

MEMBER CONDUCT PANEL – 4TH JUNE 2021

Report of the Monitoring Officer

ITEM 4 DETERMINATION OF A COMPLAINT OF A BREACH OF THE MEMBERS' CODE OF CONDUCT OF BIRSTALL PARISH COUNCIL BY CLLR JULIAN HOWE (Ref: MC9 2019/20)

Purpose of the Report

1. To enable the Panel to determine a complaint of a breach of the Code of Conduct of Birstall Parish Council (the Parish Council) against Cllr Julian Howe that 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 Cllr Howe of Birstall Parish Council self-referred a Member Conduct complaint against himself. His complaint was Birstall Parish Council had accused him of harassment against their Clerk, and that he wished for the allegations to be independently reviewed and investigated.
3. Having undertaken a fact-finding review and having consulted with one of the Independent Persons, Mr Richard Gough, the complaint was referred to for an independent investigation by 'ch&i associates'.
4. The Investigators concluded in their report that Cllr Howe did fail to comply with paragraphs 1 and 2 of the Code of Conduct of Birstall Parish Council with regards to this matter. The relevant paragraphs of the Code of Conduct are:
 1. *He/she shall behave in such a way that a reasonable person would regard as respectful.*
 2. *He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.*
5. Having considered the Investigator's report (which is attached as Appendix 2) and after consulting with Mr Gough, the Independent Person, the Monitoring Officer has decided Cllr Howe has 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 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 Appendix 1 to this report.
7. 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 Cllr Howe. The particular issue to be considered is usefully summarised by the Investigators in their report as follows:

'We consider that on occasion Councillor Howe did fail to treat the Clerk with respect and bullied / harassed her by making inappropriate comments about her performance and posting detrimental material about her in a blog. Our recommendation therefore is that Councillor Howe be found to have failed to comply with paragraphs 1 and 2 of the Parish Council's Code of Conduct'.

8. The Independent Person involved in the case, Richard Gough, will also be present to advise the Panel in relation to his views on the matter.
9. If the Panel finds against Cllr Howe, they will then need to consider whether they feel it is appropriate to recommend the imposition of a sanction to Birstall Parish Council.
10. 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.
11. The Panel is also able to make more general recommendations with a view to promoting high standards of conduct.

Pre-Hearing Process

12. 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.
13. Cllr Howe's pre-heating submission is attached as Appendix 3, and the Investigator's response to his submission is attached as Appendix 4.
14. Cllr Howe has also indicated that although he may be unable to attend the hearing on 4th June, he does wish for it to go ahead in the event of his absence.
15. The Investigator's report makes extensive reference to interactions between Cllr Howe and the Clerk of Birstall Parish Council, Sue Coulson. The Clerk has confirmed that she is happy for the report to be made public, and therefore the Monitoring Officer does not consider that any issues of exemption or confidentiality apply.

APPENDICES

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

Appendix 2: Investigator's Report

Appendix 3: Cllr Howe's Pre-hearing Submission

Appendix 4: Investigator's response to Cllr Howe's Pre-hearing Submission

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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 *[Appeals & Reviews 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 *[appeal submitted by the Member and whether or not they wish to uphold the decision of the original Member Conduct Panel that there has been a breach of the code of conduct]*.

[If the Panel decides that there has not been a breach of the code of conduct, then any sanctions imposed by the original Member Conduct Panel will be set aside].

[If the Panel upholds the original decision that there has been a breach of the code of conduct, and if the Member's appeal includes

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.



**Independent investigation into
a self-referred complaint by**

**Councillor Julian Howe
of
Birstall Parish Council**

24/03/2021

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1: Executive Summary

- 1.1 This report concerns the conduct of Councillor Julian Howe, a member of Birstall Parish Council ('the Parish Council'). Councillor Howe referred his own conduct to the Monitoring Officer at Charnwood Borough Council ('the Borough Council') after the Parish Council had placed restrictions on his ability to engage with the Clerk.
- 1.2 We have been asked to review Councillor Howe's conduct towards the Clerk between November 2014 and 16 January 2017, when the Parish Council informed Councillor Howe that he was not to make direct contact with her. The Parish Council took this decision after the Clerk had raised her concerns about Councillor Howe's conduct to the Parish Council's Management and Policy Committee. The Clerk did not make a formal Code of Conduct complaint at this time and therefore no formal investigation into Councillor Howe's conduct (under the Localism Act 2011) was carried out prior to the decision being made.
- 1.3 During this investigation we have focused on those areas of concern that have been particularly identified by the Clerk:
 - Anonymous blog articles written by Councillor Howe, in which he discussed Parish Council business.
 - Councillor Howe's 'constant' requests and queries, that were sent without the agreement of the Parish Council, to an extent that monopolised the Clerk's time.
 - A Code of Conduct complaint that Councillor Howe submitted against the Chair of the Council, Councillor Marshall, which included criticisms of the Clerk's performance and an insinuation that there may be fraudulent activities taking place within the Parish Council.
 - Criticisms made about the Clerk by Councillor Howe to a member of public during a public consultation into a proposed local housing development.
 - A press release that Councillor Howe issued to the Birstall Post, which included remarks about the Clerk which were untrue, unfounded and defamatory.
- 1.4 We consider that on occasion Councillor Howe did fail to treat the Clerk with respect and bullied / harassed her by making inappropriate comments about her performance and posting detrimental material about her in a blog. Our recommendation therefore is that Councillor Howe be found to have failed to comply with paragraphs 1 and 2 of the Parish Council's Code of Conduct.

2: Councillor Howe's official details

- 2.1 Councillor Howe has been a member of the Parish Council since 2011.
- 2.2 Councillor Howe is also a member of the Borough Council, where he represents the Birstall Watermead Ward. He is a member of the Conservative Party.

3: Relevant legislation and protocols

The Localism Act 2011

- 3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant Authority must promote and maintain high standards of conduct by members and co-opted members of the Authority. In discharging this duty, the Authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity. For the purposes of this investigation, the relevant Authority is Birstall Parish Council.
- 3.2 Section 28 of the Act provides that the Authority must secure that its Code of Conduct is, when viewed as a whole, consistent with the following principles: - Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty; Leadership.
- 3.3 Under 28(6) of the Act, Local Authorities must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. By section 27(7), arrangements put in place under subsection (6)(b) must include provision by the appointment of the Authority of at least one “independent person” whose views are to be sought and considered by the Authority before it makes its decision on an allegation that it has decided to investigate. For the purposes of this investigation, the relevant Authority is Charnwood Borough Council.
- 3.4 Section 28(11) of the Act provides that if a relevant Authority finds that a member or a co-opted member of the Authority has failed to comply with its Code of Conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take.

Birstall Parish Council's Code of Conduct

- 3.5 Under Section 27(2) of the Localism Act the Parish Council established a Code of Conduct for members (the Code).
- 3.6 The Code adopted by the Council includes the following paragraphs:

Member obligations

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations.

1. *He/she shall behave in such a way that a reasonable person would regard as respectful.*
2. *He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.*

European Convention on Human Rights (ECHR)

- 3.7 Section 3 of the Human Rights Act 1998 (HRA) requires that primary and subordinate legislation must, as far as possible, be read and given effect in a way which is compatible with the Convention rights. By virtue of section 6, it is unlawful for a public authority to act in a way that is incompatible with Human Rights.
- 3.8 Article 10 of the ECHR provides:

Freedom of expression

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary

- 3.9 In considering these matters it is important to note the words of Collins J in the standards case of *Livingstone v The Adjudication Panel for England* [2006] EWHC 2533 (Admin) [at para.39]:

“The burden is on [the Adjudication Panel for England] to justify interference with freedom of speech. However offensive and undeserving of protection the appellant’s outburst may have appeared to some, it is important that any individual knows that he can say what he likes, provided it is not unlawful, unless there are clear and satisfactory reasons within the terms of Article 10(2) to render him liable to sanctions.”

We have provided relevant Case Law on Article 10 in Annex A.

4: The Evidence Gathered

Our appointment

- 4.1 The Council's Monitoring Officer appointed ch&i associates to conduct the investigation into the complaints on 9 October 2020. This investigation was conducted by Alex Oram and Mark Hedges. Alex has been conducting member conduct investigations since 2003. He was previously employed by Standards for England as its principal investigator who was responsible for conducting many of their most complex, politically sensitive and high-profile investigations into member conduct. Mark has worked for ch&i associates since 2017; prior to this he was a Detective in the Police Service for 21 years.

The investigation

- 4.2 During this investigation we have reviewed documents and emails sent to us by the Clerk, Councillor Howe and the Borough Council. We interviewed both the Clerk and Councillor Howe by way of virtual meetings and sent them a draft report with our provisional findings for their comments.¹

The Complaint

- 4.3 The Borough Council's Monitoring Officer received a 'self-referred' Member Conduct complaint from Councillor Julian Howe that was based on a letter he received from the Parish Council on 16 January 2017. The letter referred to his continuing harassment of the Clerk, Mrs Coulson. Councillor Howe stated that copies of this letter have been re-issued to him several times since it was originally sent, including most recently on 2 December 2019, to confirm that the conditions referred to within it are still in force. Councillor Howe stated that the conditions imposed upon him by the letter seek to, and do, restrict his activities as a parish councillor.
- 4.4 Councillor Howe made it clear that he was not making a complaint about any other party but simply self-referring his own conduct, as had occurred in the '*Ledbury Town Council case*'; R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin). In that case a councillor 'self-referred' a complaint against themselves, which had been progressing under internal grievance processes at the Town council. Ultimately this led to the court case referred to above, where the court held that a council cannot run a grievance procedure alongside, or as an alternative to, a standards regime procedure under the Localism Act 2011,

¹ Councillor Howe stated: "*Thank you for the report, it can't have been easy bearing in mind dealing with this matter bearing in mind the complex nature of it. Having read it I wish now I had insisted that I be shown all of the evidence before talking to you. I am contacting Adrian Ward the Monitoring Officer for some advice and I will come back to you when I have heard from him.*" We received no further contact.

The Clerk stated: "*I have read the report and find it to be a thorough, fair and balanced report and I have no comments to make.*"

and that complaints regarding a councillor's conduct have to be dealt with under the authority's standards arrangements. We have provided additional information in Annex B.

4.5 The Parish Council was asked for relevant details of any allegations or concerns about Councillor Howe's conduct which led to the issue of their letter to him of 16 January 2017, and any other relevant information that has resulted in the letter being re-issued to him. The Parish Council responded to the self-referred complaint and submitted a detailed, chronologically dated documentation pack comprising 28 items. The following summarises the response from the Parish Council:

- a. Since 2014, the Parish Council have been trying to deal with issues and concerns brought to their attention by the Clerk regarding Councillor Howe's behaviour. They are mindful that they have a duty to safeguard the Clerk and itself from vicarious liability.
- b. During this period, the Parish Council made several attempts to resolve the matter informally under the advice of LRALC and the Parish Council's retained HR advisors.
- c. The Parish Council did not make a complaint to the Monitoring Officer about Councillor Howes behaviour as they received advice from LRALC and the Monitoring Officer that this was an employment matter and should be dealt with by the Parish Council. At no time has the Clerk submitted a formal grievance. This was under advice from her Union Representative.
- d. The Parish Council have at no time accused Cllr Howe of harassment. Rather it was included in the 16 January 2017 letter in order to properly represent the feelings of the Clerk.
- e. The letter dated 16 January 2017 imposes various actions/sanctions considering what the Clerk 'considers to be continuing harassment of her'. The letter requests 'no further direct communication' with the Clerk and states that any matters be addressed through the Chair and Vice Chair for their consideration. It was considered that the provision of a different route of communication would be less intrusive for the Clerk and not seek to or restrict Cllr Howes activities as a Parish Councillor.
- f. The Parish Council decision in 2017 was taken before the R(Harvey) v Ledbury Town Council judgement was reached in [May] 2018 and the safeguarding measures put in place were taken under advice from LRALC, the Parish Council's retained HR advisors and satisfied the Clerks Union advisors.
- g. The Parish Council are aware of the Ledbury judgement and have not imposed similar sanctions highlighted in the Ledbury judgement upon Councillor Howe (i.e. to remove him from committees of the Council or Outside bodies etc).

- h. In December 2019, the Clerk reported levels of emails and letters from Councillor Howe were increasing and asked for further support from the Management & Policy Committee.
- i. A letter was sent to Cllr Howe on 2 December 2019 reminding him of the measures put in place in January 2017. At that time the Management and Policy Committee also re-enforced to the Clerk that she was not to respond to any communications from Councillor Howe.
- j. Councillor Howe responded with a letter dated 16 December 2019 which the Council's Management & Policy Committee considered. The content of the letter is summarised: *'I have taken advice and it appears that your letter [dated 2 December 2019] is in breach of the Localism Act 2011. In the circumstances will you confirm that your letter dated 17 January 2017 has been withdrawn, that my fellow councillors are informed and that I am allowed the same facilities and support available to all my fellow councillors'*.
- k. There was an informal meeting with Councillor Howe, the Chair and the Vice Chair to discuss the matter. This was a confidential meeting and no minutes or recording was taken.
- l. The Management & Policy Committee were appraised of the informal meeting and the Committee RESOLVED: *'That the HR measure put in place in January 2017 was reasonable and proportionate and would not be withdrawn and that no response to the letter was required'*.
- m. Overall, the Parish Council have been trying over a long period of time to deal with what they consider to be Cllr Howe's difficult behaviour and the impact it was having on the Clerk. The Management & Policy Committee feel very strongly that it has acted reasonably and proportionately in order to safeguard the Clerk, and at no point has Councillor Howe's role as a parish councillor been in anyway interfered with or restricted.
- n. The Parish Council are aware of the case of *Moores v Bude Stratton Town Council* where the outcome of the actual claim isn't important, but the conclusion is, and that is that the Council can be held vicariously liable in unfair dismissal claims for the actions of its councillors.

4.6 The Monitoring Officer and the Council's Independent Person reviewed the information received from the Parish Council. They also carefully considered comments made by Councillor Howe in his letter dated 15 February 2020: *'My problem is I don't know what the nature of the complaints against me are and I have not had a chance to defend myself or have the complaint considered by an Independent Person'*.

4.7 The Monitoring Officer noted that a fair procedure requires:

- Complaints to be investigated and precise allegations identified.
- Evidence should be clearly identified and disclosed.

- The respondent to an investigation should be given an opportunity to respond to the investigatory process.
- The response to the complaint should demonstrably engage with the concept of proportionality.

4.8 The Monitoring Officer and the Independent Person considered that given the *R(Harvey) v Ledbury Town Council* [2018] EWHC 1151 (Admin) ruling, which established that local authority's governance arrangements are centre stage when seeking to address alleged misconduct under the Localism Act 2011, and taking into account all factors, the Monitoring Officer considered that Councillor Howe may have breached the requirements of the Code of Conduct and the issues raised within the self-referred Code of Conduct complaint are serious enough to merit further investigation.

4.9 It should be noted that it is not part of our role to consider or necessarily comment on the way in which the Parish Council have dealt with any of the concerns raised by the Clerk, including their decision to place restrictions on the way in which Councillor Howe can interact with the Clerk and their subsequent decisions to re-enforce those restrictions. The scope of this investigation is limited to considering whether Councillor Howe's conduct towards and about the Clerk amounts to a failure to comply with the Parish Council's Code of Conduct.

Background

4.10 Sue Coulson was Deputy Clerk to the Parish Council from 2009 until 2014. When the previous Clerk left, Mrs Coulson was appointed to the vacant position. It is common ground that between 2011 (when Councillor Howe became a member of the Parish Council) and 2014, Councillor Howe and Mrs Coulson enjoyed a positive working relationship.

4.11 When the previous Clerk left the Parish Council, Councillor Howe felt that the job should have been externally advertised. Mrs Coulson told us though that it was well known that she was being groomed to fill the role, with the Council investing money in her CILCA training. She told us that that Councillor Howe was given ample opportunity to formally object to her appointment as Clerk, however he limited himself to commenting to others informally that he did not think her the calibre of person needed for the role.²

4.12 The Clerk told us that while Deputy Clerk, she had seen Councillor Howe make life difficult for her predecessor and that as soon as she was appointed to the role, he began to do the same with her. To illustrate the ongoing concerns she had with Councillor Howe's conduct, she provided us with a chronology of events from 3 November 2014 until 16 January 2017; this was the point at which Councillor Howe was told that he was no longer permitted to email, write to, telephone or text the Clerk directly; any necessary communication with the Clerk / Parish Council would have be addressed to the Chair or Vice-Chair of the Council.

² This was denied by Councillor Howe, who told us that it was the Chair of the Council who had questioned whether Mrs Coulson was up to the job

4.13 The following evidence and considerations are based on the events that were set out in the Clerk's chronology.

Councillor Howe's blog article

4.14 The Clerk told us that following her appointment (1 March 2014), Councillor Howe very quickly began to monopolise her working day with ongoing queries and requests for information, despite having no remit from the Parish Council to do so. The Clerk said that she was eventually prompted to formally report her concerns about Councillor Howe's conduct by comments he made in a blog that he posted on a website³ run by CPALC (Communities, Parishes and Local Councils). Although Councillor Howe wrote the article anonymously, members became aware of it after Councillor Howe had encouraged them to use the website themselves as a learning resource. Councillor Howe has confirmed to the investigation that he was indeed the author.

4.15 The article, which was posted on 3 November 2014, read as follows: "***It was resolved? How many meanings does the word 'resolve' have? Out of the blue our last minutes have been based on "NALC guidelines" we were not given any information as to who made this decision. The minutes are now meaningless as they do not contain details of any of the factors we discussed and, in any case, do not follow NALC guidelines, below are a number of agenda items marked as resolved.***

- 1. A Councillor raised an objection to previous minutes as a discussion with members of the public had been omitted, the Chair got someone to propose and second the minutes and moved to the next item without allowing us to vote. Resolved*
- 2. At the last meeting we were given a copy of an old policy document and told it had been changed, we voted and moved on to the next item. So we hadn't seen the changes in writing and it wasn't mentioned in the minutes, oh and I nearly forgot to mention this item wasn't on the agenda! Resolved.*
- 3. The Clerk launched a personal attack on a Councillor for making what she claimed was a personal attack on her at the previous meeting. No vote taken. Resolved.*
- 4. The next item was a kangaroo court against me, the details are too tedious and it wasn't clear from the agenda item it related to me so it took me by surprise. A lot of my fellow Councillors were clearly embarrassed. Although the agenda item said "To consider" no vote was taken. Resolved.*

Note the irony here you can't criticise the staff but its open season on Councillors. So the word 'resolved' covers items that may or may not have

³ The website no longer exists

been voted upon. At one stage a Councillor asked why we didn't record how the voting went but they were given the brush off. A new Councillor, who is a professional person, asked how we could possibly operate like this as there was no audit trail for the decisions we were making with public money. After the meeting the Clerk approached the Councillor and said she couldn't understand what his problem was. To add insult to injury we were handed 11 pages of financial documents and work schedules at the start of the meeting and given a minute or so to look at them =, no doubt these will be shown as Resolved at the next meeting! We are a large PC with 17 staff (don't ask) and an income of £500,000 and have a Clerk and Chair who don't seem to take accountability seriously. It would appear the majority of my fellow Councillors don't care or don't understand the potential problems we are storing up".

- 4.16 Councillor Howe told us that the website was a forum for people who were interested in Parish Councils. He explained that the idea around the 'blogs' was that a user could post issues they might be having and receive advice from other users. Councillor Howe told us that while he did post the above article on the website, he was careful to do so anonymously and made sure that he did not mention the name of the Parish Council he was referring to.
- 4.17 The Clerk acknowledged that the identity of the Parish Council, and therefore by extension her own identity, would not have been easily discerned from the article; clearly though it was recognised by their own members, who had been encouraged to visit the site by Councillor Howe. The Clerk told us that the content related to Council business and included the insinuation that fraudulent activity was going on at the Parish Council. She also expressed concern that Councillor Howe's blog contained unsubstantiated comments and actions supposedly made by her during the Parish Council meeting.

Parish Council meeting, 8 December 2014

- 4.18 The Clerk told us that around this time, Councillor Howe was publicly expressing a concern that the Parish Council's reserves were too high. At the Parish Council meeting of 8 December 2014, while the Clerk was delivering a budget report to members, Councillor Howe referred to a public inquiry that had been held in Lydney (Lydney Town Council in Gloucestershire). The Clerk told us that this public inquiry related to a case of fraud and that Councillor Howe seemed to be comparing the situation at Lydney with that at the Parish Council. The Clerk said at interview that she told Councillor Howe that he was 'scaremongering'. At interview she acknowledged Councillor Howe's right to bring such concerns to the Parish Council's attention. She though felt that it had been inappropriate for him to do so whilst she was delivering the budget report.
- 4.19 On 15 December 2014, Councillor Howe emailed the Clerk as follows: "*At the meeting held last Monday you said that by Law that we had to keep a reserve of at least six months precept and that we could legally have a reserve of up to three years precept. As you said it was the Law. I understood that to mean that legal action could be taken against us if we didn't have a minimum of six months reserve. Councillor Rollings said that this was the Law then the Parish Council*

could do nothing about it and if I had a problem regarding this Law, I should approach my local MP. So it appears he shared my opinion that this is set in statute and enforceable. I have decided that I will take the advice and see my MP. So will you please let me have 1. Details of the law you were referring to and the sanctions that could be taken against us as a parish council if we don't have a minimum of six months reserve. 2. A copy of the Parish Council's policy regarding reserves. 3. A copy of the last risk assessment of the reserves."

4.20 Councillor Howe told us that this email and others were never responded to.

Councillor Howe's ongoing interactions with the Clerk

4.21 The Clerk told us that her concerns about the impact Councillor Howe's conduct was having on her ability to do her job led her to write a confidential report for the Parish Council's Management and Policy Committee. In it, she informed members that she had received 29 emails from Councillor Howe in ten months, which had led to her feeling overwhelmed and stressed. She stated that he regularly asked for information that was either easily available on the website or had already been provided in an agenda pack; he seeks information about Parish Council decisions and often challenges them; he quotes legal acts and sections in order to intimidate her; and he makes her feel intimidated and incompetent.

