of the complaint did not need to be referred to a hearing.
10. The individual element of the complaint against Councillor Lemon to be determined, and the relevant section of the Mountsorrel Parish Council Code of Conduct, is therefore as follows:

Councillor Lemon's actions in submitting a motion for the calling of an Extraordinary General Meeting in relation to a matter that he had an interest in did not accord with Principle 2 of the Nolan Principles (Integrity) incorporated into the Code of Conduct of Mountsorrel Parish Council:

Principle 2 - Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

11. The Borough Council has adopted a procedure for determining complaints about the conduct of parish and town councillors within the Borough of Charnwood. The relevant sections within that procedure will be used for this hearing and are set out in Annex 1 to this report.
12. 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 of the Parish Council by Councillor Lemon.
13. The Independent Person involved in the case, Gordon Grimes, will also be present to advise the Panel in relation to his views on the matter.

14. If the Panel finds against Councillor Lemon, they will then need to consider whether they feel it is appropriate to recommend the imposition of a sanction to Mountsorrel Parish Council.
15. If so, they may decide on recommending 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) that the Member undertake training or issue an apology.
16. The Panel is also able to make more general recommendations with a view to promoting high standards of conduct.

Pre-Hearing Process

17. 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.
18. Councillor Lemon did not make any submission during the pre-hearing process but did indicate that he would not attend any hearing that was arranged.

ANNEXES

- Annex 1: Extract from the Council's Arrangements for Dealing with Complaints about Member Conduct under the Localism Act 2011
- Annex 2: Investigating Officer's Report, (including the fact-finding report and dispensation letter as appendices)

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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.

Where the Member is a parish/town councillor the Panel's decision will be in the form of a recommendation to the relevant authority on what sanction to impose.

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.

INVESTIGATION REPORT

CHARNWOOD BOROUGH COUNCIL

Complaint against Cllr Lemon of Mountsorrel Parish Council
concerning a disclosable pecuniary interest

July 2020 – FINAL

It should be noted that this is the draft final report and has been circulated to the parties for responses.

1. EXECUTIVE SUMMARY – FINDINGS

- 1.1. Based upon the evidence set out in this report (including the appendices) and on the balance of probabilities, I find that Cllr Lemon:
- 1.2. Did not breach Sec 30(1) of the Localism Act 2011 (The Act) in respect of failing to register a disclosable pecuniary interest but did breach Sec 31(4) of the Act by failing to leave the room on a number of occasions when the item that he had an interest in (namely the payment of accounts) was discussed but the advice given to him by the Clerk afforded him a reasonable excuse under the Act; and
- 1.3. That whilst his actions in submitting a motion for the calling of an Extraordinary General Meeting in relation to the matter that he had an interest in did not contravene the Act they did not accord with Principle 2 of the Nolan Principles (Integrity) incorporated into the Code of Conduct; and
- 1.4. I cannot discern any justification for the grant of a dispensation allowing Cllr Lemon to participate in the debate at the Extraordinary General Meeting as:
 - a) the request for the grant of the dispensation did not comply with Standing Order 13 as it was not in writing and therefore no evidence exists of the reason for the request; and
 - b) The Notice granting the dispensation fails to record which of the grounds for granting a dispensation as set out in Standing Order 13 (as replicated from Section 33 of the Act) were used and therefore the Notice lacks transparency; however;
 - c) Cllr Lemon could reasonably have expected to be able to rely on that dispensation as it was given by the Proper Officer of the Council even though it was defective.

Introduction

- 2.1 This report was requested by the Monitoring Officer of Charnwood Borough Council on 20 February 2020.

Regrettably the conduct of the investigation and the preparation of this report has been considerably delayed by the Covid19 Pandemic.

- 2.2 The Monitoring Officer received a formal complaint about the conduct of Cllr Lemon on 11 February from Cllr Elizabeth Benner alleging that Cllr Lemon had failed to declare a disclosable pecuniary interest (DPI) on his register of interests and that he had called a meeting seeking to overturn decisions of a sub-committee (the Mountsorrel Memorial Centre (MMC), which if overturned would see Cllr Lemon benefit financially.
- 2.3 As a result the Monitoring Officer conducted a fact finding investigation.
- 2.4 The fact finding investigation identified that Cllr Lemon had included on his register of interest a DPI in the following terms;

'Supplier of drinks to the Mountsorrel Memorial Centre'.
- 2.5 It was therefore apparent that Cllr Lemon had complied with his duty under the Localism Act 2011 to declare his DPI to the Monitoring Officer.
- 2.6 The Monitoring Officer received an initial response to the complaint from Cllr Lemon and at the conclusion of the fact finding investigating formed the view that Cllr Lemon may have breached the requirements of the Code of Conduct and of the Localism Act in relation to remaining in meetings where decisions were being taken in relation to the payment of accounts which included payments where he had declared a DPI, and concluded that the complaint merited further investigation in respect of that matter. The Monitoring Officer also identified as a relevant issue, whether any advice given by the Clerk to Cllr Lemon relating to his DPI constituted a 'reasonable excuse' under the provisions of the Act, (Section34(1)).
- 2.7 The fact finding report was referred to the Independent Person (Gordon Grimes) who agreed with the view that the complaint warranted further investigation and I was instructed by the Council's Monitoring Officer, Mr Adrian Ward to undertake the same.

Instructions

3. The extent of my instructions from the Monitoring Officer are as follows:

- a) To determine whether Cllr Lemon breached Section 30(1) of the Localism Act 2001 by remaining in the room when he had declared an interest
- b) To determine whether Cllr Lemon acted without Integrity in calling for an Extraordinary General Meeting on a matter in which he had a personal financial interest; and
- c) Whether any advice given by the Clerk to Cllr Lemon amounted to a 'reasonable excuse' under the Localism Act.

Qualifications

- 4.1 I am a Solicitor of the Senior Courts of England and Wales and am employed by Oadby and Wigston Borough Council as the Head of Law and Democracy and Monitoring Officer. I qualified as a Solicitor in 2008 after which I worked in-house for North West Leicestershire District Council (NWLDC) before joining my current Authority in November 2017.
- 4.2 From January 2011 until November 2017 whilst working at NWLDC I occupied the position of Acting Deputy Monitoring Officer, Temporary Deputy Monitoring Officer and Deputy Monitoring Officer and am experienced in the application of the Code of Conduct.

The Complaint

5. The formal complaint and result of the fact finding investigation conducted by the Monitoring Officer is attached at Appendix 1.

The Investigation

6. I carried out my investigation in accordance with instructions from the Monitoring Officer and within the requirements of the standards regime that operates under the Localism Act 2011. My investigation and the advice in this report is solely based on the Localism Act 2011, the Code and the evidence referred to me.
- 6.1 During the course of my investigation I have considered the written information provided to me by the Monitoring Officer. I have also had the opportunity to interview the following:
 - 6.1.1 Lorraine Davies – Parish Clerk via Zoom on 7 June 2020

- 6.1.2 Cllr Elizabeth Benner - via Zoom on 4 June 2020
- 6.1.3 Cllr Kate Walker – via Zoom on 11 June 2020
- 6.1.4 Cllr Paul Harris – via a telephone interview on 25 June 2020
- 6.1.5 Cllr Michael Lemon – via a telephone interview on 27 July 2020

6.2 In considering each of the individual matters of concern raised by the Member Conduct Panel and making my findings as set out in this report, I have assessed the information provided against the civil standard of proof (i.e. on the balance of probabilities) and dealt with them in the order raised by the Member Conduct Panel (i.e. chronologically).

Failing to leave the room when the Council considered a matter upon which Councillor Lemon had declared a Disclosable Pecuniary Interest.

- 7.1 When interviewed it was clear that Cllr Lemon fully understood the restrictions imposed on him once he had declared a DPI in any matter, i.e. the requirement to leave the room, not engage in the debate and not vote on the matter. He did not however appear to understand the gravity of failing to comply with that requirement, namely that in remaining in the room he prima facie committed a criminal offence. In relation to the overall allegations he said when/if he stayed in a meeting it would have been because he had the best interests of the Parish council at heart and ‘If that broke the law then so be it’.
- 7.2 When interviewing the other people named above there was a general consensus that Cllr Lemon invariably declared a pecuniary interest in the Agenda Item relating to the accounts but he remained in the room on numerous occasions when the items were called on for debate.
- 7.3 There was a dispute between Cllrs Benner and Walker and the others interviewed as to whether on occasions he actually moved or seconded the item/s.