4.22 The Clerk's report was considered at that Committee's meeting of 22 December 2014. The minutes of this meeting read: *"The Clerk had reported her feelings of stress and undue pressure to the Chair who advised that the matter should be raised at the next meeting of the Management and Policy Committee to seek their support on resolving the situation. The Clerk reported to Councillors that she was receiving an unacceptable number of emails from a Councillor that were increasing in regularity and becoming more demanding, causing her stress and making her feel she is under excessive scrutiny. The Clerk stated that her preferred option would be for the Management & Policy Committee to deal with the situation informally at this stage... **RESOLVED:** that appropriate advice be sought by the Chair and a letter then sent to the Councillor concerned by recorded delivery as soon as possible."*

4.23 On 9 January 2015, after considering the Clerk's report, the Chair of the Council (Councillor Marshall) wrote to Councillor Howe on behalf of the Management and Policy Committee: *"I write to inform that our Clerk, Mrs Coulson has approached the Management & Policy Committee to ask for their assistance in resolving a situation which is causing her stress and interfering with her ability to undertake her work. She reports receiving an unacceptable number of emails from you, in which you ask numerous questions, thus placing unreasonable demands on her workload as she tries to deal with your queries. The Council is responsible for the conduct of its Members towards its Employees and has a duty to protect them from unreasonable behaviour. Failure to do so could result in a fundamental breach of trust and confidence between the Employee and its Employer. This would be a breach of Contract and could result in the Employee resigning and submitting a claim for Constructive Dismissal. It is regrettable that this situation has arisen, however Mrs Coulson is Clerk to the whole Council and responsible to it as a corporate body. Her time cannot be monopolised by individual Member's*

to the detriment of the rest (see Member/Officer Relationship Protocol). The Management & Policy Committee has decided at this stage to deal with the situation informally in order to protect the clerk from further stress and to prevent the matter progressing to a formal grievance. If you would like to discuss this matter informally with myself and another member of the Management & Policy Committee, please inform me and I will arrange it.”

- 4.24 On 17 January 2015, Councillor Howe responded to the Chair: *“Thank you for your letter I am sorry to hear that the Clerk is upset. I note that it is not the tone or content that concerns the Clerk or yourself but the "unacceptable number of emails" I am sending and "the unreasonable demands" I am making on her workload. But you have not included any evidence to support these claims and I can't see how attending a meeting will help unless you give me a clear idea in advance as to what you think I have done wrong. We have been fellow Councillors for nearly four years and as Chairman you would have been fully aware of the impact your letter would have on me, especially as you sent it recorded delivery. There have been several incidents recently where I feel I have been unfairly treated and this is beginning to impact on my health as I take my role as a Councillor seriously. As Chairman you have a duty of care towards me so I assume before you prepared your letter you carried out an independent and thorough review of my emails to satisfy yourselves that the Clerk was justified in making her comments. I can only assume that as a result you must have reached the conclusion that my breaches were too serious to be resolved by a quick telephone call or a word with me at a Council meeting and that a formal letter was required. This review would I hope would have included listing the emails, and then estimating the amount of time that was required to reply to compared to the value of the information / help I required. In addition, I would hope that you considered the parts of the Protocol relating to the obligations that the Clerk has towards the Councillors and also established precisely which parts of the Protocol you consider each of my emails have breached. Will you please provide me with the results of your review including details of which emails you are referring to, exactly which sections of the Protocol you consider I have breached, the amount of time you estimate the Clerk would have taken to respond and what you consider is a reasonable number of emails based on the description of the Clerks role in the protocol.”*
- 4.25 On 25 February 2015, Councillor Howe wrote to Councillor Marshall's again: *‘I have had a word with the Monitoring Officer and asked them if they were prepared to attend the meeting with you to try and resolve our differences, but they are only prepared to act once a complaint has been made. So I have agreed to attend the meeting with you and one other Councillor as you suggested so that you can explain what I have done wrong and so that I can establish what my rights are as a Parish Councillor with regard to the Clerk and vice versa for the future. As this is a complaint against myself my only proviso is that I am allowed to bring a third party with me (as happened when my complaint against the previous Clerk was heard) to take notes.*
- 4.26 Councillor Marshall sought advice from Leicestershire and Rutland's Association of Local Councils (LRALC) before responding to Councillor Howe's email. In her response Councillor Marshall confirmed that no official complaint had been made

about Councillor Howe's conduct; she was simply seeking to resolve the matter informally and that the offer of an informal chat was to simply to allow Councillor Howe to discuss the Clerk's concerns. Councillor Marshall agreed that Councillor Howe could bring another Parish Council member to the meeting.

- 4.27 Councillor Howe did not respond to Councillor Marshall's email and neither party took any further steps to ensure that the meeting went ahead, or the Clerk's concerns were addressed.
- 4.28 When asked by us about the number of emails he had sent the Clerk, Councillor Howe stated: *"When I got the formal letter saying about me harassing the Clerk, I checked my email correspondence to the Clerk. I could trace twenty-seven emails sent in the seven months before the letter. There may be the odd one or two. I only send one email about one topic to keep things tidy. Twelve of the emails were replies to requests from the Clerk. Of the remaining fifteen: three were about obscene spam I received to my Council email address; three were about standing orders (as the link on the website was out of date); this leaves nine emails in seven months. In total I had asked three questions and asked for copies of two documents. I do not feel this represents what I was accused of in the letter sent to me, which was unreasonable requests, monopolisation of the Clerk's time, numerous emails and too many questions..."*
- 4.29 Councillor Howe did tell us that he would be able to provide us with copies of all these emails so that we could be satisfied that they did not represent unreasonable or intimidatory requests. To date not all of these emails have been provided; we have though seen the emails sent in the two months that immediately preceded the Clerk raising her concerns.

Councillor Howe's complaint against Councillor Marshall

- 4.30 On 10 April 2015, Councillor Howe submitted a Code of Conduct complaint against Councillor Marshall. In his complaint, Councillor Howe raised the fact that the Clerk had accused him of 'scaremongering' during the Parish Council meeting 8 December 2014 (see paragraph 4.12) and that Councillor Marshall, as Chair, had done nothing about this '*personal attack*' against him. Councillor Howe complained about Councillor Marshall's letter of 9 January 2015 (see paragraph 4.14), stating that the contents of it were not based on fact and that the concerns raised by the Clerk about his actions were untrue.
- 4.31 Councillor Howe's complaint against Councillor Marshall also included a copy of the Audit Commission's report on fraud risks in Parish Councils. In relation to this Councillor Howe wrote: *'I enclose a copy of the Audit Commission leaflet on fraud risks in Parish Councils and would make the point that having investigated fraud for over 30 years I am not making any accusation of fraud. But I would like to highlight the following comments, "in some places friendship with Council Staff become too close. Some parish councillors can leave too much unquestioned, unchallenged or insufficiently scrutinised. Your duty is to the taxpayer and citizen. If you think something is not right say so". Some of the warning signs are "Hesitancy, avoidance or confrontation when asked direct questions, lack of openness and transparency". [Councillor Howe's*

emphasis] *I feel those comments exactly mirror what has happened here. In April 2013, despite some opposition, the full Council voted to support my motion that we should constitute a Working Party to review the Internal audit procedures in the light of an Audit report into Lydney Parish Council. But despite the vote, no subsequent action was taken to form one.'*

- 4.32 Councillor Howe's complaint was assessed by the Borough Council's Monitoring Officer who decided that the complaint was a matter for the Parish Council to deal with directly because it related to either the Clerk's conduct or internal governance matters; not Code of Conduct issues relating to Councillor Marshall.
- 4.33 In his comments on the complaint, the Borough Council's Independent Person made a point highlighting the fact that Councillor Howe clearly believed that there were issues concerning the competence of the Parish Clerk to perform her duties. The Independent Person suggested that Councillor Howe may benefit from training so that he could better understand the remit and responsibilities of the Parish Clerk. He also suggested that the Parish Council review the types of questions that should be referred directly to the Clerk and which should be forwarded via the Chair, as this may reduce the amount of time the Clerk was having to spend dealing with Councillor Howe's correspondence.
- 4.34 On 24 April 2015, the Monitoring Officer wrote to the Clerk with notification of the decision to take no further action.
- 4.35 On 18 May 2015, during a closed session of the Parish Council, Councillor Marshall referred to the complaint that Councillor Howe had made about her. Councillor Marshall told members that the Monitoring Officer had decided that the complaint did not warrant any further action. She added though that both the Monitoring Officer and the Independent Person had pointed to the fact that there appeared to be some confusion with regards to the respective roles played by parish councillors and their clerk. Councillor Marshall said that useful information could be found in the handbooks and that training was available for anyone who might find it useful. She mentioned that it had been a stressful time, but the matter was now closed and there was no recourse to the Monitoring Officer.
- 4.36 The Clerk told us that she was very concerned about the contents of the complaint made by Councillor Howe, particularly the part relating to the Audit Commission's leaflet on fraud risks.
- 4.37 Councillor Howe told us: *"I got fed up with being attacked and the only way I could think of to resolve the issues with the Clerk was to enter a Code of Conduct complaint against the Chair, my rationale being that the Chair was responsible for the Clerk's behaviour. I had been elected and I had the best interests of the electorate at heart."* Councillor Howe acknowledged referencing concerns about fraud in his complaint; he stressed though that he was simply highlighting the risks rather than alleging that fraudulent activity was taking place: *"As part of the complaint I put a paragraph in the complaint regarding fraud although I did not suggest that fraud was going on at the Council. These comments were supposed to be in relation to the fact that I was being denied information from the Clerk / Council and that this was similar to comments made in a report that I mentioned*

in my complaint. I do not believe there is any fraud or corruption going on at the Council.'

- 4.38 We note that prior to retirement, Councillor Howe was a fraud investigator and as such may have been particularly alive to the potential risks. In our view Councillor Howe was less alive to the impact his comments may have had on others within the Parish Council. We will consider this in more detail below.

Continuing emails from Councillor Howe and a second blog article.

- 4.39 In June 2015, the Clerk sought further advice from her Union regarding her concerns about Councillor Howe's conduct. The Clerk told us that Councillor Howe continued to send her emails that included inappropriate demands for information and that inappropriately challenged decisions that had been made at Parish Council meetings. The Clerk said that Councillor Howe, having been advised not to monopolise her time with requests for information, began sending Freedom of Information (FOI) requests instead either directly or through the website '*What do they know*'⁴. FOI requests were at this time dealt with by the Clerk, which the Clerk was confident Councillor Howe knew very well. In her view Councillor Howe was clearly attempting to circumnavigate the Management and Policy Committee's request for him not to ask the Clerk directly for information without the agreement of the Parish Council.
- 4.40 On 26 August 2015, Councillor Howe posted another blog on the CPALC website: *'In the past I have posted about my attempts to get my Parish Council to have a serious think about why they are hoarding so much money in 'the reserves' things have reached an interesting stage so I thought I would post an update. I decided to raise motions about the reserves and our lack of input in the budget process, with regards to the former in April we had £425,000 in a current account and recently over £150,000 has been added to earmarked reserves with (sic) this ever being discussed. With regards to the latter the Clerk prepares the Budget gives a choice of rise in precept, we then have about 40 minutes to an hour then a vote is taken and we are not allowed to discuss it again. As far as I can find out not a single Councillor has any input pre-Budget. Last year four separate councillors raised points about the budget but the Clerk told them the budget meeting was not the appropriate forum and that was that. So in order to get some facts to support my motions I asked some simple questions such as the amount of surplus over the budget figure for the last 4 years, who had input into the budget, who added over £150,000 to our reserves since April this year, how much was split between current and deposit accounts and when we had we last reviewed the reserves. The response was a cease-and-desist letter claiming I was harassing the Clerk and preventing her from doing her duties. I think it would have taken at most 15 minutes to reply, the Monitoring officer wouldn't help me. I reissued my request and in reply received pages of ranting which didn't further the situation. One of the more bizarre claims was it would take weeks of time to reply. I pointed out about the Freedom of Information Act and the Clerk*

⁴ The 'What do they know' website reports that Councillor Howe contacted the Clerk via their site on 20 October 2017, 18 January 2019, 24 June 2020 (x3), 27 July 2020 (x3), 2 August 2020 and 20 August 2020 (x3). These concerned five separate FOI requests.

claimed I hadn't mentioned it, I pointed out that I didn't have to. I asked her to report me to the Monitoring Officer as clearly I was in the wrong and she wouldn't. I pointed out that were a parishioner to have asked the same questions she wouldn't have sent the same response but she ignored the point. She refused to reply or send a formal refusal under the FOI and when I forced the issue, she told me the information commissioners had told her to ignore me. I checked by phone with them and they said they would never have said that. So I've passed this all over to the information commissioners. To head me off at the pass the management and policy (or as I call them The Chosen ones) were told by the Clerk, we needed a reserve policy, and she drafted it and they agreed it, it was then passed to us to vote. This is the same Clerk, who late 2014 publicly accused me of being a scaremonger for suggesting we reviewed the reserves, and also said I was in breach of the law. The minutes of that meeting were heavily edited. How do I know? Well the clerk posted the wrong set on the website. The policy document is rubbish and I have serious concerns about some of the claims and information used in support of it, but the biggest flaw is that although we will carry out an annual risk assessment, the reserve is pre-set at 60%. Luckily someone else pointed this out. They were a member of the m&p, but didn't attend the previous meeting, and I spoke to them shortly before the meeting. The Chair told them that they were breaking the rules about collective responsibility but then eventually accepted that the policy was flawed and withdrew it. In any case, 60% is well above the recommended minimum of 25% for a council of our size, (£210,000 compared to £90,000). Then another member of the m&p started ranting about how much time he spent on behalf of the Council, and that people like me should be ashamed that we wouldn't accept the proposals. He wanted a vote but didn't get one. But it was the next agenda item that was classic, The Chosen Ones have decided to revise standing orders so that a councillor cannot request any information from the clerk, as it would involve the Clerk's time so any councillor that wants any information will have to ask for the matter to be "agreed by the Council."

- 4.41 The Clerk told us that Councillor Howe's comments as shown above prompted her to seek advice from her Union once again. She was advised to raise the matter with the Parish Council with a view to lodging a formal grievance.
- 4.42 Councillor Howe told us: *'I am not using the FOI process for harassment. There is a protocol by which I should receive information as a councillor. If that was complied with, I wouldn't need to seek FOI requests. If I was going over the top with my requests, it is up to the Chair to address it and inform me of this. This isn't the case; it's a blanket refusal to provide me information.'*

The Broadnook consultation event

- 4.43 On 28 January 2016, public consultation about a proposed local development known as 'Broadnook' took place at the Village Hall. The Clerk told us: *'The Broadnook consultation event was being held in the village hall, which is attached to my office. Councillor Iain Bentley came from the village hall and knocked on my office door. I let him in, and he was very agitated and said "Sue, Julian is in the hall, he is bad mouthing you something terrible to Mr A [the organiser of the event] you need to stop him Sue, now, it's awful". I thanked Councillor Bentley*

for letting me know and I went through to the back of the hall and caught the eye of the Chair, Councillor Ann Marshall. I told her what Councillor Bentley had said and she went over to where Mr A the event presenter and Julian were standing and she broke into the conversation. This put a stop to Julian saying anything more and he walked away from the group. After a few minutes he left the village hall. Councillor Ann Marshall asked Mr A to come into my office for a second, which he was happy to do. I informed Mr A of what I had been told by Councillor Bentley and Mr A confirmed that to be correct. He didn't know who Julian was or that he was a Parish Councillor at the time. He confirmed that Julian was being very critical of me; calling me incompetent and that the Parish Councillors were no better - they are all clueless and are an absolute waste of space and money. Mr A added that he felt uncomfortable with this inappropriate conversation and had tried to move away from Julian, but Julian followed him, he said that Julian was in a very agitated and angry state and clearly had issues with the Clerk and the Parish Council. The Chair, Councillor Ann Marshall I'm sure will be able to verify this.'

4.44 When asked about the Broadnook consultation event, Councillor Howe told us that he was unable to comment on it as he could not recall the incident due to it being too long ago. He stated that no one had ever raised the issue with him at the time or since.

4.45 The following day, the Clerk wrote to Councillor Marshall as Chair: *"It is with a heavy heart that I am writing this letter, but I feel that Cllr J Howe's behaviour has now reached lunatic levels of ridiculousness, levels that are dangerous and damaging to my professional reputation and my career, particularly because he cannot and has not substantiated any of his accusations, comments and allegations, and still feels he needs to keep spewing them out. This has all been brought to a head by events which took place yesterday, Wednesday 28 January 2016 at the Broadnook Development consultation event in the village hall (at which I was not present). He was heard making derogatory remarks about me to the hirer (someone he had never even met before) and this was heard by a third party who then went out of their way to come around to the office to make me aware of what they considered was unacceptable behaviour by Cllr J Howe at a public event, they referred to the derogatory remarks that were being imparted by Cllr J Howe to the hirer about myself, and they were asking if there was anything that I could do to stop it. As you will recall, you were in the hall at the time and so I was able to alert you to this immediately, you then approached the hirer, and he was asked to step into the office, the hirer did this willingly and he appraised you and Cllr T Fowler who was also present, of the derogatory comments that had been made to him by Cllr J Howe, they also added that they were immediately conscious of Cllr J Howe's whole demeanour which appeared angry, dissatisfied and confrontational. Because Cllr J Howe's comments have been confirmed by the third parties, I consider this to be slander. Cllr J Howe is constantly trying to impress upon others that I am incompetent, and has even indicated in a written statement that he considers that I demonstrate the characteristics of someone carrying out fraudulent activities, which in my opinion could be considered as libel, because it was offered in a written statement by Cllr J Howe to the Monitoring Officer. I have no idea what I have done to deserve this kind of attention and so I feel I am now left with no alternative but to formally*

complain about Cllr J Howe's deplorable behaviour and actions, I have listed a number of clauses in the Member Officer Protocol that I feel have been breached. I am more than aware that there is little that can be done to resolve this situation, and that conscious efforts have been made in the past by the Management & Policy Committee to resolve it, all to no avail, but greatly appreciated by myself. Because it cannot be resolved doesn't mean that it is to be expected or accepted that Councillors are entitled to behave in this way. If I could ask for you to put it to the Management & Policy Committee to consider a complete communication ban on Cllr J Howe to prevent him from communicating with me in any way whatsoever. In fact I would go so far as to ask for a complete communication ban to be put in place preventing him from communicating directly with any member of staff, in any way whatsoever. My reasoning for asking for this to be considered is because it is typical behaviour for Cllr J Howe that when one well dries up he will find another, and I, as the Staff Manager has a duty of care to them, and I wouldn't wish this on anyone. To pre-empt his reaction to this suggestion, it will not affect him in carrying out his role as a Councillor, he should be going through the proper channels anyway, and that is through a Council or Committee meeting."

- 4.46 Also on 29 January 2016, Councillor Roy Rollings (no longer a member of the Parish Council) emailed the Clerk suggesting that there were certain issues that needed resolving at the Parish Council, including that at present it seemed like councillors cannot disagree on a matter without it becoming an issue. Councillor Rollings said that the relationship between her and Councillor Howe could not be allowed to carry on as it was. He suggested an informal meeting to try and resolve the issues and draw a line under the whole thing.
- 4.47 The Clerk's response to the mail was to agree to meet with the Chair and Councillor Rollings; she was clear though that the meeting was not going to be about entering any form of mediation with Councillor Howe and would not involve any other councillors: *"It will be purely to discuss that there are processes in place for dealing with staff matters, and that Councillors (the Council) need to adhere to these processes meticulously to avoid Grievances being submitted by members of staff which could potentially lead to employment tribunals. That is why it should be a collective Council / Committee decision on how to deal with staff matters. All of this could potentially put the Council and myself in a very awkward position indeed and there is only so far that I can go in advising on this matter before compromising my own rights as an employee to be able to submit a grievance, added to which I do hope that this has not been progressed with Cllr J Howe before consent has been given by the member of staff concerned."*
- 4.48 The Clerk told us that, after seeking further advice from her Union regarding the incident during the Broadnook consultation, the Clerk rescinded her offer to meet. Meanwhile the Chair informed all parties that the Clerk's complaint about Councillor Howe's conduct would be discussed at the next meeting of the Management and Policy Committee, on 29 February 2016.
- 4.49 On 10 February 2016, Councillor Howe sent an email to the Clerk regarding a complaint he had made to the Information Commissioner's Office (ICO). The email read: *'As you know I lodged a complaint with the ICO against the Parish*

Council for its failure to respond to my requests for information. Although my complaint was by letter the ICO responded by email but I didn't receive it because Virgin Media had changed servers and the majority of my incoming emails were being auto deleted, which as you know is the reason why I was forced to change my email address. I have explained to the ICO why I didn't respond to their email and that in view of the delay I was prepared to let this matter rest. In their reply the ICO said "in my response I set out that from the evidence provided it appeared the Birstall Parish Councils response to your information request did not fully comply with the Freedom of Information act." As far as I'm concerned, I am entitled to ask for information to help me perform my duties as a Parish Councillor as covered by the councils own protocol let alone the Freedom of Information act. In future I expect my request to be dealt with quickly and courteously and if they aren't then I will have no hesitation making another complaint and publicising the results. Will you please put this email before the Management and Policy Committee so there is a public record of what happened. At the same time I would hope that the Committee review their Information Policy to ensure that in future the Parish Council fully complies with the obligations contained within the FOI.'