- 7.4 Cllr Lemon acknowledged that there were occasions when he remained in the room when the item relating to the accounts was called on and said that normally this was because he didn't have the opportunity to leave the room.
- 7.5 He explained that the accounts agenda item was normally 6 or 7 on the agenda and invariably the item was moved and seconded without debate and went straight to the vote and therefore he didn't have time to leave the room.
- 7.6 Cllr Lemon stated during the fact finding exercise conducted by the Monitoring Officer that the Clerk has advised him that he could remain in parish council meetings during approval of the accounts payable, although he wasn't allowed to vote and he confirmed this during interview.
- 7.7 An examination of various minutes of meetings records that Cllr Lemon declared his interest but does not record whether or not Cllr Lemon left the room, as would generally be expected. The votes were not recorded votes and therefore do not show whether having remained in the room, Cllr Lemon voted on the item.
- 7.8 Cllr Lemon stated that he never moved or seconded the item and never voted on them because that was the advice from the Clerk.
- 7.9 When interviewed the Clerk provided an explanation that supported what Cllr Lemon said about the lack of time to leave the room due to the agenda structure and without explicitly confirming what advice she had given it was clear that there was tacit acceptance that it was more than likely that Cllr Lemon remained in the room without any challenge from either the Clerk or the Chairman.

Conclusion on Complaint One

- 8.1 Cllr Lemon was prima facie in breach of Section 31(4) of the Localism Act 2011. The section provides a statutory defence of 'reasonable excuse', unfortunately the Act and accompanying guidance is silent as to what amounts to a reasonable excuse.
- 8.2 I understand that Cllr Benner reported this matter to Leicestershire Constabulary who determined that it wasn't in the public interest to investigate the matter and referred her back to the Monitoring Officer.

8.3 If and when this matter is referred back to a Member Conduct Panel, and irrespective of any finding in relation to Cllr Lemon regard should be had to a requirement to the Clerk and Chairman requiring the effective ordering of the agenda and management of the meeting to avoid such issues in future. Good Practice is that where a member has a DPI sufficient time must be given to enable the member to leave the room before the matter is debated or put to the vote. In circumstances such as these where the declaring of a DPI is a regular occurrence consideration should be given to re-ordering the agenda so that the item is the last item and the member with the interest can leave as it is called on.

To determine whether Cllr Lemon acted without integrity in calling for an Extraordinary General Meeting on a matter in which he had a personal financial interest.

9.1 As previously stated whilst the DPI was no bar to Cllr Lemon submitting the motion as his DPI only 'kicked in' during a meeting, should Cllr Lemon have been aware that his actions in calling the meeting were likely to provoke concern? The question is 'Was the decision to submit the motion at that time as a result of political naivety or a bullish indifference to what people may think or say?'

9.2 Cllr Lemon has been an elected member of the Parish Council since 1991 and has undergone Code of Conduct training on a number of occasions although the training records are not available. He stated that that training had been under a number of iterations of the Standards Regime.

9.3 As reported in the findings of the Fact Finding Investigation the Nolan Principle's are incorporated into the current adopted Code of Conduct. Principle Two relating to Integrity requires that councillors should 'not act or take decisions in order to gain financial or other material benefits for themselves', and that they 'must declare and resolve any interests and relationships'. This wider principle applies to all actions taken by councillors when they are acting in their capacity as such.

9.4 When interviewed Cllr Lemon appeared to lack any awareness, or have regard to how a member of the public or any other person looking on would or could have perceived the situation where a member with a declared DPI was calling a meeting which would or

could appear to have a direct financial benefit to that member. It should have been obvious to him that his actions were likely to provoke concern, particularly in the current febrile atmosphere that the Parish Council operates in. He was astute enough to realise that he would be unable to speak or vote on the motion that he had submitted without a dispensation, which given his experience should of itself led him to ask the question ‘ what would the man on the Clapham Omnibus think if he was looking on’.

9.5 When interviewed Cllr Lemon’s justification for submitting the motion was that he was trying to do the best for the parish and that he was concerned that the MMC was being poorly managed with no clear business plan in place and that its financial viability was in question. The Monitoring Officer in his Fact Finding Exercise noted that one of the reasons given by Cllr Lemon for jointly submitting the request to rescind the decision of the MMC Committee was a concern that if the Bar Supervisor were to leave, the viability of the MMC may be put at risk as potentially they would no longer be able to serve alcohol. That could have had a direct impact on Cllr Lemon as the MMC would no longer be placing orders with his company.