- 4.50 The Clerk forwarded this email to the Management and Policy Committee, stating that she felt it was disrespectful, demanding and threatening.
- 4.51 On 19 February 2016 Councillor Marshall and the Clerk held a meeting with the Parish Council's Internal Auditor. During this meeting Councillor Marshall informed the Internal Auditor about the comments relating to fraud that had been made in Councillor Howe's Code of Conduct complaint against her in April 2015. The Auditor commented on this in his Internal Audit Report to the Council. He wrote: *'Whilst no unusual financial activity was found in the minutes reviewed, it was brought to my attention by the Chair and the Clerk/RFO that a letter of complaint has been submitted to the Borough Council Monitoring Officer which in part inferred inappropriate financial administrations within the parish office. However, from the internal audit work undertaken I have not found any evidence to support these assertions.'*
- 4.52 On 29 February 2016, a meeting of the Council's Management and Policy Committee was held. They reviewed the email sent to the Clerk on 10 February 2016 and resolved to send a collective response to Councillor Howe. The Committee considered Councillor Howes email to be rude, threatening and selective, and that it was also an inappropriate and unacceptable way of communicating with a member of staff. They also considered that his threats of making further complaints to be another attempt to bully and intimidate the Clerk into complying with his demands. They added that the timing was particularly inappropriate given that the Clerk had just submitted a complaint about his conduct.
- 4.53 On 4 April 2016 Councillor Marshall sent a letter to Councillor Howe on behalf of the Management and Policy Committee. The letter read: *The Management & Policy Committee have received a complaint from our Clerk, Mrs Coulson in respect of your behaviour towards her. The matters raised are: A report that you made derogatory remarks about Mrs Coulson to third parties at the Broadnook*

Development meeting on 28 January 2016 in the Village Hall; [and] A report that you sent an unacceptable email which Mrs Coulson viewed as threatening (sent 10 February 2016, copy attached/enclosed) At this time these matters have not been raised as a formal grievance, therefore the Management & Policy Committee would like to resolve this as soon as possible. To this end the Committee has decided to give you the opportunity to attend a meeting between yourself, Mrs Coulson, the Chair of Management & Policy, Councillor Ann Marshall and the Vice Chair, Councillor Robert Dickinson. Hopefully, this will allow the matter to be discussed, resolved and a way forward agreed.”

Matters related to the meeting of 26 April 2016.

- 4.54 On 26 April 2016, a meeting took place between Councillor Howe, the Clerk, Councillor Marshall and the Vice-Chair Councillor Robert Dickinson. At this meeting, the situation between the Clerk and Councillor Howe was discussed and Councillor Howes made some suggestions as to how things may be resolved.
- 4.55 On 28 April 2016, Councillor Marshall wrote to Mrs Coulson regarding the meeting held on 26 April 2016. In her letter she wrote: *“Thank you for attending the informal meeting at Birstall Parish Council on 26 April 2016, facilitated by Councillor A Marshall (Chair) and Councillor R Dickinson (Vice Chair). The purpose of the meeting was to address the complaint made to the Management & Policy Committee concerning Councillor J Howe’s behaviour towards you, It was informal, as you elected to deal with the matter this way in the first instance. The meeting was intended to allow a full and frank discussion between yourself and Councillor Howe and to be a means of resolving the complaint. Councillor A Marshall emphasised that matters discussed would not be minuted and should be treated as confidential by all parties, particularly as you are a member of staff. The ensuing discussion allowed you to air your grievances and for Councillor Howe to respond. There were some issues on which both parties agreed to differ. At the end of the discussion Councillor Howe suggested a way forward in response to your complaint by agreeing the following: 1. He will in future treat you and your role as Clerk with respect. 2. He will try to think before he acts. 3. He will draw a line under past issues. If this approach is not adhered to you reserve the right back to the Management & Policy Committee for further assistance. The Chair and Vice Chair were pleased that Councillor Howe attended the meeting and hope that it has assisted in paving the way to a more positive relationship between yourself and Councillor Howe in the future.*
- 4.56 On 5 May 2016, Councillor Marshall sent the following letter to Councillor Howe in relation to the meeting held on 26 April 2016: *“Thank you for attending the informal meeting held at the Parish Council offices on 26 April 2016, at which an agreed way forward was reached in order to resolve Mrs Coulson’s complaint. Enclosed are two copies of the letter sent to Mrs Coulson indicating the three points suggested by you to enable all parties to move forward. Could I ask that you sign one copy of the letter enclosed and return it in the envelope provided.*
- 4.57 On 22 May 2016 Councillor Howe sent the following letter to Councillor Marshall in response to her letter dated 5 May 2016: *Please accept my apologies for the*

delay in replying to your letter of the 28 April 2016 this is because I have been away on holiday. I am prepared to sign and complete the form enclosed with your letter. However, based on past experience, I would in return like a signed commitment from yourself that in future I will be treated with respect. I would also like the commitment to include clarification as to the role of the Clerk at meetings and what rights Councillors have with regards to support, information and getting motions on the agenda.”

- 4.58 Councillor Howe told us that he never signed the letter as requested by Councillor Marshall. He explained: *‘When we had a meeting about the issues I was basically told that I must sign a letter saying I would treat the Clerk with respect, there were no instances of exactly what I’d done. I said I would sign one if the Chair and the Clerk signed one to say they would treat me with respect. I was referring to the Budget meeting where the Chair had ridiculed me for raising the fact that the Budget was wrong. I wrote to the Chair afterwards saying that not only was she rude to me but why had no other councillor noticed the mistake. The Chair and the Clerk refused to sign a letter saying they would treat me with respect and the whole thing fizzled out.’*

Matters related to Councillor Howe’s ‘press release’ in the Birstall Post

- 4.59 On 7 November 2016, at a meeting of the Management and Policy Committee an agenda item was discussed entitled *‘To receive information of councillor Correspondence to the Clerk and the Chair relating to placing items on the Agenda’*.
- 4.60 The minutes of the meeting recorded the following in relation to this item: *‘Cllr A Marshall explained that Councillors had received in their agenda packs copies of a thread of emails that had been received by the Clerk and the Chair from Councillor J Howe. 1. First email from Cllr Howe to Clerk: In this email Cllr Howe was requesting that the Clerk produced reports on various items; nowhere did it mention that he wanted the items placing on an Agenda. 2. Clerk’s response highlighted in Yellow: The Clerk responded and copied in the Chair and Vice Chair of the Council. 3. Email from Cllr Howe to the Chair complaining about the tone of the email. Cllr J Howe emailed the Chair complaining about the tone of the Clerks response and requested that the Chair instructed the Clerk to place his items on the Agenda. The Chair responded advising him of the correct procedure for requesting items to be placed on the Agenda. Both the Chair and Vice Chair had confirmed that they could see nothing wrong with the Clerks response and that it was polite and factual on each point. 4. Chairs response. The Chair asked Cllr J Howe if he was making an official complaint against the Clerk. 5.Cllr Howes response to the Chair. Cllr J Howe confirmed that he was not making a complaint against the Clerk and asked to meet with the Chair to discuss the issues; and also asked for the procedure to contact NALC direct to get information on how to get items on the Agenda. 6. Thread of emails to LRALC highlighting matters: This whole matter and copies of all correspondence was passed to LRALC for their advice on this matter.’*

It was confirmed that: the Chair does not have the power or authority to issue instructions to the Clerk (or any other member of staff); the Chair is not duty bound to meet with Cllr J Howe to discuss any matters, least of all Staff Matters.; the Chair is not duty bound to respond to the communications from fellow Councillors; no individual Councillor can contact NLAC or LRALC directly - the Council is the corporate member not individual Councillors. LRALC took the decision to put all the information to NLAC LNALC's response was read out at the meeting.

Cllr A Marshall stated that the correct process had been explained to Cllr J Howe in the past, that she felt no need to meet with Cllr J Howe, but thought that it would be good practice to reaffirm at full Council the correct process for requesting items to be placed on Agenda's in Section 9 of the Council's Standing Orders, along with a copy of NALC's response, and to further remind all Councillors that there is a full explanation of the roles of Councillor, Chair and Clerk in the Councillors Handbooks. This course of action was agreed by Members of the Committee.'

4.61 On 1 December 2016 the Birstall Post⁵ published the following letter from 'J.Howe': *'I'd like to apologise to the residents of Riverside Ward who asked me to raise their concerns about the problems on Meadow Lane/Worcester Avenue including traffic jams, cars blocking gateways, large vehicles, flooding, people staying overnight on Parish Council land etc. I asked for these to be put on the Parish Council agenda so that their concerns could be discussed but the Clerk refused. My request for a progress report on the Hallam Fields Community Hall was also refused. At the Parish Council meeting on the 15 November 2016 the Chairman claimed that the Clerk has sole responsibility for deciding what goes on the agenda and what doesn't. We were not allowed to debate the matter. Because of this people have asked me what's the point of electing Parish Councillors if they are prevented from raising legitimate concerns raised by the parishioners as surely that's the main role of a Councillor? Maybe someone else would like to answer that question? On a positive note, after many months of pressure from myself our Local Authorities have finally agreed to fund a fence on Meadow Lane to prevent people and vehicles dropping into the ditch. I will continue to press to get Meadow Lane adopted. Also we now have a bus shelter at the terminus on Wanlip Lane. There is no doubt that the shelter would never have been erected had it not been for pressure from myself backed up by Christine my wife collecting 127 signatures on a petition. As a result of this the Parish Council reversed their publicly stated policy of refusing to support bus shelters (Birstall Post 336). I feel sorry for the people who've been exposed to bad weather at that stop over the years when our Local Authorities could have erected a shelter at anytime. Our next step is to campaign to get the kerb raised at the two stops on Wanlip Lane and hopefully Councillors representing all three tiers of Local Government will support this as this has been going on for well over 10 years.*

4.62 On 5 December 2016 Councillor Howe sent the following email to the Clerk: *'I understand that a Parishioner has recently asked if a further bus shelter can be*

⁵ The Birstall Post is a community newspaper published once a month

erected in the village, will you please let me have copies of any correspondence with regards to this request."

- 4.63 On 6 December 2016, the Clerk sent the following email in response: *'No requests for a bus shelter have been received in the office from a Parishioner.'*
- 4.64 Councillor Howe responded to this email the same day. He wrote: *'Let me rephrase my request. I understand a Parishioner has asked for a further Bus Shelter the (sic) be erected in the village and a request for partial funding of projects has been made to the Parish Council will you please supply me with copies of the correspondence relating to this request'*
- 4.65 The Clerk forwarded the email chain to Councillor Iain Bentley, adding the following remarks: *"I know that you have discussed this with Cllr Howe so can you answer his request please, Cllr Howe clearly does not believe me or understand what I am telling him, that a Parishioner has NOT made a request to the office."*
- 4.66 On 8 December 2016 Councillor Howe sent the following email to the Clerk, copying in Councillor Bentley: *'Considering its low cost the bus shelter on Wanlip Lane has been one of the most successful projects in the village for a long time and both my wife and I have received a lot of positive comments. So I was pleased to hear that another shelter has been requested although of course the Parish Councillors will need to establish that we are getting "value for money" before we can agree whether to fund it or not. Please send me copies of any response the Parish Council has made to this request as it would not be appropriate to ask Councillor Bentley for them. I'm unclear as to the procedure I assume any request such as this is automatically included on the Agenda of the next Estates and Recreation meeting? If this isn't the case will you let me know what the rules are? Can you confirm that even if Birstall Parish Council didn't have the General Power of Competency the Parish Council Act 1957 S1 allows us to provide Bus shelters? Finally please don't draw assumptions or use capital letters in your emails to me especially when you copy third parties in.'*
- 4.67 On 9 December 2016, the Clerk forwarded Councillor Howe's email of 8 December 2016 to the Chair and Vice-Chair stating: *'Please see a further email from Cllr J Howe. due to recent events and ongoing legal advice being sought, can I ask the Chair and Vice Chair of the Council for their permission not to respond to any further emails from Cllr J Howe at this moment in time. I look forward to hearing from you.'*
- 4.68 The Chair, Councillor Marshall responded to the Clerk the same day. She wrote: *"I agree under the circumstances you should not respond to e-mails from Cllr Howe, given recent events and the fact that we are awaiting legal advice. Ann Marshall. Chair of Birstall Parish Council."*
- 4.69 On 12 December 2016, a meeting of the Parish Council took place. The issue of Councillor Howe's letter to the Birstall Post was discussed. The minutes of the meeting record that the majority of members felt that Councillor Howe's letter contained unfounded and incorrect information. It was resolved that a letter be

drafted to the Birstall Post to be circulated amongst councillors before submitting for publication.

- 4.70 In the next issue of the Birstall Post (January 2017) a letter from 'Birstall Parish Council' was published in response to the letter from 'Julian Howe'. It read: *'Councillors were saddened and disappointed that Julian Howe chose to publicly criticise two members of the Council team and to claim credit for actions which were not directly attributable to him. The Clerk did not refuse to put items on the agenda as Julian Howe asserts. He did not request this or follow the prescribed process, which applies to all Councillors, when they wish to request items be placed on agendas. However, the Clerk answered his request, which was for a report back, in a polite and reasonable manner. The Chair did not make any claims re the Clerk's responsibilities. She merely read out to Councillors the National Association of Local Councils legal judgment on agenda setting. All Councillors received a copy. Julian Howe also claimed that it was his actions which led to the agreement to erect a fence to eradicate the Health and Safety concerns in respect of Meadow Lane ditch. This is simply not true. It had been an ongoing Council issue for a very long time. It was finally resolved by the Clerk, who negotiated a three-way funding agreement between Charnwood Borough Council, Leicestershire County Council and Birstall Parish Council. Parish Councillors are very disappointed that Julian Howe chose to attempt to damage the reputation of the Council, particularly that of the Clerk and the Chair in the press/public domain. The Council as a whole works hard for the residents of Birstall, and they consider it wrong that Julian Howe, as a member of that Council, publicly undermines his colleagues.'*
- 4.71 The Editor of the Birstall Post, Mr Jerry Jackson, also published the following statement in relation to Councillor Howe's letter published in the December 2016 issue of the Birstall Post: *'A letter in the December issue of the Birstall Post from Julian Howe contained an allegation that the clerk to Birstall Parish Council had refused a request from him to put items on the agenda. In fact, the clerk had not received a request from Julian Howe. The letter also stated that the Chair of the Council had 'claimed' what the clerk's responsibilities were in respect of setting the agenda, which implied the chair's remarks were arbitrary. They were in fact an announcement of legal advice from NALC. The allegations went unchecked as the letter was received shortly before going to press. I apologise for any distress the publication of the letter caused.'*
- 4.72 The Clerk told us that she did not receive a retraction or apology from Councillor Howe in relation to this letter. She stated that at no point had Councillor Howe made a request for the item to be put on the agenda. She sought further advice from her Union and then made a request for further support to the Management and Policy Committee. Her request included the proposal that a measure of no direct communication between Councillor Howe and the Clerk be imposed by the Council. The Management and Policy Committee agreed in principle to this proposal and resolved to take advice from LRALC and the Councils HR advisors to ensure that the Council were acting correctly.
- 4.73 In relation to his letter to the Birstall Post, Councillor Howe told us: *"We have a big problem with an unadopted road near my house. It's a big question of concern*

locally for my residents and something I campaigned about during the election campaign. I asked for a motion to be put before the Council to discuss it. The Clerk refused to put this on the agenda. I contacted the Chair who told me that it was only up to the Clerk what was put on the agenda. So I wrote to the local paper saying that the road was a matter of local importance and that I'd tried to put it on the agenda but the Clerk had refused. There was no legal reason to not put the motion on the agenda. I was elected on this issue and if it had been dealt with properly and discussed I would not have had an issue but it was not. The people I represent wanted to know why I haven't done what I said I was going to do. My letter was supposed to inform them that I had tried and the reasons why I had failed.'

Matters related to the meeting of 9 January 2017.

4.74 On 9 January 2017, at a meeting of the Management and Policy Committee, Members considered a request for further support from the Clerk. The Clerk's request referenced the agreement that had been reached on 26 April 2016: *"Clearly this agreement is not working. Cllr J Howe is determined to continue in the same vein as before which is causing me further undue stress and pressure with his unrelenting offensive and vexatious behaviour. This continuing harassment from Cllr J Howe has caused me to seek medical attention for stress related illness. I am a personally paid up member of ALCC and my Union Advisor has advised me that I am within my rights to request that Cllr J Howe has no further direct contact with me either by email, letter, phone or text and that he should be supplied with an alternative route of communication with another person(s). As you are aware, Cllr J Howe caused harm and damage to the Clerk's reputation and serious injury to feeling damage with the content of a letter he had published in the December issue of the Birstall Post, to which, the Editor (after considering all the information) has apologised to the Clerk and the Chair and will be issuing an apology in the next issue of the Birstall Post along with a response from the Council declaring that Cllr J Howe's allegations were untrue and unfounded. Upon returning to work after the Christmas break, there were three emails received from Cllr J Howe, written on 27 December 2016 to which I have not responded, the reasons being:*

i) Bus Shelter - Cllr J Howe has already had answers that he didn't like or accept and so this is his third request! I consider this email as vexatious; it is also due to be addressed at the Council meeting this evening.

ii) The flooding on Worcester Avenue allotments was concluded in October 2016 and removed from the list. The resolution was for the Clerk to report back after viewing the ditch, which I did in October 2016. The ditch was viewed by me the ETM and the Senior Groundsman, it could be seen that the water level was high, but it was not flooding, it is LCC's ditch and the Rangers have been emailed, no response has been received back and Cllr J Howe has been told this.

iii) Cllr J Howe did suggest a Public meeting, but this was deflected by Cllr R Rollings and so the Council did not agree to pursue setting up a public meeting at this moment in time, therefore, his motion would not be considered yet.

If I respond to Cllr J Howe with the answers above, he will not be pleased and it will only invite and encourage further offensive, vexatious and upsetting emails

from him. I have decided to keep them back and await the Committees decision on my following requests for further support.

a) To agree that no direct contact is to be made to the Clerk by Cllr J Howe (as recommended and advised by ALCC and LRALC) and to write to Cllr J Howe informing him of this.

b) Decide who 'the other person(s)' is to be for him to contact? I would suggest that it is not the Chair, because she suffers as much as the Clerk (she is not duty bound to be his first point of contact) it would appear, and can be evidenced, that Cllr J Howe appears to have a grudge against both the Clerk and the Chair. Would the Vice Chair be prepared to put himself forward as the first point of contact for Cllr J Howe?"

c) To inform the Council at the February Meeting of this decision and the reasons behind it, in closed session.

4.75 On 16 January 2027, after taking advice from LRALC and HR advisors, the Chair of the Parish Council sent the following to Councillor Howe: *"I write to inform you that at the Management & Policy Committee meeting on Monday, 9 January 2017, our Clerk sought further support from the Committee in respect of what she considers to be your continuing harassment of her. Sadly, your behaviour continues to cause stress to the Clerk. This is not the first time this matter has been raised. In April 2016, our Clerk again was forced to complain about your behaviour, I refer you to a letter sent inviting you to meet with the Chair, Vice-chair and Mrs Coulson to discuss and resolve the matter and agree a way forward. At the meeting held on 26 April 2016 agreement was reached on the way forward, in fact you, yourself, suggested at least two of the points. I refer you to the letter dated 28 April 2016, sent following the meeting detailing the agreed way forward. It is of great regret to the Management & Policy Committee that the Clerk has again been forced to raise the matter of your behaviour. She is exercising her right to refer back to the Management and Policy Committee for further assistance (stated in a letter dated 28th April 2016). Our Clerk has requested no further direct communication with yourself. Therefore, you will cease to: Email the Clerk; Write to the Clerk; or Telephone / Text the Clerk. This course of action is being taken to protect the Clerk, as an employee of the Council, from further stress and to avoid any action being taken against the Council. In order to facilitate any necessary communication relevant to the role of the Clerk, you will address such matters to the Chair and Vice Chair for their consideration."*

Events since the letter of 16 January 2017

4.76 The Clerk told us that since the above letter was sent, Councillor Howe has been using the website 'Whatdotheyknow?' to make requests for information. She told us: *'Councillor Howe has circumnavigated these stipulations by submitting requests to me via Freedom of Information requests or subject access requests. This is done via a website and if any requests are sent from this website*

regarding the Parish Council, they are received by me, which Councillor Howe is fully aware of.’⁶

- 4.77 When asked about the Freedom of Information requests he had submitted through the ‘Whatdotheyknow?’ website Councillor Howe told us: *‘the Clerk has suggested that dealing with the three FOI requests I sent took her 42 hours to respond to. This is a total exaggeration in my opinion. It seems to me that the slightest attempt to ask for anything receives an automatic ‘shutters down’ response and that councillors are just spectators in the process’.*
- 4.78 The Clerk did confirm that other than those requests, Councillor Howe has largely been operating under the terms of this letter ever since January 2017. She reported to us: *‘I am not entirely clear what Councillor Howe’s issues with me are, but unfortunately my working relationship with Councillor Howe is now unworkable and I cannot work with him directly. Since 2017, the problems have been largely resolved. There has been far less communications from Councillor Howe, although no one is restricting him from making contact with me via the Chair or Vice-Chair. He simply chooses not to do so. The situation for me has been vastly improved by the stipulations of the letter sent to Councillor Howe asking him not to contact me directly. I am aware that Councillor Howe is asserting that he cannot carry out his role as a councillor effectively without direct contact to me as Clerk. I do not accept this at all. He has had items put on the agenda since this time and the fact that he has to request things through the Chair or Vice-Chair makes no difference to him as far as I can see.’*
- 4.79 At interview Councillor Howe told us: *‘The frustration from my point of view is that these accusations were being made against me without any evidence to support it. Just statements that it was happening. Since the letter I feel completely hamstrung. I don’t feel that I can make requests sent through the Chair or Vice-Chair. It is humiliating and the one time I did do it recently my request was simply refused. Council rules state that all motions should go to the Clerk. The Council have revised the rules to state that anything that involves the Clerk’s time must be formally agreed by the Council. I do not feel this is necessary, as no councillors do make requests of the Clerk. I feel that there is no point in getting elected if the Clerk decides what is put on the agenda. There is an imbalance between the role of the Clerk and the members. I feel that the Clerk has exaggerated the amount of her time that is being utilised by my requests. I don’t understand why the Council refused to take NALC up on their offer of arbitration. I would have been quite happy to sit down and try and resolve the issues in this way. I would still be happy to do this although I feel a governance review is needed.’*
- 4.80 Councillor Howe also told us: *I very rarely ask for things, the idea is that members have their place which is to discuss and vote on issues and yet I have a recording of a meeting regarding a footpath where the Clerk intervenes and says that the footpath would be ‘a rat run and a terrible thing’. She is the Clerk of the Council she is not supposed to not get involved in debates and yet it is made perfectly*

⁶ The ‘What do they know’ website reports that Councillor Howe contacted the Clerk via their site on 20 October 2017, 18 January 2019, 24 June 2020 (x3), 27 July 2020 (x3), 2 August 2020 and 20 August 2020 (x3). These concerned five separate Fol requests.

clear in meetings by the Clerk which way she expects members to vote. I feel that a governance review is needed. Sometimes I feel that people get confused as to who the Chair of the Council actually is. The councillors very rarely put a motion on the agenda, it is run by the Clerk. My role is to represent the interests of the public who are forced to pay for the Parish Council and I do so politely. I keep my cool in the face of allegations of lying, despite the fact that everyone knows I record meetings and can prove I am not.'

5: Reasoning as to whether there have been failures to comply with the Code of Conduct?

Capacity

- 5.1 Before we make a recommendation as to whether Councillor Howe's conduct amounts to a failure to comply with the Code of Conduct, we need to decide if he was acting as a councillor (i.e. acting in his official capacity) at the relevant times.
- 5.2 Section 27(2) of the Localism Act 2011 requires all relevant authorities to adopt a code of conduct "dealing with the conduct that is expected of members ... when they are acting in that capacity" (my emphasis). The Council has reiterated this in its own Code.
- 5.3 The Code therefore does not seek to regulate what members do in their purely private and personal lives. The Code only applies to members when conducting Council business or when carrying out their constituency work. A distinction must be drawn between the individual as a councillor and the individual as an individual; a councillor is not a councillor twenty-four hours a day. Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by the Code; a link to that person's membership of their authority is needed.
- 5.4 In offering our own views on this, we recognise that the Localism Act is vague on the key point of what acting in 'official capacity' involves. Nor do we have any case law arising from the Localism Act to assist us on this. What we do have, however, is well established case law from earlier hearings. Whilst the wording in the current Code varies slightly from the previous model codes of conduct, cases concerning the former model codes remain of relevance as to how Councils must interpret what 'official capacity' means.
- 5.5 Clearly on those occasions that Councillor Howe was corresponding with the Clerk about Parish Council business, he was acting in his capacity as a Parish Councillor. Councillor Howe's actions in writing the blog (anonymously), attending the Broadnook consultation event and in writing to the Birstall Post are less clear cut.
- 5.6 Under the previous legislation, a restrictive view on capacity was generally taken by the Adjudication Panel for England, the First Tier Tribunal (Local Government Standards) and the High Court. Though relating to the former 2007 model code of conduct, the Upper Tribunal decision in *MC v Standards Committee of the London Borough of Richmond 2011* UKUT 232 (AAC) is a helpful distillation of the previous High court cases on capacity, those being – *Livingstone v Adjudication Panel for England (2006) EWHC 2533* and *R(Mullaney) v Adjudication Panel for England (2009) EWHC 72*. The principles stated in *MC* are:-
- (a) was the Councillor, as a matter of ordinary English, actually conducting the business of their authority, including the business of the office of councillor?

- (b) A fact sensitive approach is required to the above.
- (c) The question is one for the tribunal to determine, not a reasonable observer.

5.7 Judge Laverick specifically considered the use of social media by a councillor in First Tier Tribunal Case No. LGS/2011/0537. When considering the capacity in which a councillor was writing in an online blog, Judge Laverick took the view it was perfectly reasonable for a councillor to write posts in their private capacity even if they clearly identified themselves as a councillor. The key determining factor is whether the content of the post / message is sufficiently connected to Council business to engage the Code; to consider otherwise was found to be a disproportionate restriction of an individual's freedom of speech and right to a private life. Judge Laverick accepted that under those circumstances a councillor could make offensive and possibly defamatory comments that may affect the reputation of their Council without necessarily engaging that Council's Code of Conduct.

5.8 This issue was further considered by Judge Lister in First Tier Tribunal Case No. LGS/2012/0597, when he heard an appeal against a decision made by Surrey Heath Borough Council's standards committee. Surrey Heath's Standards Committee had found one of their councillors in breach of the Code when making general political and satirical comments in an online blog. In her considerations on the appeal, Judge Lister gave regard to the guidance that had been produced by Standards for England, which stated:

"Q. Does the Code apply to blogs, social networking sites, twitter etc?"

It is unlikely that private blogging will fall within the scope of the Code... It is important to draw a distinction between comments on a blog about council business and comment about general political issues. The context is important and the decision as to whether the Code is engaged is fact sensitive and case specific."

5.9 Judge Lister overturned the Standards Committee's decision, stating that although the member had been clearly identifiable as a councillor on the relevant blog, the reference to that position in his profile description was not an indicator that he was conducting the business of his authority when blogging. Again, the important determining factor is whether the content of the offending blog related to the Council or Council business.

5.10 As demonstrated above, the current legislation allows councillors to engage in a public debate about national and local issues without that conduct falling within the jurisdiction of the Local Government standards framework, even if their position as a councillor is evident. On the flip side though, a councillor's conduct can be found to have engaged the Code even where their identity / position as a councillor is not evident if they are making comments directly about Council business. As an example, a councillor who posts insulting, offensive and unreasonable comments about any Council officer anonymously would be found

in breach of the Code even if their online identity had not been discernible from their comments.

- 5.11 A key case in this area is *McTigue v Middlesbrough Council* (2009). Councillor McTigue made a series of postings on the forum of the Middlesbrough Evening Gazette using the pseudonym “Indie” which related to wheelie bin collections and were alleged to be insulting of a local resident. Councillor McTigue argued that she was not acting in her official capacity as all her comments on the forum were made in her own time and all using the pseudonym “Indie”. The Adjudication Panel held she was not acting as a councillor when commenting about things in general, but that she was acting within the ambit of the Code when the contents of her posts concerned Council business, even though she was using a pseudonym that did not identify her as a councillor.
- 5.12 The determining factor then is whether the content of any individual post / tweet / blog is sufficiently connected to Council business to justify potential regulatory intervention. In this instance, we are satisfied that the content of the blogs and the press release to the Birstall Post are about Council business and therefore that the matters do fall within the ambit of the Code. For similar reasons, we are of the view that Councillor Howe was also conducting Council business when discussing his view of the Clerk / Parish Council with the organiser of the Broadnook consultation event. The role of a councillor is to provide a bridge between the community and the Council. As well as being an advocate for their residents, representing their views at council meetings and signposting them to the right people within the authority, councillors are responsible for communicating back to their constituents their views on the decisions and actions of both the Council and their fellow councillors. Accordingly, we are satisfied that all the conduct referred to in the report falls within the jurisdiction of the Code.

Has Councillor Howe failed to comply with the Code of Conduct?

- 5.13 The intention of the Code is to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy.

Code Principles

- 5.14 Paragraph 1: Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurred are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and any provoking factors.
- 5.15 Paragraph 2: There are many definitions of bullying and it is often used interchangeably with harassment. The definition for bullying that we apply is based on the classification provided by ACAS. The definition for harassment that we apply reflects the definition set out in Section 26 of the Equality Act 2010.

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour involving an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Power does not always mean being in a position of authority and can include both personal strength and the power to coerce through fear or intimidation. Examples of bullying may include, but are not limited to:

- Verbal abuse, such as shouting, swearing, threatening, insulting, being sarcastic towards, ridiculing or demeaning others, inappropriate nicknames or humiliating language.
- Physical or psychological threats or actions towards an individual or their personal property.
- Practical jokes, initiation ceremonies or rituals.
- Overbearing or intimidating levels of supervision, including preventing someone from undertaking their role or following agreed policies and procedures.
- Inappropriate comments about someone's performance.
- Abuse of authority or power, such as placing unreasonable expectations on someone in relation to their job, responsibilities or hours of work, or coercing someone to meet such expectations.
- Use of unfair sanctions in relation to disciplinary or attendance procedures.
- Ostracising or excluding someone from meetings, communications, work events or socials.
- Sending, distributing or posting detrimental material about other people, including images, in any medium.

Harassment is any unwanted physical, verbal or non-verbal conduct that has the purpose or effect of either violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. Under the Equality Act 2010, harassment is related to one or more of the relevant 'protected characteristics' which include age, sex, race, disability, religion or belief, sexual orientation and gender reassignment. Harassment may be persistent or an isolated incident. It can also be intentional or unintentional; for example, if a person speaks or behaves in a way that they do not find offensive, but that another person does, then it can still be harassment – the feelings of the recipient are crucial. Examples of harassment (other than sexual harassment), may include, but are not limited to:

- Deliberate exclusion from work activity or conversations.
- Sending or displaying offensive material in any format (including posters, graffiti, emails, messages, clips or images sent by mobile phone or posted on the internet).
- Mocking, mimicking, belittling, or making jokes and comments about a person (or a group stereotype) in relation to their age, disability, gender reassignment, race, religion or belief, sex or sexual orientation.
- Use of unacceptable or inappropriate language or stereotypes relating to race or ethnicity.

- Deliberately holding meetings or social events in a location that is not accessible for an individual with a disability.
- Using profanities or swearing that could have the effect of intimidating a person.

Councillor Howe's conduct

- 5.16 When considering this matter, I am mindful that we are not being asked to assess a specific allegation from a third party as such; Councillor Howe took the decision to seek this investigation and the Monitoring Officer agreed on the basis that Councillor Howe did not fully understand the nature of the concerns that led to the Parish Council's decision as set out in their letter to him dated 16 January 2017 and, based on the evidence provided by the Parish Council, there appeared to be a prima facie case to answer.
- 5.17 The evidence set out in this report demonstrates that the relationship between Councillor Howe's and the Clerk has been strained for some time. This has clearly had a detrimental impact on both parties, with Councillor Howe's feeling as if his ability to represent his parishioners is being limited; and the Clerk feeling bullied and harassed by Councillor Howe's ongoing behaviours. I also have little doubt that this issue has also affected the effectiveness of the Parish Council as a whole. Councillors and officers are indispensable to one another; mutual respect and communication between both is essential for good local government. Councillors provide a democratic mandate to the council, whereas officers contribute the professional and managerial expertise needed to deliver the policy framework agreed by councillors. Their roles are different but need to work in a complementary way.
- 5.18 The relationship between the Clerk and Parish Council, and the Clerk and individual councillors, is legally explicit. In law the Council is a Corporate Body. In other words, it functions legally as a single entity. All its formal decisions are therefore the responsibility of the Council as a whole, and not those of individual councillors, whatever their personal views or how they voted on an issue. In this system, the only 'executive power' resides with the Parish Council as a legal entity.
- 5.19 The Clerk reports to the Parish Council as a body, and not to any individual councillor, even the Chair. Consequently, the relationship between the Clerk and members must be professional; there is also an obligation on all parties to remain at arm's length to maintain a demonstrable separation of respective roles and responsibilities. The Clerk has a key role in advising the Council, and councillors, on governance, ethical and procedural matters. That guidance may be unpalatable on occasion. The Council as a body though must be extremely mindful of its responsibilities to their Clerk as an employer. The actions of individual councillors can have a positive or detrimental effect on the position of the Council in this legal relationship, and councillors should act accordingly in their dealings with all members of staff⁷.

⁷ The EAT in *Moore v Bude-Stratton Town Council* held that a council was "vicariously" liable for the actions of a "back-bench" elected councillor who behaved abusively towards a council employee on

5.20 During this investigation we have focused on those areas of concern that were identified by the Clerk.:

- The anonymous blog articles written by Councillor Howe, in which he discussed Parish Council business.
- Councillor Howe's 'constant' requests and queries, that were sent without the agreement of the Parish Council and to an extent that monopolised the Clerk's time.
- A Code of Conduct complaint that Councillor Howe submitted against the Chair of the Council, Councillor Marshall, which included criticisms of the Clerk's performance and an insinuation that there may be fraudulent activities taking place within the Parish Council.
- Criticisms made about the Clerk by Councillor Howe to a member of public during a public consultation into a proposed local housing development.
- A press release that Councillor Howe issued to the Birstall Post, which included remarks about the Clerk which were untrue, unfounded and defamatory.

5.21 To deal firstly with the allegation that Councillor Howe harassed the Clerk by making too many requests of her, effectively monopolising her time. Councillor Howe has strongly argued that in those terms, and with no reference to the content of his emails being problematic, the sending of 27 emails over a 10-month period can surely not be described as 'harassment'. We would be inclined to agree. Certainly, it would be difficult to reach a conclusion that harassment had occurred on that basis alone.

5.22 To consider whether Councillor Howe's conduct in sending those emails amounts to the bullying and / or harassment of the Clerk, we must look both at their respective roles and the tone and manner of their exchanges. In simple terms, a councillor's role is providing democratic leadership and direction to the Council by representing members of the public and scrutinising service delivery. Officers have a responsibility to implement the policies agreed by councillors, organise, and deliver services, and provide unbiased, professional advice and support to them. If councillors and officers do not fully understand each other's roles it can lead to unfortunate misunderstandings. Although many of these can be considered in advance, there will always be issues to be worked through and building good relationships from the start will ease those discussions.

5.23 Councillor Howe clearly wanted to ensure that he had all the necessary information to not only be sufficiently informed when making decisions at Parish Council meetings; but to scrutinise and where he considered appropriate,

council premises during office hours. The Tribunal found that the councillor's conduct was capable of amounting to a breach by the council of its implied contractual obligation to the employee to provide him with a reasonable congenial working environment, and his complaint of constructive unfair dismissal should be considered on that basis.

challenge the way in which the Parish Council was conducting its business. In this regard I acknowledge Councillor Howe's frustration at what he perceives to be the marginalisation of his position; it is important that members with Councillor Howe's desire to represent their community can fulfil a legitimate 'scrutiny' role, drawing attention in a reasonable manner to issues of genuine public concern. Indeed, robust language can sometimes be appropriate to ensure that matters are dealt with properly; the Code is not intended to stifle the expressions of passion and frustration that often accompany discussion about the efficient running of a council.

- 5.24 Having said that, Councillor Howe has not necessarily been mindful enough of the fact that the Clerk works for the Parish Council as whole and is not answerable to any individual councillor, not even the Chair. It is perhaps relevant that Councillor Howe is also a Borough Councillor, where the support function is much larger and the role somewhat different to that found within a Parish. While we consider the majority of the emails highlighted to us as being reasonable requests for information, it is for the Parish Council to decide how the Clerk prioritises her time and respond as necessary when she says that the time taken corresponding with an individual councillor is impacting on her ability to do her job. That is not to say that a balance cannot be found; and the Parish Council does have both a responsibility to ensure that the Clerk is given sufficient resource to properly support its members and fulfil the Parish Council's legal responsibilities under the Freedom of Information Act and the Environmental Information Regulations. And while we can understand that Parish Council has concerns about what they see as Councillor Howe's attempts to bi-pass the restrictions placed on him, we do not consider that the FoI requests we have seen necessarily engage the Code; the FoI regulations have built in safeguards to deal with requests that are unjustified or cause a disproportionate level of disruption or irritation.⁸
- 5.25 Having spoken with the Clerk, we have no doubt that she felt harassed by Councillor Howe's ongoing correspondence and in our view, not without some justification. It is evident even from the limited amount of correspondence we have seen that on occasion, Councillor Howe's emailed requests / comments paid little regard to either the professional advice he was being offered by the Clerk or to decisions that had already been made by the Parish Council. We have also seen evidence of Councillor Howe failing to adhere to the normal niceties one might expect in email correspondence and of his sometimes being unnecessary accusatory / critical in the manner that he has phrased his requests.
- 5.26 While we are not sure that Councillor Howe's emails to the Clerk would on their own amount to a failure to comply with the Code, they must be viewed alongside what else he was doing during this period prior to the restrictions being initially imposed on him. It is evident that the Clerk's initial concerns about Councillor Howe's conduct were as much caused by his critical blog article dated 3 November 2014 as they were by his continuing demands for information.

⁸ The FOIA protects public authorities from having to deal with such requests (called vexatious requests) under Section 14. In the case of the EIR, there is an equivalent provision for requests which are manifestly unreasonable [Regulation 12(4)(b)].

Subsequent to this article, we have seen evidence of Councillor Howe continuing to make disparaging comments about the Clerk both in articles and in person.

5.27 Turning then to the way Councillor Howe has spoken about the Clerk: It is of course important that legitimate concerns about an employee's conduct are dealt with robustly and the standards framework does allow councillors to criticise the actions of officers if it is done so appropriately and in the correct forum. A line must be drawn between the requirement for members to treat employees with respect / not bully employees; and the freedom members must have to disagree with the views, opinions and actions of others. The Code is not intended to unnecessarily constrain members' involvement in local governance, including the role of members to challenge advice or performance and instruct the Clerk as to how they wish to be supported. The Clerk is the most senior officer within the Parish Council and would be expected to be able to deal with robust challenge and, on occasion, criticism.

5.28 When considering whether the way in which Councillor Howe spoke about the Clerk could amount to a failure to comply with the Council's Code, we must also be satisfied that a breach finding would not amount to a disproportionate restriction on his right to freedom of expression. Councillors operate in a political environment and must be free to make political points and discuss matters of public concern without undue interference. That said, freedom of expression is not absolute under Article 10 of the Human Rights Act 1998. Limits on freedom of expression may only be justified if they are 'prescribed by law' and are 'necessary in a democratic society'.

5.29 The Code of Conduct and its application here meet those requirements in that they are:

- Prescribed by law: The Localism Act 2011 explicitly provides for local Codes of Conduct.
- Necessary in a democratic society: Article 10(2) highlights various factors which are considered to meet this requirement, including the protection of the reputation or rights of others. It is also considered a proportional restriction on freedom of expression to ban those serving in democratic governance from engaging in 'intimidating, malicious or insulting behaviour'.

5.30 One of the objectives of the Code and the provisions within it (along with the imposition of any sanction if a breach is found), is to maintain standards and ensure the conduct of public life at the local government level does not fall below a minimum level. A further aim is to protect the reputation and rights of others, for example, from offensive, abusive or defamatory remarks. Councillors should consider, therefore, both what they are expressing and the way they are expressing it. They should also consider how their conduct could be perceived. There is no reason why councillors should not be able to represent the public and any constituents; or make political points / challenges in a respectful, courteous, and appropriate manner; without resorting to personal attacks, being offensive, abusive and / or unduly disruptive.

- 5.31 One of the concerns raised about Councillor Howe's conduct was the way in which he referenced the alleged conduct of the Clerk in a complaint he made to the Borough Council's Monitoring Officer about Councillor Marshall. Having reviewed this correspondence, we are of the view that it does not represent a failure to comply with the Code. Public policy recognises that it is important that genuine complainants should not be deterred from using a complaints process. Complainants should not be fearful that they will be subject to some sanction when they make a complaint to an appropriate body, provided the complaint is made in good faith. In common law complaints or information passed under a public or private legal, social or moral duty to another individual with a duty to receive them, are protected by qualified privilege and provide a defence to a claim of defamation. The qualified privilege arises provided the complaint is not made in bad faith and the complaint is made to the proper authority and not published elsewhere.
- 5.32 The key issue legally and ethically then is whether a complaint is made in good faith, and not whether the complaint itself is subsequently found to have been well-founded. A complaint made in good faith may, after investigation, be found to have been ill-founded for many reasons. If though a councillor uses his position to make allegations in bad faith, for an improper motive, then the councillor is likely to be in breach of the members' code of conduct. In the case of Buchanan (APE0417 2009) the First Tier Tribunal found that the councillor could not have reasonably believed in the truth of the serious misconduct allegations he had made about an officer. The Tribunal found that the councillor had acted maliciously, as he had made his complaints as an act of revenge to cause damage to the officer because the officer had complained about him and damaged his political career. The Tribunal concluded that the councillor's conduct was disreputable and disqualified him from office.
- 5.33 Councillor Howe was clearly frustrated at what he perceived to be an inability on Councillor Marshall's part to control what he saw as the Clerk's unfair treatment of him or deal objectively with any concerns he might raise about the Clerk. And we accept Councillor Howe's assertion that at no time did he ever explicitly allege fraudulent activity, which was the strong concern of the Clerk; in our view Councillor Howe was using the well published 'signs of risk' to re-enforce his concerns about the alleged closeness of the relationship between the Chair and Clerk and Councillor Marshall's alleged failure in ensuring that he received all the information he felt he needed. While we would stress that we are in no way commenting on the veracity of his complaint, we believe that Councillor Howe was entitled to raise his concerns in the limited form of a private complaint to the Borough Council's Monitoring Officer without having to fear being in breach of the Code.
- 5.34 Councillor Howe's comments about the Clerk in his two blog articles however, along with the comments made in his letter to the Birstall Post, were not made in the context of a private complaint and were fully accessible by members of the public. Having reviewed the relevant articles, we are satisfied that they include:
- mockery of the way in which the Clerk drafted the minutes;
 - an accusation that the Clerk personally attacked a councillor;

- an accusation that the Clerk did not take accountability seriously;
- a suggestion that the Clerk did not allow councillors sufficient input into agreeing the budget;
- suggestions that the Clerk was not doing her job properly;
- suggestions that the Clerk was deliberately and unreasonably seeking to avoid giving him information;
- a suggestion that the clerk manipulated the minutes;
- several references to confidential employer / employee disputes involving the Clerk;
- an accusation the Clerk had refused to put residents' concerns about Meadow Lane / Worcester Avenue on the agenda; and
- an accusation the Clerk refused to provide a report on the Hallam Fields Community Hall

5.35 In addition to the above, we note that Councillor Howe's appears to have made highly critical comments about the Clerk at the Broadnook event, including calling her incompetent. It is crucially important that any concerns a councillor has about the performance of an employee are restricted to the appropriate forum. Making such comments publicly and when the Clerk has no right of response suggests that Councillor Howe was more intent on embarrassing and demeaning the Clerk than drawing attention to legitimately held concerns. When considering whether a breach finding if a disproportionate restriction on Councillor Howe's freedom of speech, we refer to the words of Mr Justice Hickinbottom⁹, who stated that while it is vitally important within a democracy for politicians to strongly challenge the actions of public bodies, civil servants (and by extension Council officers) are only involved in assisting with and implementing policies, not making them. *"As such they must enjoy public confidence in conditions free from perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive attacks when on duty."*

5.36 Accordingly, based on the evidence referred to above, we consider by making inappropriate comments about the Clerk's performance and posting detrimental material about her in a blog, Councillor Howe failed to treat the Clerk with respect and that he bullied / harassed her.