9.6 In his interview Cllr Lemon repeated his statement that he makes no profit on the drinks he supplies to the MMC and repeatedly stated in interview that ‘he was doing what he thought was his best for the parish’ and that ‘it didn’t matter what they did (that is the parish council) people would be unhappy’. He said that he wasn’t concerned which if any of the staff were made a temporary manager, he just thought that there needed somebody to give direction or control. He stated that he was not promoting any particular person.

Conclusion on Complaint Two

10. Having considered the information before me I am satisfied that whilst his actions in submitting a motion for the calling of an Extraordinary General Meeting in relation to the matter that he had an interest in did not contravene the Act, they did not accord with Principle 2 of the Nolan Principles (Integrity) incorporated into the Code of Conduct. The appearance of a lack of integrity was further compounded by his attendance at, and input into the EGM where the matter was debated.

10.1 It is my view that his decision to submit the motion was not borne out of political naivety but more out of a bullish indifference to what people may think or say given the febrile environment that has existed at the Parish Council over a number of years. However 'honourable' his intentions may or may not have been in so far as securing the 'best for the parish' an outside observer was likely to have formed a view that there was the appearance of bias in the way that this matter was conducted and that Cllr Lemon who was at the centre of the debate was a likely beneficiary of the decisions being made.

Did any advice given by the Clerk to Cllr Lemon amount to a 'reasonable excuse' under the Localism Act?

11. There are two points for consideration under this part of the investigation;
- a) Did the advice given by the Clerk in relation to the DPI in respect of the payment of the accounts amount to a reasonable excuse under the Act; and
 - b) Was the dispensation granted to Cllr Lemon by the Clerk valid for the purpose of being a reasonable excuse under the Act?
- 11.2 There is no doubt that the initial advice given by the Clerk to Cllr Lemon in respect of point (a) above was correct, that is the requirement to register his interest as a DPI and the need to leave the room and abstain from voting.
- 11.3 Thereafter there was a failure to effectively enforce the requirements of the Code by both the Clerk and the Chair when Cllr Lemon failed to leave the room and as a result of this failure to challenge effectively it was assumed that tacit approval was 'given' to Cllr Lemon to remain in the room.
- 11.4 The situation that developed was neatly 'summed up' by Cllr Harris, who during his interview when discussing the requirements of the code used the expression 'familiarity breeds contempt' which resulted in a large degree of complacency and a 'that's the way that we've always done it' attitude developing over a number of years.

11.5 In so far as point (b) above is concerned, Cllr Lemon was clearly alert to his DPI in the subject matter of the MMC hence his request for a dispensation.

11.6 Standing Order 13 requires the following:

- a *Dispensation requests shall be in writing and submitted to the Proper Officer as soon as possible before the meeting, or failing that, at the start of the meeting for which the dispensation is required.*
- b *A decision as to whether to grant a dispensation shall be made by the Proper Officer and that decision is final.*
- c *A dispensation request shall confirm:*
 - i. *the description and the nature of the disclosable pecuniary interest or other interest to which the request for the dispensation relates;*
 - ii. *whether the dispensation is required to participate at a meeting in a discussion only or a discussion and a vote;*
 - iii. *the date of the meeting or the period (not exceeding four years) for which the dispensation is sought; and*
 - iv. *an explanation as to why the dispensation is sought.*
- d *Subject to standing orders (d) and (f) above, dispensations requests shall be considered [by the Proper Officer before the meeting or, if this is not possible, at the beginning of the meeting of the council, or committee or a sub-committee for which the dispensation is required.*
- e *A dispensation may be granted in accordance with standing order (e) above if having regard to all relevant circumstances the following applies:*
 - i. *without the dispensation the number of persons prohibited from participating in the particular business would be so great a proportion of the meeting transacting*

the business as to impede the transaction of the business or

- ii. granting the dispensation is in the interests of persons living in the council's area
or*
- iii. it is otherwise appropriate to grant a dispensation.*

11.7 Cllr Lemon Confirmed that his request for a dispensation was made verbally to the Clerk and not in writing.

11.8 When the Clerk was interviewed she was asked on what basis the dispensation was granted and she replied 'under Standing Order 13'. I made it clear that a dispensation could only be granted if it was in accordance with one of the reasons as set out in the Act (and as incorporated into Standing Order 13) however she failed to elaborate on the precise detail of why she granted the dispensation and the subsequent dispensation notice failed to reference which element of Standing order 13 e(i), e(ii) or e(iii) was relied upon to grant the dispensation. A copy of the dispensation letter is attached at Appendix 2.

11.9 Given the dysfunctional nature of the Parish Council at that time and the likelihood that any decision to grant a dispensation would be challenged by other members of the council I would have expected that the dispensation letter would have provided a detailed justification of why it had been granted i.e. a consideration of the public interest and/or a specific reason as to why it was considered appropriate to grant it.

11.10 Having said that Cllr Lemon could reasonably have expected to be able to rely on that advice as it was given by the Proper Officer of the Council and he stressed throughout his interview that he always deferred to the advice of the Clerk and therefore that advice constituted a reasonable excuse for the purposes of the Act.

Overall Conclusions

12. As set out in the Executive summary at 1 above on the balance of probabilities I am satisfied that Cllr Lemon:

- a) Did not breach Sec 30 (1) of the Localism Act 2011 (The Act) in respect of failing to register a disclosable pecuniary interest but did breach Sec 31(4) of the Act by failing to leave the room on a number of occasions when the item that he had an interest in (namely the payment of accounts) was discussed; and
 - b) That whilst his actions in submitting a motion for the calling of an Extraordinary General Meeting in relation to the matter that he had an interest in did not contravene the Act, they did not accord with Principle 2 of the Nolan Principles (Integrity) incorporated into the Code of Conduct; and
 - c) I cannot discern any justification for the grant of a dispensation allowing Cllr Lemon to participate in the debate at the Extraordinary General Meeting as:
 - 1) The request for the grant of the dispensation did not comply with Standing Order 13 as it was not in writing and therefore no evidence exists of the reason for the request; and
 - 2) The Notice granting the dispensation fails to record which of the grounds for granting a dispensation as set out in Standing Order 13 (as replicated from Section 33 of the Act) were used and therefore the Notice lacks transparency; however;
 - 3) Cllr Lemon could reasonably have expected to be able to rely on that advice as it was given by the Proper Officer of the Council and therefore that advice constituted a reasonable excuse for the purposes of the Act.
- 12.1 During the course of my investigation it became clear that the Parish Council is/was dysfunctional with opposing factions, the 'old' and the 'new' members with diametrically opposed views as to how things should be done and the outcomes being sought.
- 12.2 I also became aware during the investigation that the Parish Council had undertaken a governance review under the auspices of the Chief Executive of LARALC which will no doubt have identified many of the issues referred to above and if this matter proceeds to a Members Standards Panel then the outcome of that review should be borne in mind if any sanctions are imposed.

12.3 Without having had sight of that review any Member Conduct Panel should consider at the very least:

- 1) Advice to the Parish Council for an amendment to the Standing Orders to ensure that Code of Conduct (and other training) is mandatory for all Members and provided on a regular basis;
- 2) The maintenance of training records for members; and
- 3) Further training for the Clerk on the role of Proper Officer, the granting of dispensations and the Public Interest test.

Postscript

13. During my investigation Cllr Benner brought to my attention a conversation involving Cllr's Walker, Harris and Lemon after a meeting of the Planning and Highways Committee that immediately preceded the meeting of the MMC sub-committee. I understand that there were no members of the public present.

13.1 It was alleged that Cllr Lemon and Cllr Harris had indicated that the MMC sub-committee 'should make the right decision' or they knew what they had to do.

13.2 Cllr Walker confirmed the tenor of this conversation in her interview whereas Cllr Lemon and Cllr Harris said that they could not remember it and Cllr Lemon described the accusation as 'A load of bull'.

13.3 I have not included this as part of my report as I am unable to substantiate what was said and do not believe that it adds anything to the specific allegations that I have been asked to investigate.

13.4 Having said that members should be reminded that whilst there is a distinction between a pre-disposition and pre-determination any strongly expressed views may lead to an appearance of bias which would be sufficient to disqualify the member from any subsequent decision making process.