6. Recommendations

6.1 Our recommendation is that the Council find that Councillor Howe did fail to comply with paragraphs 1 and 2 of the Code of Conduct with regards this matter.

⁹ In *Heesom v Public Service Ombudsman for Wales*,

ANNEX A:

CASE LAW ON ARTICLE 10

1. Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin):

The High Court recognised that politicians have an enhanced protection in respect of political expression, which applies to all levels of politics, including local, and that political expression in itself is a broad concept. The Court further held that public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits were not as wide as they were for elected politicians. The need to protect officers when imposing a restriction, in terms of Article 10(2), on freedom of expression must be weighed up against a politician's right to enhanced protection. The Court noted that the right to freedom of expression was not absolute but that any restriction was required to respond to a 'pressing social need', to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued. However, that margin must be construed narrowly in this context as there was little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest. The Court had further recognised that it was in the public interest that officers were not subjected to unwarranted comments that prevented them from performing their duties in conditions free from perturbation as this could undermine public confidence in the administration. The Court recognised that local government could not 'sensibly function' without such a mutual bond of trust and confidence.

2. R (Calver) v Adjudication Panel for Wales (2012) EWHC 1172: This case outlined the order a Tribunal would require to adopt when considering Article 10, which was firstly whether there had been a breach of the Code; secondly, if so, whether the finding of a breach and the imposition of a sanction was a limitation of the right to freedom of expression afforded by Article 10; and thirdly, if so, whether the restriction involved was one that was justified by Article 10(2). The High Court noted that if the conduct in question is less egregious, it is more difficult to justify any restriction. The Court further noted that 'political expression' had to be interpreted widely and it included open discussion on political issues including public administration and public concern, including comments about the adequacy or inadequacy of the performance of public duties by others. It had been held that there was no distinction between political discussion and discussion of matters of public concern. In making observations about the general purpose of a Code that proscribed conduct, the High Court noted that a Code could seek to maintain standards and to ensure that the conduct of public life at the local government level, including political debate, does not fall below a minimum level so as to maintain public confidence in local democracy.

3. Guja v Moldova (2011) 53 EHRR 16: The European Court of Human Rights (EHRR) found that the signalling or disclosure of wrongdoing by an officer should be made in the first place to the individual's superior or other competent authority or body and that the question of whether there was any other effective means of remedying the wrongdoing should be considered before information was disclosed in public. The EHRR further found that the public interest in particular information could sometimes be as strong as to override even a legally imposed duty of confidence.

4. **Lombardo v Malta (2009) 48 EHRR 23**: The EHRR stated that a very narrow margin of appreciation must be afforded to competent national authorities to restrict discussions on matters of public interest. Comments in the political context, which amount to value judgements, are tolerated even if untrue, as long as they have some or any factual basis. Even a statement of fact will be tolerated if what was expressed was said in good faith and there is some reasonable (even if incorrect) factual basis for saying it. The Court noted it did not matter whether the restriction was imposed by civil or criminal proceedings when determining whether interference with the freedom of expression was proportionate to the aim pursued and was necessary in a democratic society.

5. **Mamere v France (2009) 49 EHRR 39**: The EHRR noted that individuals taking part in public debates on matters of general concern must not overstep certain limits, particularly with regard to respect of the reputation and rights of others, a degree of exaggeration or even provocation is permitted. The requirement to protect civil servants had to be weighed against the interests of freedom of the press or of open discussion on matters of public concern. In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated. The Court noted that Article 10 protects all modes of expression but that the means of disseminating information can be of significance in determining whether measures taken by a competent authority to restrict freedom of expression were proportionate to the legitimate aim being pursued.

6. **Busuioc v Moldova (2006) 42 EHRR 14**: Even if comments are made as part of a debate on an issue of public interest, there are limits to the right to freedom of expression where an individual's reputation is at stake.

7. **Livingstone v Adjudication Panel for England (2006) EWHC 2533**: The High Court notes that restraints imposed by a code of conduct designed to uphold proper standards in public life are in principle likely to fall within Article 10(2) ECHR but such restraints should not extend beyond what is necessary to maintain those standards. The Court noted that interference with the right of free speech which impedes political debate must be subjected to particularly close scrutiny but that simply indulging in offensive behaviour was not to be regarded as expressing a political opinion, which attracts the enhanced level of protection.

8. **Pederson v Denmark (2004) 42 EHRR 24**: The EHRR recognised that there can be a conflict between the right to impart information and the protection of the rights and reputation of others. In determining whether a restriction on freedom of expression was legitimate, consideration should be given to whether or not there were sufficient other opportunities for person imparting the information to achieve his or her objective.

9. **Janowski v Poland (1999) 29 EHRR 705**: The EHRR considered rights of public servants and their entitlement to protection but noted they are subject to the wider limits of acceptable criticism, meaning such criticism could be harsh or expressed in strong form. Public servants can expect criticism at higher level than the public but not quite the same level as politicians. They did not knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should not, therefore, be treated on an equal footing with the latter when it comes to

criticism of their actions. The Court noted that civil servants can expect protection if there is a pressing social need. Any such protection must also be proportionate to the legitimate aim being pursued and be relevant and sufficient. Civil Servants must enjoy public confidence in conditions free from undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks.

10. Thorgeirson v Iceland (1992) 14 EHRR 843: The EHRR noted that freedom of expression was not just applicable to information and ideas that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those which shock, offend or disturb. The Court observed that there was no distinction between political discussion and discussion on matters of public concern.

Annex B (taken from an article by Judith Barnes of Bevan Brittan)

The case of R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin) concerned the Town Council's decision to impose sanctions on a councillor under its grievance procedures, banning her from serving on any committees and from communicating with any staff, following complaints of bullying and harassment. The councillor contended that any such complaints had to be dealt with under the Localism Act procedures; the council said that the 2011 Act did not prohibit parish councils from instigating proceedings under their grievance procedure where what was in issue was a matter involving internal relations between its employees and staff.

Following complaints that Cllr H had bullied, intimidated and harassed staff, the Town Council's Grievance Panel held a meeting to discuss the allegations. Cllr H did not attend, stating that she did not recognise the authority of the Panel, and she requested that the matter be properly investigated under the standards procedure. The Panel upheld the accusations and the Town Council then resolved to impose a number of prohibitions on Cllr H, including that she should not sit on any committees, sub-committees, panels or working groups nor represent the council on any outside body, and that all communications between her and its clerk and deputy clerk should go through the mayor.

Herefordshire Council (HC), a unitary council, which had responsibility for investigating complaints about parish councillors, advised the Town Council that Cllr H's complaint was sufficiently serious to require further investigation, and so it was making arrangements for the complaint to be investigated by an external investigator. The Monitoring Officer of HC wrote to the Town Council advising that although these allegations were made under the grievance procedure, they were in fact that a member had failed to comply with the authority's Code of Conduct and so had to be dealt with in accordance with the arrangements made under s.28(6) of the Localism Act 2011.

A year later the Town Council reviewed the restrictions, in Cllr H's absence, and decided that the restrictions should not only continue but should also be expanded to prevent her from communicating with all staff. HC then advised that its external investigator had found no breach by Cllr H of the Town Council's Code of Conduct and so HC would be taking no further action on the standards complaint. Cllr H applied for judicial review of the Town Council's decision to impose sanctions under its grievance

procedures. She contended that the decision was: ultra vires as a councillor's conduct must always and only be considered under the Code of Conduct procedures required by the Localism Act 2011; substantively unfair and in breach of Article 10 of the European Convention on Human Rights (ECHR) or at common law; and procedurally unfair in the absence of following proper procedures including the absence of an opportunity to respond or defend herself.

The Town Council claimed that it had powers to determine complaints about councillors through its grievance procedure and under s.111 of the Local Government Act 1972.

Cllr H relied on a number of cases, including R (Taylor) v Honiton Town Council [2016] EWHC 3307 (Admin) and Hussain v Sandwell MBC [2017] EWHC 1641 (Admin). The Town Council principally relied on R (Lashley) v Broadland DC [2001] EWCA Civ 179

The court granted the application, and ruled that the Town Council's decision to continue and enlarge the prohibitions must be quashed and Cllr H was entitled to declaratory relief.

Mrs Justice Cockerill found that there was no general power to run a grievance procedure process in tandem with or as an alternative to the Code of Conduct process envisaged by the 2011 Act, as that would be contrary to the intention of Parliament. It was clear that Parliament intended the 2011 Act to change the regime which was previously in operation. When looking at the case law, cases prior to the 2011 Act operated in the context of a different statutory world and it was important not to strain the meaning of those decisions too far.

Lashley established that councils had, prior to the 2011 Act (in fact before the Local Government Act 2000) a power to investigate misconduct substantively but it could not establish what the power was after the Localism Act 2011. The existence of such a rump power was not a given, and if it existed did not necessitate the finding of a full tandem system. The ability to exclude a parish councillor was no wider than the statutory provision in relation to such councillors and anything which went wider than this would, even before the 2011 Act, be ultra vires.

The court then considered whether a "qualifying allegation" had to be investigated under the Code provisions, or whether the Council had a residual power to investigate formally or informally. The judge stated that the key issue related not to the making of the allegation, but to the taking of a decision as regards breach and then taking action in furtherance of that decision. What s.28(11) of the 2011 Act contemplated was actually a four-stage process:

1. the making of an allegation;
2. (optionally) a non-formal investigatory or mediation stage ("informal resolution") or a pause pending other relevant steps being taken (e.g. criminal proceedings);
3. a formal stage, involving an independent person, leading to a decision on breach;
4. (if breach is found) a formal stage, again involving the independent person, dealing with action.

An independent person had to be involved and consulted not just at the sanction stage, but also at the decision-making (breach finding) stage.

Breach of Article 10 rights

Article 10 ECHR provides the right to freedom of expression and information, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas. Article 10 protects both popular and unpopular expression – including speech that might shock others – subject to certain limitations.

The judge found that there were two potential issues regarding Cllr H's submission that the action taken was an unjustified interference with her right under Art.10 ECHR and/or that the action was unreasonable at common law: first, whether the conduct of Cllr H engaged Art.10; and secondly, if so, whether it constituted a justified interference with her right.

The issue of her conduct was not in dispute: *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin) had confirmed that what was said by elected politicians was subject to "enhanced protection", applying to all levels of politics (including local politics); and that the protection "extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others".

But the judge noted that *Heesom* qualified this: although the acceptable limits of criticism were wider for non-elected public servants acting in an official capacity, they were not as wide as for elected politicians, who came to the arena voluntarily and had the ability to respond in kind which civil servants do not. Furthermore, where critical comment was made of a civil servant, such that the public interest in protecting him as well as his private interests were in play, the requirement to protect that civil servant had to be weighed against the interest of open discussion of matters of public concern and, if the relevant comment was made by a politician in political expression, the enhanced protection given to his right of freedom of expression.

Mrs Justice Cockerill stated that the key issue here was therefore whether the committee resolutions which full Council had adopted and approved were justified under Art.10(2) ECHR.

Cllr H contended that the case was not sufficiently made clear to her and/or that she did not have a fair opportunity to respond and the proceedings were therefore seriously and obviously unfair, for example she was not told of the content of staff interviews nor did she have a report or any other analysis of the complaints and was excluded from the private discussion of her complaints and did not get the opportunity to hear the case let alone respond. The details of the alleged conduct were not provided to the meeting of the Council and therefore she had no effective opportunity to defend herself at full Council.

The court held that the Town Council's process was flawed both procedurally and substantively. It had not undertaken a process of identification and investigation, and

its broad opinion on reconsideration after a year that "there had been little or no improvement in Cllr H's behaviour" could not be adequate. The process of considering the complaint was deficient in natural justice and it was entirely wrong for the Council to approach any fresh consideration of the complaints with anything other than an open mind engaged with the possibility that Cllr H might have legitimate answers to specific complaints made against her.

The judge concluded that: "In essence, the Council identifies a single purpose in the action it took: "to safeguard staff". That is, of course, a legitimate objective and it may be one which could justify some limitation of Cllr H's Article 10 rights". "*...there is no sign at all of engagement with the other factors: rational connection, less intrusive measures and fair balance. All of these also would have to be considered in the light of the specific complaints as established following due process, which of course is missing in this case. I am therefore bound to conclude that for this reason also the decision complained of should be quashed.*"

The Council's response needed to demonstrate proportionality. Even if the complaints had been established, the sanctions were unreasonable and disproportionate (for further details see para.180 of the judgment).

Comment: This case provides a useful analysis of the new standards regime under the Localism Act 2011, and makes clear that it overrides the previous statutory procedures and also local authorities' inherent powers under the 1972 Act as determined in the Lashley case. It also highlights that councils cannot try and get round the 2011 Act's lack of effective sanctions by dealing with complaints under their staff grievance procedures. The judgment provides a reminder that any process must be fair and in accordance with the principles of natural justice, i.e. the right to a fair hearing by an unbiased and impartial body requires that individuals should have been given prior notice of the allegations made against them, a fair opportunity to answer them, and the opportunity to present their own side of the story. The right to a fair hearing is also guaranteed by Art.6(1) ECHR, which complements the common law rather than replaces it. Notwithstanding this judgment, local authorities must continue to be mindful of their responsibilities to protect their employees from bullying, intimidation and harassment, since the authority may be liable for the actions of its councillors, established in the case of *Moore v Bude-Stratton Town Council* [2000] EAT 313/99. The proper course for the investigation of such behaviour of councillors would however now be under the Code of Conduct adopted under the Localism Act 2011, and following investigation, for the Monitoring Officer to discuss the outcome of the investigation with an Independent Person, ensuring that any hearing or informal action is proportionate in all the circumstances of the case.

Cllr Howe's Pre-hearing Submission

INTRODUCTION

Before I address the report I would like to make some general points.

As outlined in The Good Councillors Guide I see my role as a Councillor is to represent my residents interests.

I have never raised a single point that wouldn't enhance the accountability of the Parish Council, enhance its reputation by delivering services that the residents want or making the Parish Council a more open and friendly organisation.

When I have asked for help or information it was because it was needed to fulfil that role.

Yet thinking back over the last 10 years I think I can count on one hand the number of times I've requested help or information and actually received a courteous, full and prompt reply.

Also thinking back the amount of information I've requested has been insignificant and there is nothing in this report to indicate otherwise.

The cost to my Parishioners of refusing my requests has greatly exceeded the cost of supplying it.

Some people appear to believe that Councillors once elected become part of a corporate body and their loyalty is towards that body, I don't.

In the past I've been accused of "conspiring with other Councillors against the Parish Council" and of upsetting the staff by directly quoting from the Good Councillors Guide.

Birstall Parish Council has a Member / Officer Relationship Protocol and Standing Orders which had they been adhered to it would have prevented any of this happening.

Some of the incidents referred to happened seven years ago yet they were not included in an unsuccessful complaint made against me in 2015.

With regard to that particular complaint had the Chair spoken to me for a minute she would have been realised there were no grounds for the complaint and it would have saved a great deal of time and money.

Apart from the claims about constantly wasting the Clerks time with requests for information (as detailed in the letter of 16/1/2017) from recollection none of the other allegations in this report have been discussed with me.

In my response I mention Freedom of Speech. Since 2011 Parish Meetings can be recorded and members of the public and press can attend so irrespective of the light it puts people in I can't see why I can't blog or discuss incidents that happen during them.

Recently Handforth Parish Council came into the limelight, were I am member of the that Council I would be publicly critical of the actions of some of those Councillors and I don't believe any Councillor could be accused of breaking the Code of Conduct for doing so.

Also any correspondence and emails not marked Confidential can be released under Freedom of Information so again I feel there is there is nothing to prevent me publishing or discussing their contents with anyone.

In support of my contention about Freedom of Speech I would like to thank Professor Andrew Tettenborn MA, LLB (CANTAB) for allowing me to reproduce extracts from an article he wrote in 2020 regarding Freedom of Speech and The Code of Conduct.

'Requirements such as treating people with respect, or not bringing the council or your office into disrepute, clearly have the potential to impinge on what would otherwise be entirely lawful speech. Whatever the merits of allowing private employers to limit what their employees are allowed to say in a non-official capacity (and there are strong reasons for tighter limits even here), it is very difficult to justify penalising an elected councillor for saying what he thinks, however ill-tempered or offensive, or for that matter to threaten proceedings in such a way as to encourage him always to look over his shoulder for saying anything controversial. The views a councillor expresses should be a matter for the electorate, and for no-one else.'

I would point out that at no time do I consider I have been ill-tempered or offensive despite such behaviour constantly being deployed against me

WHY DID I SELF REPORT MYSELF NOW?

As the report states there has been a considerable gap between the letter of the 16/1/2017 and when I self-reported myself in early 2020.

But whilst the terms of that letter are in place I am prevented from fully functioning as a Parish Councillor and at the time I was not shown any evidence in support of the complaint and as there is no right of appeal it could be in place for ever.

Furthermore there is nothing in the Parish Councils own rules to support the issuing of the letter.

I would also point out that had the Parish Council lodged a complaint in 2017 and even if it it was upheld by the Members panel I would now in theory be able to perform my duties and represent my Parishioners.

Another reason for self reporting was that irrespective of the outcome I hope to be given advice as to how I can function as a Parish Councillor given the restraints in place which are in breach of the Parish Councils own regulations.

MY RESPONSE

Please excuse the length of my response and the repetition and detail I go into but I have spent my life based on fact and evidence and in view of the serious nature of the complaints its not unreasonable for me to deconstruct them item by item.

I would also like to put on record that I am extremely disappointed that despite two requests I was not shown the full “ evidence “ against me until after the report was prepared and a decision reached.

Background

4.10 Sue Coulson was Deputy Clerk to the Parish Council from 2009 until 2014. When the previous Clerk left, Mrs Coulson was appointed to the vacant position. It is common ground that between 2011 (when Councillor Howe became a member of the Parish Council) and 2014, Councillor Howe and Mrs Coulson enjoyed a positive working relationship.

4.11 When the previous Clerk left the Parish Council, Councillor Howe felt that the job should have been externally advertised. Mrs Coulson told us though that it was well known that she was being groomed to fill the role, with the Council investing money in her CILCA training. She told us that that Councillor Howe was given ample opportunity to formally object to her appointment as Clerk, however he limited himself to commenting to others informally that he did not think her the calibre of person needed for the role.¹

(¹ This was denied by Councillor Howe, who told us that it was the Chair of the Council who had questioned whether Mrs Coulson was up to the job)

- Firstly I was totally unaware that the Clerk was being “groomed to fill the post” and I was never involved in making this decision and this seems an extremely strange comment to make about the selection of someone for such a senior job.
- Secondly many residents expressed concern that the post was being filled without being advertised which is why I raised the matter. In fact it is still a bone of contention with many of my residents to this day.
- From recollection the Councillors voted to advertise the post but were told at a subsequent meeting that for legal reasons it was not possible.
- As I understand it the standard practice is to publicly advertise such vacancies.
- I have no idea what is meant by me being given ample opportunity to formally object to the appointment.

- In any case surely residents elect their Councillors to make decisions such as who to employ

4.12 The Clerk told us that while Deputy Clerk, she had seen Councillor Howe make life difficult for her predecessor and that as soon as she was appointed to the role, he began to do the same with her. To illustrate the ongoing concerns she had with Councillor Howe's conduct, she provided us with a chronology of events from 3 November 2014 until 16 January 2017; this was the point at which Councillor Howe was told that he was no longer permitted to email, write to, telephone or text the Clerk directly; any necessary communication with the Clerk / Parish Council would have be addressed to the Chair or Vice-Chair of the Council.

- This is all a long time ago and I did not make her predecessors life difficult I have evidence to support that but this is not the time or the place.

4.13 The following evidence and considerations are based on the events that were set out in the Clerk's chronology.

Councillor Howe s blog article

4.14 The Clerk told us that following her appointment (1 March 2014), Councillor Howe very quickly began to monopolise her working day with ongoing queries and requests for information, despite having no remit from the Parish Council to do so. The Clerk said that she was eventually prompted to formally report her concerns about Councillor Howe's conduct by comments he made in a blog that he posted on a website² run by CPALC (Communities, Parishes and Local Councils). Although Councillor Howe wrote the article anonymously, members became aware of it after Councillor Howe had encouraged them to use the website themselves as a learning resource. Councillor Howe has confirmed to the investigation that he was indeed the author. (² The website no longer exists)

- The Parish Council have a detailed protocol which includes amongst others the comment " that employees fully and effectively support members in exercising both executive and

none executive functions” there are many other provisions in that Protocol that support my requests for information and support.

- My requests have been proportionate and reasonable and there is no evidence in this report to support the claim I monopolised the Clerks time.
- I would hope that a copy of that Protocol is given to the members and this is considered during the course of the hearing and I will repeat there is no doubt in my mind that had its principles been adhered to then none of this would have happened.
- Parish Councillors throughout the country receive similar support without question

4.15 The article, which was posted on 3 November 2014, read as follows: *“**It was resolved?** How many meanings does the word resolve have? Out of the blue our last minutes have been based on NALC guidelines” we were not given any information as to who made this decision. The minutes are now meaningless as they do not contain details of any of the factors we discussed and, in any case, do not follow NALC guidelines, below are a number of agenda items marked as resolved.*

1. *A Councillor raised an objection to previous minutes as a discussion with members of the public had been omitted, the Chair got someone to propose and second the minutes and moved to the next item without allowing us to vote. Resolved*
2. *At the last meeting we were given a copy of an old policy document and told it had been changed, we voted and moved on to the next item. So we hadn t seen the changes in writing and it wasn t mentioned in the minutes, oh and I nearly forgot to mention this item wasn t on the agenda! Resolved.*
3. *The Clerk launched a personal attack on a Councillor for making what she claimed was a personal attack on her at the previous meeting. No vote taken. Resolved.*

4. *The next item was a kangaroo court against me, the details are too tedious and it wasn't clear from the agenda item it related to me so it took me by surprise. A lot of my fellow Councillors were clearly embarrassed. Although the agenda item said "To consider" no vote was taken. Resolved.*

Note the irony here you can't criticise the staff but its open season on Councillors. So the word resolved covers items that may or may not have been voted upon. At one stage a Councillor asked why we didn't record how the voting went but they were given the brush off. A new Councillor, who is a professional person, asked how we could possibly operate like this as there was no audit trail for the decisions we were making with public money. After the meeting the Clerk approached the Councillor and said she couldn't understand what his problem was. To add insult to injury we were handed 11 pages of financial documents and work schedules at the start of the meeting and given a minute or so to look at them =, no doubt these will be shown as Resolved at the next meeting! We are a large PC with 17 staff (don't ask) and an income of £500,000 and have a Clerk and Chair who don't seem to take accountability seriously. It would appear the majority of my fellow Councillors don't care or don't understand the potential problems we are storing up".

- *Apart from the discussion with the Councillor all this took place at an open public meeting.*
- *Under the Openness of Local Government Bodies Regulations 2011 it states " people may film record tweet or blog from this meeting"*
- *I don't think it unreasonable to discuss the lack of a clear audit trail with regards to decisions or the fact we were given 11 pages of detailed financial records to agree on the night of the meeting*
- *From recollection I did try to propose a motion that unless the matter was urgent Councillors should not be expected to be given wads of documents on the night of the meeting but this was ignored.*

- *With regards to my comments about the other Councillors I've heard far worse comments made face to face at Borough meetings*
- *In addition I've attended many Birstall Parish council meetings where far worse has been said publicly against me with the same small number of Councillor acting totally in breach of our Regulations and unchecked by the Chair.*
- *I won't go into detail but I have recordings to substantiate this I will however mention two.*
- *I will quote from one email a Parishioner sent me expressing his disappointment at how he had been treated when trying to raise a matter and then added " I noticed the chair tried to stop you speaking three times"*
- *There was also the occasion when two member of the Management and Policy committee accused me of lying, I offered them a copy of my recording to prove I didn't and contacted the Chair to try and get an informal apology at the next meeting but she told me to go to the Monitoring Officer*

4.16 Councillor Howe told us that the website was a forum for people who were interested in Parish Councils. He explained that the idea around the 'blogs 'was that a user could post issues they might be having and receive advice from other users. Councillor Howe told us that while he did post the above article on the website, he was careful to do so anonymously and made sure that he did not mention the name of the Parish Council he was referring to.

- *The comments in the blog were made 7 years ago and its unclear to me if permission was given to reproduce it as I understood it was covered by Copyright which was why I asked for permission from Professor Tettenborn before reproducing his article*

4.17 The Clerk acknowledged that the identity of the Parish Council, and therefore by extension her own identity, would not have been easily discerned from the article; clearly though it was recognised by their own members, who had been encouraged to visit the site by

Councillor Howe. The Clerk told us that the content related to Council business and included the insinuation that fraudulent activity was going on at the Parish Council. She also expressed concern that Councillor Howe's blog contained unsubstantiated comments and actions supposedly made by her during the Parish Council meeting.

- Yet again there's the claim I'm suggesting fraud I've never claimed there is but this word is dragged up at regular intervals whenever I try to discuss the Parish Finances
- I didn't mention fraud but on page 10 of the Good Councillors Guide on Finance and transparency the following passage appears

'Throughout the year the council needs to satisfy itself that expenditure is both lawful and in line with council decisions, and that proper controls are in place to prevent **any possibility of fraud**. No council wants to risk being the subject of adverse local media coverage relating to financial mismanagement, lack of control or poor budgeting.'

- I didn't mention fraud and presumably if I read this extract out at a meeting the Clerk would lodge a complaint against me for saying the word?
- So basically fraud is a risk that as Councillors we should consider and could be held responsible for but we can't ever mention it and in fact I never have.

Parish Council meeting, 8 December 2014

4.18 The Clerk told us that around this time, Councillor Howe was publicly expressing a concern that the Parish Council's reserves were too high. At the Parish Council meeting of 8 December 2014, while the Clerk was delivering a budget report to members, Councillor Howe referred to a public inquiry that had been held in Lydney (Lydney Town Council in Gloucestershire). The Clerk told us that this public inquiry related to a case of fraud and that Councillor Howe seemed to be comparing the situation at Lydney with that at the Parish Council. The Clerk said at interview that she told Councillor Howe that he was 'scaremongering'. At interview she acknowledged Councillor Howe's right to bring such concerns to the Parish Council's

attention. She though felt that it had been inappropriate for him to do so whilst she was delivering the budget report.

- Can someone please tell me what's inappropriate about an elected Councillor expressing concern about the amount of reserves and what rule or regulation I've broken doing so?
- If it was "inappropriate of me " why do the minutes show the Clerk invited questions on a page by page basis?
- The Clerk may have told the investigator that the Lydney was about fraud but it would only have taken a minute to look at the Lydney case online and establish that there was no allegation of fraud which substantiates my earlier remark that whenever I try to raise anything about finances I get accused of alleging fraud
- The Lydney case involved a Parish Council which due to poor financial controls ended up with an unexpected bill of £150,000 and having to triple its precept for three years to cover it.
- The National Audit Office in their report provided a blueprint as to how Parish Councils could organise their financial affairs to prevent this happening and at the meeting the Councillors voted that the Management and Policy committee consider the recommendations and come back to full Council, this didn't happen.
- As a further matter of concern two differing sets of minutes were circulated, which led to me starting to record the meetings for my own protection if nothing else
- From recollection I didn't raise the point about Lydney as I'd already done so in April 2013 (see item 4.31) and even then all I did was suggest that we compared the NAO recommendations with our current practices to see if we were in line with them. It's a long long time ago but from recollection I did not contrast Lydney to Birstall.
- To me this is exactly the kind of thing Parish Councillors should be doing and what my Parishioners expect me to do as I didn't

want us to end up in the same situation as the Councillors at Lydney who no doubt thought everything was fine.

- To this day after being a Parish Councillor for 10 years I have no idea how substantial areas of the Parish Council function yet if something goes wrong I as a Councillor will be asked “why didn’t you notice” ?
- I am extremely concerned that a claim like this is being made against me in a public document and I hope the members will appreciate that if sometimes I might have stepped over the line when being constantly smeared like this with no recourse.
- Also how can it be acceptable for a Councillor to be publicly attacked for asking a simple question as to how the reserve figure is set?
- On what grounds does the Clerk feel it is inappropriate for an elected Councillor to raise concerns about reserves?
- What is a more appropriate time to raise the matter as basically the Budget meeting is the only time a Councillor can raise it?
- If the minutes are to be believed it was another Councillor that expressed concern about the large amount in the reserves
- The Clerk prepares the budget with no input from the Councillors, we first see it shortly before the meeting where we are expected to agree it.
- Any attempt by me (as I’m basically the only Councillor to do so) to ask questions about finances gets firmly rebuffed, again I can supply recordings to back this comment up.
- To try and depersonalise the issue I have suggested we have a finance committee, that we accept the NALC financial guidelines, that we review the budget quarterly all without success.

4.19 On 15 December 2014, Councillor Howe emailed the Clerk as follows: “*At the meeting held last Monday you said that by Law that we had to keep a reserve of at least six months precept and that we*

could legally have a reserve of up to three years precept. As you said it was the Law. I understood that to mean that legal action could be taken against us if we didn't have a minimum of six months reserve. Councillor Rollings said that this was the Law then the Parish Council could do nothing about it and if I had a problem regarding this Law, I should approach my local MP. So it appears he shared my opinion that this is set in statute and enforceable. I have decided that I will take the advice and see my MP. So will you please let me have 1. Details of the law you were referring to and the sanctions that could be taken against us as a parish council if we don't have a minimum of six months reserve. 2. A copy of the Parish Council's policy regarding reserves. 3. A copy of the last risk assessment of the reserves."

4.20 Councillor Howe told us that this email and others were never responded to.

- So let me summarise at a public meeting I politely asked a perfectly reasonable question about how the Parish Council reserves were set.
- I was publicly accused of "scaremongering" and trying to break the Law which to me is a clear and serious breach of our Protocol,
- In fact the exact words were "by Law the Council has to have a reserve of six months precept and it can't be spent unless the precept isn't received" I defy anyone to find any Law, Regulation or best practice that states that
- I also suggested that we adopted the National Audit Office guidelines to improve our financial control
- Subsequently the Parish Council adopted a Reserve Policy as a direct result of my raising so I count this as a success
- There were two sets of minutes produced for this meeting, one set the Councillors agreed and one set that were published and then later removed from the Parish Council Website

- It was because of this that I resolved to record open parts of Parish Council meetings so I had a permanent and accurate record of what happened.

Councillor Howe's ongoing interactions with the Clerk

4.21 The Clerk told us that her concerns about the impact Councillor Howe's conduct was having on her ability to do her job led her to write a confidential report for the Parish Council's Management and Policy Committee. In it, she informed members that she had received 29 emails from Councillor Howe in ten months, which had led to her feeling overwhelmed and stressed. She stated that he regularly asked for information that was either easily available on the website or had already been provided in an agenda pack; he seeks information about Parish Council decisions and often challenges them; he quotes legal acts and sections in order to intimidate her; and he makes her feel intimidated and incompetent.

4.22 The Clerk's report was considered at that Committee's meeting of 22 December 2014. The minutes of this meeting read: "*The Clerk had reported her feelings of stress and undue pressure to the Chair who advised that the matter should be raised at the next meeting of the Management and Policy Committee to seek their support on resolving the situation. The Clerk reported to Councillors that she was receiving an unacceptable number of emails from a Councillor that were increasing in regularity and becoming more demanding, causing her stress and making her feel she is under excessive scrutiny. The Clerk stated that her preferred option would be for the Management & Policy Committee to deal with the situation informally at this stage... **RESOLVED:** that appropriate advice be sought by the Chair and a letter then sent to the Councillor concerned by recorded delivery as soon as possible.*"

4.23 On 9 January 2015, after considering the Clerk's report, the Chair of the Council (Councillor Marshall) wrote to Councillor Howe on behalf of the Management and Policy Committee: "*I write to inform that our Clerk, Mrs Coulson has approached the Management & Policy Committee to ask for their assistance in resolving a situation which is causing her stress and interfering with her ability to*

undertake her work. She reports receiving an unacceptable number of emails from you, in which you ask numerous questions, thus placing unreasonable demands on her workload as she tries to deal with your queries. The Council is responsible for the conduct of its Members towards its Employees and has a duty to protect them from unreasonable behaviour. Failure to do so could result in a fundamental breach of trust and confidence between the Employee and its Employer. This would be a breach of Contract and could result in the Employee resigning and submitting a claim for Constructive Dismissal. It is regrettable that this situation has arisen, however Mrs Coulson is Clerk to the whole Council and responsible to it as a corporate body. Her time cannot be monopolised by individual Members to the detriment of the rest (see Member/Officer Relationship Protocol). The Management & Policy Committee has decided at this stage to deal with the situation informally in order to protect the clerk from further stress and to prevent the matter progressing to a formal grievance. If you would like to discuss this matter informally with myself and another member of the Management & Policy Committee, please inform me and I will arrange it."

4.24 On 17 January 2015, Councillor Howe responded to the Chair:
Thank you for your letter I am sorry to hear that the Clerk is upset. I note that it is not the tone or content that concerns the Clerk or yourself but the "unacceptable number of emails" I am sending and "the unreasonable demands" I am making on her workload. But you have not included any evidence to support these claims and I can't see how attending a meeting will help unless you give me a clear idea in advance as to what you think I have done wrong. We have been fellow Councillors for nearly four years and as Chairman you would have been fully aware of the impact your letter would have on me, especially as you sent it recorded delivery. There have been several incidents recently where I feel I have been unfairly treated and this is beginning to impact on my health as I take my role as a Councillor seriously. As Chairman you have a duty of care towards me so I assume before you prepared your letter you carried out an independent and thorough review of my emails to satisfy yourselves that the Clerk was justified in making her comments. I can only

assume that as a result you must have reached the conclusion that my breaches were too serious to be resolved by a quick telephone call or a word with me at a Council meeting and that a formal letter was required. This review would I hope would have included listing the emails, and then estimating the amount of time that was required to reply to compared to the value of the information / help I required. In addition, I would hope that you considered the parts of the Protocol relating to the obligations that the Clerk has towards the Councillors and also established precisely which parts of the Protocol you consider each of my emails have breached. Will you please provide me with the results of your review including details of which emails you are referring to, exactly which sections of the Protocol you consider I have breached, the amount of time you estimate the Clerk would have taken to respond and what you consider is a reasonable number of emails based on the description of the Clerks role in the protocol.”

- *I don't think my letter is unreasonable and there's no evidence in this report that my emails weren't proportionate to my role as a Parish Councillor and weren't in line with the Councils protocols and the Good Councillors Guide*
- *See also my comments at 4.29*

4.25 On 25 February 2015, Councillor Howe wrote to Councillor Marshall's again: *I have had a word with the Monitoring Officer and asked them if they were prepared to attend the meeting with you to try and resolve our differences, but they are only prepared to act once a complaint has been made. So I have agreed to attend the meeting with you and one other Councillor as you suggested so that you can explain what I have done wrong and so that I can establish what my rights are as a Parish Councillor with regard to the Clerk and vice versa for the future. As this is a complaint against myself my only proviso is that I am allowed to bring a third party with me (as happened when my complaint against the previous Clerk was heard) to take notes.*

- *I have always been open to resolve these issues to allow me to properly spend my time representing the interests of my Parishioners rather than in a constant battle*

- *This is why I contacted the Monitoring Officer on several occasions as I had no one else to turn to*

4.26 Councillor Marshall sought advice from Leicestershire and Rutland's Association of Local Councils (LRALC) before responding to Councillor Howe's email. In her response Councillor Marshall confirmed that no official complaint had been made about Councillor Howe's conduct; she was simply seeking to resolve the matter informally and that the offer of an informal chat was to simply to allow Councillor Howe to discuss the Clerk's concerns. Councillor Marshall agreed that Councillor Howe could bring another Parish Council member to the meeting.

4.27 Councillor Howe did not respond to Councillor Marshall's email and neither party took any further steps to ensure that the meeting went ahead, or the Clerk's concerns were addressed.

4.28 When asked by us about the number of emails he had sent the Clerk, Councillor Howe stated: *When I got the formal letter saying about me harassing the Clerk, I checked my email correspondence to the Clerk. I could trace twenty-seven emails sent in the seven months before the letter. There may be the odd one or two. I only send one email about one topic to keep things tidy. Twelve of the emails were replies to requests from the Clerk. Of the remaining fifteen: three were about obscene spam I received to my Council email address; three were about standing orders (as the link on the website was out of date); this leaves nine emails in seven months. In total I had asked three questions and asked for copies of two documents. I do not feel this represents what I was accused of in the letter sent to me, which was unreasonable requests, monopolisation of the Clerk's time, numerous emails and too many questions..."*

4.29 Councillor Howe did tell us that he would be able to provide us with copies of all these emails so that we could be satisfied that they did not represent unreasonable or intimidatory requests. To date not all of these emails have been provided; we have though seen the emails sent in the two months that immediately preceded the Clerk raising her concerns.

- *It appears I'm being expected to provide proof I'm innocent.*

- Surely before making an allegation against an elected Councillor it would have been expected this matter to have been reviewed in great detail as outlined in my letter of the 17/01/2015 (4.24)
- The fact that this evidence has not been produced supports my opinion of the casual way the matter was dealt with and the lack of due diligence before making the allegations. Would a complaint against an employee be pursued without a thorough review?
- I reasonably assumed that this point would be thoroughly reviewed and I would be told how many emails I'm allowed, on what subject and which of my emails were inappropriate

Councillor Howe s complaint against Councillor Marshall

4.30 On 10 April 2015, Councillor Howe submitted a Code of Conduct complaint against Councillor Marshall. In his complaint, Councillor Howe raised the fact that the Clerk had accused him of 'scaremongering' during the Parish Council meeting 8 December 2014 (see paragraph 4.12) and that Councillor Marshall, as Chair, had done nothing about this '*personal attack*' against him. Councillor Howe complained about Councillor Marshall's letter of 9 January 2015 (see paragraph 4.14), stating that the contents of it were not based on fact and that the concerns raised by the Clerk about his actions were untrue.

4.31 Councillor Howe's complaint against Councillor Marshall also included a copy of the Audit Commission's report on fraud risks in Parish Councils. In relation to this Councillor Howe wrote: *I enclose a copy of the Audit Commission leaflet on fraud risks in Parish Councils and would make the point that having investigated fraud for over 30 years I am not making any accusation of fraud. But I would like to highlight the following comments, in some places friendship with Council Staff become too close. Some parish councillors can leave too much unquestioned, unchallenged or insufficiently scrutinised. Your duty is to the taxpayer and*

citizen. If you think something is not right say so". Some of the warning signs are **"Hesitancy, avoidance or confrontation when asked direct questions, lack of openness and transparency"**. [Councillor Howe's emphasis] *I feel those comments exactly mirror what has happened here. In April 2013, despite some opposition, the full Council voted to support my motion that we should constitute a Working Party to review the Internal audit procedures in the light of an Audit report into Lydney Parish Council. But despite the vote, no subsequent action was taken to form one.*

- *I repeat that the Lydney case was nothing to do with fraud. All I was doing was asking the question (which got the support of the majority of Councillors) could we improve our own procedures by comparing the NAO's suggestions with our procedures at that time?*
- *I've no doubt that the Councillors at Lydney thought their procedures were adequate at the time and I wouldn't want to be in the same position they were in.*
- *With regard to my highlighting the part about friendship, in late 2015 after having a polite conversation with the Clerk about the budget and suggesting ways to improve the process by having a Finance committee etc I wrote to the Clerk*
- *With the permission of the Management and Policy Committee she wrote back to me in red and her reply above was circulated to all Councillors and is in the public domain.*
- *You can see I even included a joke about the lottery to avoid looking too know it all and offered to meet her to go through the process.*
- *Whats being forcefully said is that she believes that using the bank balance at 1/4/2015 for the budget is more accurate than the normal accountancy practice of making a best estimate of the amount at 1/4/2016*

2 An estimate of cash in hand at 1/4/2016, we can already calculate a fairly accurate figure of income (unless we win the lottery) we know the level of day to day expenditure so its just a question of making a calculation based on the lines of your Six Month Review. I've tried to do this myself but I haven't got enough information.

Accurate being the operative word! To answer your first point, in this case I would say the factual one which is the starting balance at the beginning of the year. I would not even consider 'guessing' the financial position at 1 April 2016, it would be very wrong of me to do so! The starting balance is what it is and can be justified, it is checked by the Internal Auditor when he reviews the reconciled bank statements, and this is the usual common format for setting a precept and see no reason to change it.

Your comments above give me cause for some concern, in particular when I consider them alongside the comment you made to me on Monday evening of "I don't see why we need Reserves, if the Council runs out of money or needs more it could always take out a loan", I was quite taken aback by this and I don't consider that kind of approach as a proper or professional way of managing any finances, especially the Parish Council finances.

- *I no longer have the figures for 1/4/2016 but the year starting 1/4/2015 the Budget was based on a balance of £193,000 when the actual figure should have been in the region of £342,000 which proves my point*
- *To add insult to injury and without any apology the Budget for the subsequent years was based on my suggestion.*
- *Needless to say the comments about the reserves are incorrect*
- *Yet one of the mainstays of this complaint is that I criticise the Clerk and my fellow Councillors yet as you can see they are quite happy to do the same to me even when I'm making a perfectly valid point.*

4.32 Councillor Howe's complaint was assessed by the Borough Council's Monitoring Officer who decided that the complaint was a matter for the Parish Council to deal with directly because it related to either the Clerk's conduct or internal governance matters; not Code of Conduct issues relating to Councillor Marshall.

4.33 In his comments on the complaint, the Borough Council's Independent Person made a point highlighting the fact that Councillor Howe clearly believed that there were issues concerning the competence of the Parish Clerk to perform her duties. The Independent Person suggested that Councillor Howe may benefit

from training so that he could better understand the remit and responsibilities of the Parish Clerk. He also suggested that the Parish Council review the types of questions that should be referred directly to the Clerk and which should be forwarded via the Chair, as this may reduce the amount of time the Clerk was having to spend dealing with Councillor Howe's correspondence.

4.34 On 24 April 2015, the Monitoring Officer wrote to the Clerk with notification of the decision to take no further action.

4.35 On 18 May 2015, during a closed session of the Parish Council, Councillor Marshall referred to the complaint that Councillor Howe had made about her. Councillor Marshall told members that the Monitoring Officer had decided that the complaint did not warrant any further action. She added though that both the Monitoring Officer and the Independent Person had pointed to the fact that there appeared to be some confusion with regards to the respective roles played by parish councillors and their clerk. Councillor Marshall said that useful information could be found in the handbooks and that training was available for anyone who might find it useful. She mentioned that it had been a stressful time, but the matter was now closed and there was no recourse to the Monitoring Officer.

4.36 The Clerk told us that she was very concerned about the contents of the complaint made by Councillor Howe, particularly the part relating to the Audit Commission's leaflet on fraud risks.

4.37 Councillor Howe told us: *I got fed up with being attacked and the only way I could think of to resolve the issues with the Clerk was to enter a Code of Conduct complaint against the Chair, my rationale being that the Chair was responsible for the Clerk's behaviour. I had been elected and I had the best interests of the electorate at heart.* Councillor Howe acknowledged referencing concerns about fraud in his complaint; he stressed though that he was simply highlighting the risks rather than alleging that fraudulent activity was taking place: *As part of the complaint I put a paragraph in the complaint regarding fraud although I did not suggest that fraud was going on at the Council. These comments were supposed to be in relation to the fact*

that I was being denied information from the Clerk/Council and that this was similar to comments made in a report that I mentioned in my complaint. I do not believe there is any fraud or corruption going on at the Council.

- With hindsight I shouldn't have reported the Chair but my reasoning was she was the manager of a member of staff that was being unreasonable towards me and what else could I do ?*
- My Parishioners elect me and I try to represent their interests yet it appears others can override the process*
- Also with hindsight I should have quoted from the Member/Officer Protocol 23:16, 23.26, 23.19, 23.24.4, 23.24.7*
- I was trying to make the point that it is a serious and concerning matter for the Parish Council to prevent access to information and I still stick to that belief*

4.38 We note that prior to retirement, Councillor Howe was a fraud investigator and as such may have been particularly alive to the potential risks. In our view Councillor Howe was less alive to the impact his comments may have had on others within the Parish Council. We will consider this in more detail below.