Complaint against Cllr Lemon of Mountsorrel Parish Council concerning a disclosable pecuniary interest, from Cllr Benner also of Mountsorrel Parish Council

Complaint Ref: MC7 19/20

Date: 20 February 2020

Summary of the Complaint and Potential Breaches of the Code of Conduct

Cllr Benner's complaint is that Cllr Lemon has called a special motion relating to an employee, who is the Mountsorrel Memorial Centre's (MMC) Cafe/Bar Manager, to overturn decisions taken at a sub-committee meeting.

She states that she has checked Cllr Lemon's disclosable pecuniary interests and that he has failed to declare that he is the current contractor for the Memorial Centre's bar supplies. She complains he has failed to declare a disclosable pecuniary interest and act on it correctly, and that he has called a meeting whereby he will personally gain financially by the full time employment of a person who will be placing orders directly with him, and that this is unlawful.

Cllr Lemon's conduct as referred to within the complaint could potentially be in breach of the following requirements contained within the Member Code of Conduct of the Council:

Principle 2 - Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

And:

4.2 If you are present at any meeting of the Authority, and you have a Disclosable Pecuniary Interest in any matter to be considered or being considered, and the interest is not a 'sensitive interest', at the meeting:

4.2.1 you must disclose the interest to the meeting whether or not it has been registered;

4.2.2 unless a dispensation has been given, you may not participate in any discussion of the matter at the meeting;

4.2.3 unless a dispensation has been given, you may not participate in any vote taken on the matter at the meeting.

Cllr Lemon's Response to the Complaint

Cllr Lemon's response to the complaint can be summarised as follows:

- The Bar Supervisor may be marrying the Clerk's daughter, and therefore some councillors are set against him and are putting obstacles in his way because they are prejudiced against the Clerk,
- At the moment the General Manager is off work and as the Bar Supervisor has a personal licence he is acting the licence holder, so if he decided to leave because of the current situation then the MMC would not be able to serve alcohol and this could put the whole centre at risk of failing,
- He makes no profit out of selling alcohol to the MMC as he supplies it at a discount,
- It was the full parish council's decision to award the alcohol supply contract, and the bar staff therefore have no involvement in decisions as to where to buy alcohol supplies from,
- The special meeting was called by the Chair and the Clerk, but was requested by himself and by Cllr P Harris,
- He has declared the contract on his declaration of interests,
- He also declares his interest in the contract at every parish council meeting and doesn't vote on the approval of payments, although he remains in the meeting as the Clerk has advised him that he doesn't need to leave the room.

Conclusion of the Monitoring Officer

Cllr Lemon's published registered of interests includes the following item as a disclosable pecuniary interest (DPI):

'Supplier of drinks to the Mountsorrel Memorial Centre'.

It is therefore apparent that Cllr Lemon has complied with the requirements of the Localism Act in relation to making a declaration to the Monitoring Officer that he has a DPI in this regard.

There are then two other issues to consider; firstly Cllr Lemon's involvement in calling the particular meeting referred to within the complaint, and secondly whether he has complied more generally with the relevant requirements arising from his DPI in relation to ongoing parish council business.

In relation to the first issue, Cllr Lemon has explained that at a recent meeting of the Mountsorrel Memorial Centre (MMC) Committee, it was decided to offer an extension of a temporary contract to the Bar Supervisor rather than make his appointment permanent.

Cllr Lemon has indicated that he felt this put the viability of the MMC at risk, because the Bar Supervisor is currently acting as the license holder for alcohol sales in the absence of the Centre Manager, and that therefore if he decided to leave it would not be possible to continue to sell alcohol at the MMC.

He has also suggested that some councilors involved in the decision were prejudiced against the Clerk, and that this may have influenced their decision in relation to the Bar Supervisor because he may be marrying the Clerk's daughter.

For these reasons, he and Cllr Harris requested that a meeting be called to rescind the decision taken at the MMC Committee meeting.

The complaint in relation to this issue is that, in making that request, Cllr Lemon has acted inappropriately because he will stand to gain financially from the employment of the Bar Supervisor due to the contract he has to supply drinks to the MMC.

Cllr Lemon has pointed out that the contract in question was agreed by the parish council, and that therefore the staff at the MMC have no discretion in relation to which supplier to use for the purchase of drinks, and consequently that the matter is not relevant to the employment conditions of those staff.

The provisions of the Code of Conduct and the Localism Act in relation to DPI's only apply at meetings, and not in relation to council business outside meetings, such as submitting a request to rescind a decision.