- Because I investigated fraud I know exactly what it means, as most people tend to have a broader view of the word than I do*
- **Fraud** can be broadly defined as the deliberate use of deception or dishonesty to disadvantage or cause loss (usually financial) to another person or party.*
- I have never accused the Clerk of fraud at a meeting or in a communication and had I done so I would have been reported immediately*
- I have never ever suggested fraud to anyone else, neither is it mentioned in my Blog's*
- I have been asked on many occasions by residents about the Parish finances and I have always emphasised that I have never seen any evidence of fraud*

- At the same time I have explained that I have attempted to get the Parish Council to scrutinise their finances in accordance with Value for Money but have been told that its the Clerks responsibility to do that as it's in her Clerks contract.
- From recollection I did ask for an extract from the Clerks model contract (not the full contract) regarding Value for Money but it was refused
- At the majority of budget meeting I have stated that there's no doubt in my mind that we could save money by having scrutiny and I've even offered to discuss this with Councillors outside of our formal meetings and not one of them has ever taken my offer up.

Continuing emails from Councillor Howe and a second blog article.

4.39 In June 2015, the Clerk sought further advice from her Union regarding her concerns about Councillor Howe's conduct. The Clerk told us that Councillor Howe continued to send her emails that included inappropriate demands for information and that inappropriately challenged decisions that had been made at Parish Council meetings. The Clerk said that Councillor Howe, having been advised not to monopolise her time with requests for information, began sending Freedom of Information (FOI) requests instead either directly or through the website *What do they know*³. FOI requests were at this time dealt with by the Clerk, which the Clerk was confident Councillor Howe knew very well. In her view Councillor Howe was clearly attempting to circumnavigate the Management and Policy Committee's request for him not to ask the Clerk directly for information without the agreement of the Parish Council.

(³The 'What do they know 'website reports that Councillor Howe contacted the Clerk via their site on 20 October 2017, 18 January 2019, 24 June 2020 (x3), 27 July 2020 (x3), 2 August 2020 and 20 August 2020 (x3). These concerned five separate Fol requests.)

- The FOI was introduced to ensure transparency in the Public Sector anyone is entitled to use it

- Is it being claimed that the Clerks Union believes the Freedom of Information Act does not apply to Councillors?
- In any case I can't believe any reasonable person would consider the small number of requests I've made over the years could in anyway be classed as harassment.
- I will be interested to hear the members opinion on this, have you seen any evidence that my emails were excessive and monopolised the Clerks time?.
- There is a pervasive attitude of "this is what we are doing who's against it"

4.40 On 26 August 2015, Councillor Howe posted another blog on the CPALC website: *In the past I have posted about my attempts to get my Parish Council to have a serious think about why they are hoarding so much money in the reserves 'things have reached an interesting stage so I thought I would post an update. I decided to raise motions about the reserves and our lack of input in the budget process, with regards to the former in April we had £425,000 in a current account and recently over £150,000 has been added to earmarked reserves with (sic) this ever being discussed. With regards to the latter the Clerk prepares the Budget gives a choice of rise in precept, we then have about 40 minutes to an hour then a vote is taken and we are not allowed to discuss it again. As far as I can find out not a single Councillor has any input pre-Budget. Last year four separate councillors raised points about the budget but the Clerk told them the budget meeting was not the appropriate forum and that was that. So in order to get some facts to support my motions I asked some simple questions such as the amount of surplus over the budget figure for the last 4 years, who had input into the budget, who added over £150,000 to our reserves since April this year, how much was split between current and deposit accounts and when we had we last reviewed the reserves. The response was a cease-and-desist letter claiming I was harassing the Clerk and preventing her from doing her duties. I think it would have taken at most 15 minutes to reply, the Monitoring officer wouldn't help me. I reissued my request and in reply received pages of ranting which didn't further the*

situation. One of the more bizarre claims was it would take weeks of time to reply. *I pointed out about the Freedom of Information Act and the Clerk claimed I hadn't mentioned it, I pointed out that I didn't have to.* I asked her to report me to the Monitoring Officer as clearly I was in the wrong and she wouldn't. I pointed out that were a parishioner to have asked the same questions she wouldn't have sent the same response but she ignored the point. *She refused to reply or send a formal refusal under the FOI and when I forced the issue, she told me the information commissioners had told her to ignore me. I checked by phone with them and they said they would never have said that.* So I've passed this all over to the information commissioners. To head me off at the pass the management and policy (or as I call them The Chosen ones) were told by the Clerk, we needed a reserve policy, and she drafted it and they agreed it, it was then passed to us to vote. This is the same Clerk, who late 2014 publicly accused me of being a scaremonger for suggesting we reviewed the reserves, and also said I was in breach of the law. The minutes of that meeting were heavily edited. How do I know? Well the clerk posted the wrong set on the website. The policy document is rubbish and I have serious concerns about some of the claims and information used in support of it, but the biggest flaw is that although we will carry out an annual risk assessment, the reserve is pre-set at 60%. Luckily someone else pointed this out. They were a member of the m&p, but didn't attend the previous meeting, and I spoke to them shortly before the meeting. The Chair told them that they were breaking the rules about collective responsibility but then eventually accepted that the policy was flawed and withdrew it. In any case, 60% is well above the recommended minimum of 25% for a council of our size, (£210,000 compared to £90,000). Then another member of the m&p started ranting about how much time he spent on behalf of the Council, and that people like me should be ashamed that we wouldn't accept the proposals. He wanted a vote but didn't get one. But it was the next agenda item that was classic, The Chosen Ones have decided to revise standing orders so that a councillor cannot request any information from the clerk, as it would involve the Clerk's time so any councillor that wants any information will have to ask for the matter to be agreed by the Council.

- *I'm sure I can supply a recording if anyone doubts what I've written as this is an accurate description as to how the budget system works.*
- *Only this year I asked for a summary of the final Budget for 2021/22 as the figures on the summary we used last December were superseded but this request was refused*
- *I would urge the members of the panel to carefully read what I've said and then judge am I a trouble maker or someone trying under great duress to represent my residents interests*
- *I don't use the FOI as a weapon but as a backstop when our Protocol and the Parish Councils own information policies are ignored. Even then the Parish Council (as I have highlighted in red) chose to ignore their obligations under that Law and the Parish Councils own regulations*
- *After the meeting a member of the public approached me and said they were staggered at the way I was spoken to*
- *I appreciate my comment about " the chosen ones " was satirical but it was based on the comments made at the meeting in that I was somehow a lesser Councillor who's views were not relevant plus of course the incident at 4:30*
- *As it was due to my raising the matter the reserve was reduced to 50% from 60% although NALC legal advice suggests 25% is more appropriate for a Parish Council of our size..*
- *So the Parish Council keeps substantially more of my Parishioners money than NALC advise, my fellow Councillors voted to do that but I'm not aware of any Regulation or Law that prevents me from expressing my personal opinion either by way of a blog or face to face with my Parishioners*
- *I realise that the Parish Council feels it is a corporate body and does not appreciate me raising valid points like this but I know my Parishioners do and they are the people who elect me*
- *I accept there is a conflict between the Parish Council believing that keeping a large amount of my Parishioners money is*

“prudent “and mine which is how can we justify having X amount rather than Y amount?”

4.41 The Clerk told us that Councillor Howe’s comments as shown above prompted her to seek advice from her Union once again. She was advised to raise the matter with the Parish Council with a view to lodging a formal grievance.

4.42 Councillor Howe told us: *I am not using the FOI process for harassment. There is a protocol by which I should receive information as a councillor. If that was complied with, I wouldn't need to seek FOI requests. If I was going over the top with my requests, it is up to the Chair to address it and inform me of this. This isn't the case; it's a blanket refusal to provide me information.*

- I stick by my comments currently the Parish Council seem to believe that I am not entitled to ask for information even under the FOI*
- My Parishioners are stunned that I have to use the FOI to obtain information and even then the Law is ignored*
- I would be interested to hear NALC'S views on this*

The Broadnook consultation event

4.43 On 28 January 2016, public consultation about a proposed local development known as ‘Broadnook ’took place at the Village Hall. The Clerk told us: *‘The Broadnook consultation event was being held in the village hall, which is attached to my office. Councillor Iain Bentley came from the village hall and knocked on my office door. I let him in, and he was very agitated and said "Sue, Julian is in the hall, he is bad mouthing you something terrible to Mr A [the organiser of the event] you need to stop him Sue, now, it's awful". I thanked Councillor Bentley for letting me know and I went through to the back of the hall and caught the eye of the Chair, Councillor Ann Marshall. I told her what Councillor Bentley had said and she went over to where Mr A the event presenter and Julian were standing and she broke into the conversation. This put a stop to Julian saying anything more and he walked away from the group. After a few minutes he left the village hall. Councillor Ann Marshall asked Mr A to come into my*

office for a second, which he was happy to do. I informed Mr A of what I had been told by Councillor Bentley and Mr A confirmed that to be correct. He didn't know who Julian was or that he was a Parish Councillor at the time. He confirmed that Julian was being very critical of me; calling me incompetent and that the Parish Councillors were no better - they are all clueless and are an absolute waste of space and money. Mr A added that he felt uncomfortable with this inappropriate conversation and had tried to move away from Julian, but Julian followed him, he said that Julian was in a very agitated and angry state and clearly had issues with the Clerk and the Parish Council. The Chair, Councillor Ann Marshall I'm sure will be able to verify this.

4.44 When asked about the Broadnook consultation event, Councillor Howe told us that he was unable to comment on it as he could not recall the incident due to it being too long ago. He stated that no one had ever raised the issue with him at the time or since.

- It being a five minute conversation five years ago I have no recollection what was said I suggest that Council ask Cllr Bentley to attend and give evidence.
- I would point out that at that time Cllr Bentley and I were not members of the same political party and I believe it was his comments that triggered the previous unsuccessful complaint against me in 2015
- Again the word fraud crops up even though I have made it crystal clear I've never mentioned the word apart from at 4:31 and even then I said it did not apply
- I would ask the members to consider how this incident involving three people stacks up against 4:30 and 4:79 ?

4.45 The following day, the Clerk wrote to Councillor Marshall as Chair: *"It is with a heavy heart that I am writing this letter, but I feel that Cllr J Howe's behaviour has now reached lunatic levels of ridiculousness, levels that are dangerous and damaging to my professional reputation and my career, particularly because he cannot and has not substantiated any of his accusations, comments*

and allegations, and still feels he needs to keep spewing them out. This has all been brought to a head by events which took place yesterday, Wednesday 28 January 2016 at the Broadnook Development consultation event in the village hall (at which I was not present). He was heard making derogatory remarks about me to the hirer (someone he had never even met before) and this was heard by a third party who then went out of their way to come around to the office to make me aware of what they considered was unacceptable behaviour by Cllr J Howe at a public event, they referred to the derogatory remarks that were being imparted by Cllr J Howe to the hirer about myself, and they were asking if there was anything that I could do to stop it. As you will recall, you were in the hall at the time and so I was able to alert you to this immediately, you then approached the hirer, and he was asked to step into the office, the hirer did this willingly and he appraised you and Cllr T Fowler who was also present, of the derogatory comments that had been made to him by Cllr J Howe, they also added that they were immediately conscious of Cllr J Howe's whole demeanour which appeared angry, dissatisfied and confrontational. Because Cllr J Howe's comments have been confirmed by the third parties, I consider this to be slander. Cllr J Howe is constantly trying to impress upon others that I am incompetent, and has even indicated in a written statement that he considers that I demonstrate the characteristics of someone carrying out fraudulent activities, which in my opinion could be considered as libel, because it was offered in a written statement by Cllr J Howe to the Monitoring Officer. I have no idea what I have done to deserve this kind of attention and so I feel I am now left with no alternative but to formally complain about Cllr J Howe's deplorable behaviour and actions, I have listed a number of clauses in the Member Officer Protocol that I feel have been breached. I am more than aware that there is little that can be done to resolve this situation, and that conscious efforts have been made in the past by the Management & Policy Committee to resolve it, all to no avail, but greatly appreciated by myself. Because it cannot be resolved doesn't mean that it is to be expected or accepted that Councillors are entitled to behave in this way. If I could ask for you to put it to the Management & Policy Committee to consider a complete communication ban on Cllr J Howe to prevent him from communicating with me in any way whatsoever.

In fact I would go so far as to ask for a complete communication ban to be put in place preventing him from communicating directly with any member of staff, in any way whatsoever. My reasoning for asking for this to be considered is because it is typical behaviour for Cllr J Howe that when one well dries up he will find another, and I, as the Staff Manager has a duty of care to them, and I wouldn't wish this on anyone. To pre-empt his reaction to this suggestion, it will not affect him in carrying out his role as a Councillor, he should be going through the proper channels anyway, and that is through a Council or Committee meeting.”

- *At the full Council meeting in December 2019 (I can provide a recording if required) the Budget prepared by the Clerk and agreed by the Management and Policy Committee came before us*
- *There were 16 Councillor present and the Budget was approved in principle subject to some minor amendments which were voted on and subject to determining how much income we would receive from the precept.*
- *As the debate was winding down I politely tried to raise the point that the Budget was committing us to spend more money than we appeared to have*
- *The Chair rather than listening to me or trying to understand my concerns dismissed me with the comment “ Julian I don't know what you are talking about and I'm sure no one else here does” and moved business on.*
- *This isn't the first time the Chair has reacted towards me like this when pointing out financial or legal concerns even when I'm later proved correct.*
- *After the meeting two Councillors were aggressive towards me one of whom was threatening to report me to the Police for recording the meeting*
- *I subsequently wrote to them both pointing out that it was a matter of fact that I could record meetings a copy of my letter is below in black*

'I was very disappointed in the comments you made to me after the meeting on Monday and I feel you were both in breach of the Code of Conduct bearing in mind the threatening manner, the tone of language, the swearing and the threat to report me to the Police

It shows how little you understand the issue when you said you would go to the Police as I would expect Parish Councillors to know that the ICO is responsible for GDPR not the Police

I make the recordings of Parish Council meetings freely available to anyone who wants them and am quite happy to sign an affidavit to that effect if you want to lodge a complaint to the Police or the ICO

But I would point out that a complaint was made against me on similar grounds in 2017 which was thrown out and which wasted a substantial amount of Parishioners money that could have been put towards better use.

If you want I'm sure the Chair will supply you with a copy of the legal advice given to her in January 2017 by NALC.

If you want to look at the primary legislation its section 1 of the Public Bodies (Admission to Meetings) Act 1960 (1960 Act) as amended by the Openness of Local Government Bodies Regulations 2014 (2014 Regulations)

As I'm in contact with you and you both support the 2020/2021 Budget could I ask you one question based on the figures contained, *how can the Parish Council spend £169378 more than the income its projected to receive?*

- *At the January 2020 meeting expenditure was cut by roughly £200,000 compared to the Budget we were given at the December and at least one item we had voted for at that meeting did not appear.*
- *Had the Parish Council stuck to the Budget presented in December 2019 we would have not only spent all our income but also the vast majority of our reserves*
- *I was the only Councillor to notice this huge error, I was ridiculed by the Chair, to date I have never received an apology, none of the other 15 councillors noticed and we have not changed our procedures to prevent this happening again.*
- *Is it being said that I would be in breach of The Code of Contact if I talk, blog or write about this particular incident?*

4.46 Also on 29 January 2016, Councillor Roy Rollings (no longer a member of the Parish Council) emailed the Clerk suggesting that there were certain issues that needed resolving at the Parish Council, including that at present it seemed like councillors cannot disagree on a matter without it becoming an issue. Councillor Rollings said that the relationship between her and Councillor Howe could not be allowed to carry on as it was. He suggested an informal meeting to try and resolve the issues and draw a line under the whole thing.

4.47 The Clerk's response to the mail was to agree to meet with the Chair and Councillor Rollings; she was clear though that the meeting was not going to be about entering any form of mediation with Councillor Howe and would not involve any other councillors: "It will be purely to discuss that there are processes in place for dealing with staff matters, and that Councillors (the Council) need to adhere to these processes meticulously to avoid Grievances being submitted by members of staff which could potentially lead to employment tribunals. That is why it should be a collective Council / Committee decision on how to deal with staff matters. All of this could potentially put the Council and myself in a very awkward position indeed and there is only so far that I can go in advising on this matter before compromising my own rights as an employee to be able to submit a grievance, added to which I do hope that this has not been progressed with Cllr J Howe before consent has been given by the member of staff *concerned*."

- *Until I read this report I was totally unaware that Cllr Rollings had tried to intervene on my behalf especially as we were in opposing political parties at that time. Clearly, he was as concerned as I was about what was happening.*
- *I am also aware that other Councillors were just as concerned, in fact several Councillors who resigned contacted me to explain their reasons and wish me luck for the future.*

4.48 The Clerk told us that, after seeking further advice from her Union regarding the incident during the Broadnook consultation, the Clerk rescinded her offer to meet. Meanwhile the Chair informed all parties that the Clerk's complaint about Councillor Howe's conduct

would be discussed at the next meeting of the Management and Policy Committee, on 29 February 2016.

4.49 On 10 February 2016, Councillor Howe sent an email to the Clerk regarding a complaint he had made to the Information Commissioner's Office (ICO). The email read: *As you know I lodged a complaint with the ICO against the Parish Council for its failure to respond to my requests for information. Although my complaint was by letter the ICO responded by email but I didn't receive it because Virgin Media had changed servers and the majority of my incoming emails were being auto deleted, which as you know is the reason why I was forced to change my email address. I have explained to the ICO why I didn't respond to their email and that in view of the delay I was prepared to let this matter rest. In their reply the ICO said in my response I set out that from the evidence provided it appeared the Birstall Parish Councils response to your information request did not fully comply with the Freedom of Information act." As far as I'm concerned, I am entitled to ask for information to help me perform my duties as a Parish Councillor as covered by the councils own protocol let alone the Freedom of Information act. In future I expect my request to be dealt with quickly and courteously and if they aren't then I will have no hesitation making another complaint and publicising the results. Will you please put this email before the Management and Policy Committee so there is a public record of what happened. At the same time I would hope that the Committee review their Information Policy to ensure that in future the Parish Council fully complies with the obligations contained within the FOI.*

4.50 The Clerk forwarded this email to the Management and Policy Committee, stating that she felt it was disrespectful, demanding and threatening.

- Why ? I was pointing out that the ICO had said the Parish Council was not fully complying with the FOI it isn't a threat its pointing out that the Parish Council of which I am a member was in breach of not only its own Regulations but also the Law
- Unfortunately this has continued to this day and I would be interested to hear the members opinion as to whether they feel the Parish Council can override the Law like this.

4.51 On 19 February 2016 Councillor Marshall and the Clerk held a meeting with the Parish Council's Internal Auditor. During this meeting Councillor Marshall informed the Internal Auditor about the comments relating to fraud that had been made in Councillor Howe's Code of Conduct complaint against her in April 2015. The Auditor commented on this in his Internal Audit Report to the Council. He wrote: *Whilst no unusual financial activity was found in the minutes reviewed, it was brought to my attention by the Chair and the Clerk/RFO that a letter of complaint has been submitted to the Borough Council Monitoring Officer which in part inferred inappropriate financial administrations within the parish office. However, from the internal audit work undertaken I have not found any evidence to support these assertions.*

- *I've covered this earlier I have never said there was fraud.*

4.52 On 29 February 2016, a meeting of the Council's Management and Policy Committee was held. They reviewed the email sent to the Clerk on 10 February 2016 and resolved to send a collective response to Councillor Howe. The Committee considered Councillor Howes email to be rude, threatening and selective, and that it was also an inappropriate and unacceptable way of communicating with a member of staff. They also considered that his threats of making further complaints to be another attempt to bully and intimidate the Clerk into complying with his demands. They added that the timing was particularly inappropriate given that the Clerk had just submitted a complaint about his conduct.

4.53 On 4 April 2016 Councillor Marshall sent a letter to Councillor Howe on behalf of the Management and Policy Committee. The letter read: *The Management & Policy Committee have received a complaint from our Clerk, Mrs Coulson in respect of your behaviour towards her. The matters raised are: A report that you made derogatory remarks about Mrs Coulson to third parties at the Broadnook Development meeting on 28 January 2016 in the Village Hall; [and] A report that you sent an unacceptable email which Mrs Coulson viewed as threatening (sent 10 February 2016, copy attached/enclosed) At this time these matters have not been raised as a formal grievance, therefore the Management & Policy*

Committee would like to resolve this as soon as possible. To this end the Committee has decided to give you the opportunity to attend a meeting between yourself, Mrs Coulson, the Chair of Management & Policy, Councillor Ann Marshall and the Vice Chair, Councillor Robert Dickinson. Hopefully, this will allow the matter to be discussed, resolved and a way forward agreed.”

Matters related to the meeting of 26 April 2016.

4.54 On 26 April 2016, a meeting took place between Councillor Howe, the Clerk, Councillor Marshall and the Vice-Chair Councillor Robert Dickinson. At this meeting, the situation between the Clerk and Councillor Howe was discussed and Councillor Howes made some suggestions as to how things may be resolved.

- At that meeting the Clerk accused myself and two other Councillors of “conspiring against the Parish Council” I never mentioned this meeting to anyone and then sometime later the Chair circulated a Confidential letter I had sent her about the meeting to all Councillors breaching our agreement

4.55 On 28 April 2016, Councillor Marshall wrote to Mrs Coulson regarding the meeting held on 26 April 2016. In her letter she wrote: *“Thank you for attending the informal meeting at Birstall Parish Council on 26 April 2016, facilitated by Councillor A Marshall (Chair) and Councillor R Dickinson (Vice Chair). The purpose of the meeting was to address the complaint made to the Management & Policy Committee concerning Councillor J Howe s behaviour towards you, It was informal, as you elected to deal with the matter this way in the first instance. The meeting was intended to allow a full and frank discussion between yourself and Councillor Howe and to be a means of resolving the complaint. Councillor A Marshall emphasised that matters discussed would not be minuted and should be treated as confidential by all parties, particularly as you are a member of staff. The ensuing discussion allowed you to air your grievances and for Councillor Howe to respond. There were some issues on which both parties agreed to differ. At the end of the discussion Councillor Howe suggested a way forward in response to your complaint by agreeing*

the following: 1. He will in future treat you and your role as Clerk with respect. 2. He will try to think before he acts. 3. He will draw a line under past issues. If this approach is not adhered to you reserve the right back to the Management & Policy Committee for further assistance. The Chair and Vice Chair were pleased that Councillor Howe attended the meeting and hope that it has assisted in paving the way to a more positive relationship between yourself and Councillor Howe in the future.