However, the Nolan Principle relating to integrity, as included within the Code of Conduct, requires that councillors should 'not act or take decisions in order to gain financial or other material benefits for themselves', and that they 'must declare and resolve any interests and relationships'. This wider principle applies to all actions taken by councilors when they are acting in their capacity as such.

Having carefully considered this matter, I note that one of the reasons given by Cllr Lemon for jointly submitting the request to rescind the decision of the MMC Committee is a concern that if the Bar Supervisor were to leave, that the viability of the MMC may be put at risk as potentially they would no longer be able to serve alcohol.

Whilst Cllr Lemon has clearly framed this in the context of the MMC as a public facility operated by the parish council, if this risk were to materialise and the MMC was in a position where it could no longer serve alcohol then they would also not be ordering drinks from his company, and that could have a personal financial impact for Cllr Lemon.

Although noting that Cllr Lemon has stated that he makes no profit on the drinks he supplies to the MMC, I do therefore conclude that this element of the complaint merits further investigation.

Turning to the second issue of the wider implications of Cllr Lemon's contract with the MMC for the supply of drinks, I note from the published minutes of parish council meetings that he routinely declares that he has an interest in the 'Payment of Accounts' item on each agenda, and that the accounts being approved for payment regularly include payments to his company.

Cllr Lemon has stated that the Clerk has advised him that he can remain in parish council meetings during approval of the payments item, although he doesn't vote, although I note that the minutes of meetings do not record whether or not Cllr Lemon has voted on these matters.

Both the Localism Act and the Code of Conduct require that should a councillor has a DPI in a matter under consideration, that they should leave the room during consideration of the item and must not participate in any discussions or voting.

The Localism Act further states that a councillor who fails to comply with the relevant requirements, without reasonable excuse, is committing an offence.

It therefore appears that Cllr Lemon may have breached the requirements of the Code of Conduct and of the Localism Act in relation to remaining in meetings where decisions are being taken in relation to payments where he has declared a DPI, and I therefore conclude that the complaint merits further investigation in respect of that matter. Amongst any other relevant issues, the investigation will need to consider whether any advice given by the Clerk to Cllr Lemon relating to his DPI constitutes a 'reasonable excuse' under the provisions of the Localism Act.

Adrian Ward
Monitoring Officer

Views of the Independent Person

This case has been referred to me by the Monitoring Officer and involves a complaint that Cllr Lemon has failed to declare a disclosable pecuniary interest as a member of Mountsorrel Parish Council.

The Monitoring Officer has set out a summary of the complaint above and also the relevant aspects of the Code of Conduct which may have been breached by Cllr Lemon's actions.

I have considered the Monitoring Officer's conclusions as set out in detail above and am of the opinion that whilst he has correctly disclosed a relevant disclosable pecuniary interest there are still outstanding matters that require further investigations as set out by the Monitoring Officer. These are that Cllr Lemon would be personally impacted by the closure of the bar at the Mountsorrel Memorial Centre and the fact that he remains in meetings despite having a relevant disclosable pecuniary interest.

I agree therefore with the Monitoring Officer that further investigations should be made.

Gordon Grimes
Independent Person

MOUNTSORREL PARISH COUNCIL



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Councillor M. Lemon

REDACTED

BY EMAIL

17 February 2020

Dear Councillor Lemon

Re: DISPENSATION REQUEST – EXTRA-ORDINARY COUNCIL METING 17 FEBRUARY 2020

I acknowledge receipt of your dispensation request to discuss and vote on matters relating to the operation and management of the Memorial Centre under Standing Order 13 for a period of 12 months.

I acknowledge that your company, Soar Valley Bar Supplies, do have a contract with the Parish Council for bar supplies at the Memorial Centre which is a declarable pecuniary interest and I understand that you have declared this contract on your Declaration of Interest Form.

In relation to the Extra-ordinary meeting of the Council scheduled for 17 February 2020 I confirm that a dispensation has been approved in relation to this meeting to enable you to take part in the discussion. However, I would advise you to declare your interest, refrain from voting and that your declaration of interest and absention from voting is recorded in the minutes of the meeting.

If you require any further information please do not hesitate to contact me.

Yours sincerely

REDACTED

Lorraine Davies
Proper Officer
Mountsorrel Parish Council