4.56 On 5 May 2016, Councillor Marshall sent the following letter to Councillor Howe in relation to the meeting held on 26 April 2016: *“Thank you for attending the informal meeting held at the Parish Council offices on 26 April 2016, at which an agreed way forward was reached in order to resolve Mrs Coulson s complaint. Enclosed are two copies of the letter sent to Mrs Coulson indicating the three points suggested by you to enable all parties to move forward. Could I ask that you sign one copy of the letter enclosed and return it in the envelope provided.*

4.57 On 22 May 2016 Councillor Howe sent the following letter to Councillor Marshall in response to her letter dated 5 May 2016: *Please accept my apologies for the delay in replying to your letter of the 28 April 2016 this is because I have been away on holiday. I am prepared to sign and complete the form enclosed with your letter. However, based on past experience, I would in return like a signed commitment from yourself that in future I will be treated with respect. I would also like the commitment to include clarification as to the role of the Clerk at meetings and what rights Councillors have with regards to support, information and getting motions on the agenda.”*

4.58 Councillor Howe told us that he never signed the letter as requested by Councillor Marshall. He explained: *‘When we had a meeting about the issues I was basically told that I must sign a letter saying I would treat the Clerk with respect, there were no instances of exactly what I d done. I said I would sign one if the Chair and the Clerk signed one to say they would treat me with respect. I was referring to the Budget meeting where the Chair had ridiculed me for raising the fact that the Budget was wrong. I wrote to the Chair afterwards saying that not only was she rude to me but why had no*

other councillor noticed the mistake. The Chair and the Clerk refused to sign a letter saying they would treat me with respect and the whole thing fizzled out. '

- Based on past experience I don't think my proposal at 4.57 was at all unreasonable and had it been carried through it would have been the end of things. Whats wrong with seeking clarification as to the role of the Clerk and our right to support?
- With hindsight I should have suggested we all sign an agreement that we all comply with the Members/Officers Protocol

4.59 On 7 November 2016, at a meeting of the Management and Policy Committee an agenda item was discussed entitled '*To receive information of councillor Correspondence to the Clerk and the Chair relating to placing items on the Agenda .*

4.60 The minutes of the meeting recorded the following in relation to this item: *Cllr A Marshall explained that Councillors had received in their agenda packs copies of a thread of emails that had been received by the Clerk and the Chair from Councillor J Howe. 1. First email from Cllr Howe to Clerk: In this email Cllr Howe was requesting that the Clerk produced reports on various items; nowhere did it mention that he wanted the items placing on an Agenda. 2. Clerk s response highlighted in Yellow: The Clerk responded and copied in the Chair and Vice Chair of the Council. 3. Email from Cllr Howe to the Chair complaining about the tone of the email. Cllr J Howe emailed the Chair complaining about the tone of the Clerks response and requested that the Chair instructed the Clerk to place his items on the Agenda. The Chair responded advising him of the correct procedure for requesting items to be placed on the Agenda. Both the Chair and Vice Chair had confirmed that they could see nothing wrong with the Clerks response and that it was polite and factual on each point. 4. Chairs response. The Chair asked Cllr J Howe if he was making an official complaint against the Clerk. 5.Cllr Howes response to the Chair. Cllr J Howe confirmed that he was not making a complaint against the Clerk and asked to meet with the Chair to discuss the issues; and also asked for the procedure to contact NALC direct to get information on how to get items on the Agenda. 6. Thread*

of emails to LRALC highlighting matters: This whole matter and copies of all correspondence was passed to LRALC for their advice on this matter.

didn't i ask Ann

It was confirmed that: the Chair does not have the power or authority to issue instructions to the Clerk (or any other member of staff); the Chair is not duty bound to meet with Cllr J Howe to discuss any matters, least of all Staff Matters.; the Chair is not duty bound to respond to the communications from fellow Councillors; no individual Councillor can contact NLAC or LRALC directly - the Council is the corporate member not individual Councillors. LRALC took the decision to put all the information to NLAC LNALC s response was read out at the meeting.

Cllr A Marshall stated that the correct process had been explained to Cllr J Howe in the past, that she felt no need to meet with Cllr J Howe, but thought that it would be good practice to reaffirm at full Council the correct process for requesting items to be placed on Agenda s in Section 9 of the Council s Standing Orders, along with a copy of NALC s response, and to further remind all Councillors that there is a full explanation of the roles of Councillor, Chair and Clerk in the Councillors Handbooks. This course of action was agreed by Members of the Committee.

4.61 *On 1 December 2016 the Birstall Post⁴ published the following letter from 'J.Howe': I d like to apologise to the residents of Riverside Ward who asked me to raise their concerns about the problems on Meadow Lane/Worcester Avenue including traffic jams, cars blocking gateways, large vehicles, flooding, people staying overnight on Parish Council land etc. I asked for these to be put on the Parish Council agenda so that their concerns could be discussed but the Clerk refused. My request for a progress report on the Hallam Fields Community Hall was also refused. At the Parish Council meeting on the 15 November 2016 the Chairman claimed that the Clerk has sole responsibility for deciding what goes on the agenda and what doesn t. We were not allowed to debate the matter. Because of this people have asked me what s the point of electing Parish Councillors if they are prevented from raising legitimate concerns raised by the*

parishioners as surely that's the main role of a Councillor? Maybe someone else would like to answer that question? On a positive note, after many months of pressure from myself our Local Authorities have finally agreed to fund a fence on Meadow Lane to prevent people and vehicles dropping into the ditch. I will continue to press to get Meadow Lane adopted. Also we now have a bus shelter at the terminus on Wanlip Lane. There is no doubt that the shelter would never have been erected had it not been for pressure from myself backed up by Christine my wife collecting 127 signatures on a petition. As a result of this the Parish Council reversed their publicly stated policy of refusing to support bus shelters (Birstall Post 336). I feel sorry for the people who've been exposed to bad weather at that stop over the years when our Local Authorities could have erected a shelter at anytime. Our next step is to campaign to get the kerb raised at the two stops on Wanlip Lane and hopefully Councillors representing all three tiers of Local Government will support this as this has been going on for well over 10 years.

(⁴The Birstall Post is a community newspaper published once a month)

4.62 On 5 December 2016 Councillor Howe sent the following email to the Clerk: *I understand that a Parishioner has recently asked if a further bus shelter can be erected in the village, will you please let me have copies of any correspondence with regards to this request."*

4.63 On 6 December 2016, the Clerk sent the following email in response: *No requests for a bus shelter have been received in the office from a Parishioner.*

4.64 Councillor Howe responded to this email the same day. He wrote: *Let me rephrase my request. I understand a Parishioner has asked for a further Bus Shelter the (sic) be erected in the village and a request for partial funding of projects has been made to the Parish Council will you please supply me with copies of the correspondence relating to this request*

4.65 The Clerk forwarded the email chain to Councillor Iain Bentley, adding the following remarks: *"I know that you have discussed this with Cllr Howe so can you answer his request please, Cllr Howe clearly does not believe me or understand what I am telling him, that a Parishioner has NOT made a request to the office."* **4.66** On 8

December 2016 Councillor Howe sent the following email to the Clerk, copying in Councillor Bentley: *Considering its low cost the bus shelter on Wanlip Lane has been one of the most successful projects in the village for a long time and both my wife and I have received a lot of positive comments. So I was pleased to hear that another shelter has been requested although of course the Parish Councillors will need to establish that we are getting value for money” before we can agree whether to fund it or not. Please send me copies of any response the Parish Council has made to this request as it would not be appropriate to ask Councillor Bentley for them. I m unclear as to the procedure I assume any request such as this is automatically included on the Agenda of the next Estates and Recreation meeting? If this isn t the case will you let me know what the rules are? Can you confirm that even if Birstall Parish Council didn t have the General Power of Competency the Parish Council Act 1957 S1 allows us to provide Bus shelters? Finally please don t draw assumptions or use capital letters in your emails to me especially when you copy third parties in.”*

- *An example of a Councillor doing what he is elected to do representing the interests of his residents, the Parish Council received a request for a further bus shelter I heard about it and asked for details, what’s the problem and why make such a meal about it and drag the whole thing out?*

4.67 On 9 December 2016, the Clerk forwarded Councillor Howe’s email of 8 December 2016 to the Chair and Vice-Chair stating: *Please see a further email from Cllr J Howe. due to recent events and ongoing legal advice being sought, can I ask the Chair and Vice Chair of the Council for their permission not to respond to any further emails from Cllr J Howe at this moment in time. I look forward to hearing from you.”*

4.68 The Chair, Councillor Marshall responded to the Clerk the same day. She wrote: *“I agree under the circumstances you should not respond to e-mails from Cllr Howe, given recent events and the fact that we are awaiting legal advice. Ann Marshall. Chair of Birstall Parish Council.”*

4.69 On 12 December 2016, a meeting of the Parish Council took place. The issue of Councillor Howe's letter to the Birstall Post was discussed. The minutes of the meeting record that the majority of members felt that Councillor Howe's letter contained unfounded and incorrect information. It was resolved that a letter be drafted to the Birstall Post to be circulated amongst councillors before submitting for publication.

4.70 In the next issue of the Birstall Post (January 2017) a letter from 'Birstall Parish Council' was published in response to the letter from 'Julian Howe'. It read: *Councillors were saddened and disappointed that Julian Howe chose to publicly criticise two members of the Council team and to claim credit for actions which were not directly attributable to him. The Clerk did not refuse to put items on the agenda as Julian Howe asserts. He did not request this or follow the prescribed process, which applies to all Councillors, when they wish to request items be placed on agendas. However, the Clerk answered his request, which was for a report back, in a polite and reasonable manner. The Chair did not make any claims re the Clerk's responsibilities. She merely read out to Councillors the National Association of Local Councils legal judgment on agenda setting. All Councillors received a copy. Julian Howe also claimed that it was his actions which led to the agreement to erect a fence to eradicate the Health and Safety concerns in respect of Meadow Lane ditch. This is simply not true. It had been an ongoing Council issue for a very long time. It was finally resolved by the Clerk, who negotiated a three-way funding agreement between Charnwood Borough Council, Leicestershire County Council and Birstall Parish Council. Parish Councillors are very disappointed that Julian Howe chose to attempt to damage the reputation of the Council, particularly that of the Clerk and the Chair in the press/public domain. The Council as a whole works hard for the residents of Birstall, and they consider it wrong that Julian Howe, as a member of that Council, publicly undermines his colleagues.*"

- *I can only quote from the Parish Council's own minutes of the 21/3/2016*

c) Entrance to Meadow Lane allotment site – Cllr J Howe:

Cllr J Howe reported that the access road to the site was crumbling away and that the guard rails have now gone, he is concerned that cars using this area to turn around, cannot see the edge and will drop into the ditch, and that the Parish Council need to do something about it.

*The Estates Team Manager reported that the fence and the guard rails were installed by Leicestershire County Council, they were not the property or responsibility of the Parish Council. The Estates Team have looked at the area and to install any rails is **virtually impossible**, this is due to the sides crumbling away, leaving nothing to secure posts and rails to.*

- The Clerk mentioned that she would raise these concerns at the same meeting that is to be arranged with Leicestershire County Council for the ditch.*
- So I put the matter on the Agenda and despite reservations from many (see the extract I underlined) and it being “virtually impossible” after arguing we had a moral responsibility I succeeded and prevented harm to my Parishioners*
- I’m not taking credit from the Clerk for the financing just demonstrating to my residents I try to deliver what they want*
- Had I not raised this I very much doubt it would have been done*

4.71 The Editor of the Birstall Post, Mr Jerry Jackson, also published the following statement in relation to Councillor Howe’s letter published in the December 2016 issue of the Birstall Post: *A letter in the December issue of the Birstall Post from Julian Howe contained an allegation that the clerk to Birstall Parish Council had refused a request from him to put items on the agenda. In fact, the clerk had not received a request from Julian Howe. The letter also stated that the Chair of the Council had claimed what the clerk’s responsibilities were in respect of setting the agenda, which implied the chair’s remarks were arbitrary. They were in fact an announcement of legal advice from NALC. The allegations went unchecked as the letter was received shortly before going to press. I apologise for any distress the publication of the letter caused.”*

4.72 The Clerk told us that she did not receive a retraction or apology from Councillor Howe in relation to this letter. She stated that at no point had Councillor Howe made a request for the item to be put on the agenda. She sought further advice from her Union and then made a request for further support to the Management and Policy Committee. Her request included the proposal that a measure of no direct communication between Councillor Howe and the Clerk be imposed by the Council. The Management and Policy Committee agreed in principle to this proposal and resolved to take advice from LRALC and the Councils HR advisors to ensure that the Council were acting correctly.

4.73 In relation to the letter he sent to the Birstall Post, Councillor Howe told us: *We have a big problem with an unadopted road near my house. It s a big question of concern locally for my residents and something I campaigned about during the election campaign. I asked for a motion to be put before the Council to discuss it. The Clerk refused to put this on the agenda. I contacted the Chair who told me that it was only up to the Clerk what was put on the agenda. So I wrote to the local paper saying that the road was a matter of local importance and that I d tried to put it on the agenda but the Clerk had refused. There was no legal reason to not put the motion on the agenda. I was elected on this issue and if it had been dealt with properly and discussed I would not have had an issue but it was not. The people I represent wanted to know why I haven t done what I said I was going to do. My letter was supposed to inform them that I had tried and the reasons why I had failed.*

- *These remarks seem quite reasonable surely its up to the elected Councillors to make decisions like this as it is the lane is still a danger to my community and my residents at the very least expect to know that I had tried to raise the issue and why their concerns have not been addressed*

Matters related to the meeting of 9 January 2017

4.74 On 9 January 2017, at a meeting of the Management and Policy Committee, Members considered a request for further support from the Clerk. The Clerk's request referenced the agreement that had been reached on 26 April 2016: *Clearly this agreement is not*

working. Cllr J Howe is determined to continue in the same vein as before which is causing me further undue stress and pressure with his unrelenting offensive and vexatious behaviour. This continuing harassment from Cllr J Howe has caused me to seek medical attention for stress related illness. I am a personally paid up member of ALCC and my Union Advisor has advised me that I am within my rights to request that Cllr J Howe has no further direct contact with me either by email, letter, phone or text and that he should be supplied with an alternative route of communication with another person(s). As you are aware, Cllr J Howe caused harm and damage to the Clerk's reputation and serious injury to feeling damage with the content of a letter he had published in the December issue of the Birstall Post, to which, the Editor (after considering all the information) has apologised to the Clerk and the Chair and will be issuing an apology in the next issue of the Birstall Post along with a response from the Council declaring that Cllr J Howe's allegations were untrue and unfounded. Upon returning to work after the Christmas break, there were three emails received from Cllr J Howe, written on 27 December 2016 to which I have not responded, the reasons being:

- i) Bus Shelter - Cllr J Howe has already had answers that he didn't like or accept and so this is his third request! I consider this email as vexatious; it is also due to be addressed at the Council meeting this evening.*
 - ii) The flooding on Worcester Avenue allotments was concluded in October 2016 and removed from the list. The resolution was for the Clerk to report back after viewing the ditch, which I did in October 2016. The ditch was viewed by me the ETM and the Senior Groundsman, it could be seen that the water level was high, but it was not flooding, it is LCC's ditch and the Rangers have been emailed, no response has been received back and Cllr J Howe has been told this.*
- If needs must I can support my comments with emails and recordings*
 - It was resolved in June 2016 that an inspection be made and a report presented to a subsequent Council meeting. The*

minutes of the meeting were inaccurate in that they claimed I had said it was the LCC ditch that was responsible when I said exactly the opposite.

- *It was then claimed that a report was presented to us in October 2016 but it wasn't and my request for a copy of the report and the reference in the minutes regarding this matter yielded no reply.*
 - *It was then claimed that the Grounds Manager had included it in his report but firstly as it was a resolution it should have been on the Agenda and secondly the minutes state he had nothing to report.*
 - *Neither was my request for a copy of the correspondence between the Parish Council and LCC complied with although covered by the Parish Protocol and the FOI*
 - *So I get my fellow Councillors to agree to review the flooding nothing happens as a result of that and the fact I tried to chase it up now forms part of a complaint against me*
 - *If as should have happened the resolution had come back to the Councillors and they had agreed there was nothing to be done and voted to close the matter then that would have been that*
 - *As it is five years later the ditch has been cleared the field still floods and the junior football club have been unable to play on the pitches for the last two Winters*
 - *You might notice a pattern of resolutions that never get resolved and the whole system of how resolutions are dealt with needs urgent reform as its still happening*
- iii) Cllr J Howe did suggest a Public meeting, but this was deflected by Cllr R Rollings and so the Council did not agree to pursue setting up a public meeting at this moment in time, therefore, his motion would not be considered yet.*

If I respond to Cllr J Howe with the answers above, he will not be pleased and it will only invite and encourage further offensive,

vexatious and upsetting emails from him. I have decided to keep them back and await the Committees decision on my following requests for further support.

a) To agree that no direct contact is to be made to the Clerk by Cllr J Howe (as recommended and advised by ALCC and LRALC) and to write to Cllr J Howe informing him of this.

b) Decide who 'the other person(s)' is to be for him to contact? I would suggest that it is not the Chair, because she suffers as much as the Clerk (she is not duty bound to be his first point of contact) it would appear, and can be evidenced, that Cllr J Howe appears to have a grudge against both the Clerk and the Chair. Would the Vice Chair be prepared to put himself forward as the first point of contact for Cllr J Howe?"

c) To inform the Council at the February Meeting of this decision and the reasons behind it, in closed session.

4.75 On 16 January 2027, after taking advice from LRALC and HR advisors, the Chair of the Parish Council sent the following to Councillor Howe: *"I write to inform you that at the Management & Policy Committee meeting on Monday, 9 January 2017, our Clerk sought further support from the Committee in respect of what she considers to be your continuing harassment of her. Sadly, your behaviour continues to cause stress to the Clerk. This is not the first time this matter has been raised. In April 2016, our Clerk again was forced to complain about your behaviour, I refer you to a letter sent inviting you to meet with the Chair, Vice- chair and Mrs Coulson to discuss and resolve the matter and agree a way forward. At the meeting held on 26 April 2016 agreement was reached on the way forward, in fact you, yourself, suggested at least two of the points. I refer you to the letter dated 28 April 2016, sent following the meeting detailing the agreed way forward. It is of great regret to the Management & Policy Committee that the Clerk has again been forced to raise the matter of your behaviour. She is exercising her right to refer back to the Management and Policy Committee for further assistance (stated in a letter dated 28th April 2016). Our Clerk has requested no further direct communication with yourself. Therefore, you will cease to: Email the Clerk; Write to the Clerk; or*

Telephone / Text the Clerk. This course of action is being taken to protect the Clerk, as an employee of the Council, from further stress and to avoid any action being taken against the Council. In order to facilitate any necessary communication relevant to the role of the Clerk, you will address such matters to the Chair and Vice Chair for their consideration.”

Events since the letter of 16 January 2017

4.76 The Clerk told us that since the above letter was sent, Councillor Howe has been using the website ‘Whatdotheyknow?’ to make requests for information. She told us: *Councillor Howe has circumnavigated these stipulations by submitting requests to me via Freedom of Information requests or subject access requests. This is done via a website and if any requests are sent from this website regarding the Parish Council, they are received by me, which Councillor Howe is fully aware of.*⁵

(⁵The ‘What do they know’ website reports that Councillor Howe contacted the Clerk via their site on 20 October 2017, 18 January 2019, 24 June 2020 (x3), 27 July 2020 (x3), 2 August 2020 and 20 August 2020 (x3). These concerned five separate Fol requests.)

- What the Clerk neglects to say is that I first wrote to the Chair (pre Covid) asking to visit the Parish Office and examine some information about three specific matters raised with me by three separate residents
- The Chair wrote back telling me that I had to raise a motion and put it before the Full Council for them to consider giving me permission to see the information.
- I wrote back pointing out that even if the Councillors refused permission I could make a request under the Freedom of Information Act but it would obviously be far more cost effective to just let me visit the office. I even asked for advice on how to word a motion but never got a reply.
- I then requested the information under the FOI on the 24/06/2020 and to date I have not received a reply to two out of

three requests, the remaining two are currently with the Information Commissioners

- In the responses which are in the public domain the Clerk has publicly criticised me and claimed that some documents relating to a contract (which should already be in the public domain as they are Agenda items) were “ not kept “ see extract below

I assume the members Panel will get access to or printouts of my FOI requests I made to judge for themselves if they consider my requests are harassment and to see the way the Clerk addresses me in public.

Below in black is an extract from the reply posted on the website

BMX TRACK

The information you requested that was provided to Councillors at meetings on 25/3/2019 and 19/8/2019 were hard copies of supporting paperwork in their agenda packs which were not kept after the decision had been taken at both meetings.

The supporting paperwork data you have requested is not held.

The supporting paperwork related to a contract for £10,000 which according to the Parish Council Financial Regulations should have been put to tender.

Ironically before I raised this matter I thought it prudent to get the entire audit trail first as I didn't want to get accused of crying fraud or making false accusations, sometimes you just can't win !

It should be a matter of serious concern to all Birstall Councillors that it's been publicly claimed that documents used to make a decision about a fairly large contract (including the contract itself ?) are “ not held “

TREES

My reasons for requesting information about Trees was because a Parishioner and I several times raised concerns about a decaying

tree leaning over his garden (I subsequently prepared a detailed written report supported by photographs if anyone wants to see it)

Eventually it fell damaging his fence and greenhouse, it was a large tree and remained in his garden for nearly four weeks.

The Clerk took exception to my saying our complaints were in the public domain and in an email that was circulated outside the Parish asked me to “ provide hard evidence to circulate with the agenda or withdraw your serious accusation of negligence in writing “

I can imagine the response had I written in a similar tone to the Clerk

So I pointed her in the direction of the minutes of a previous meeting where I'd raised the matter and offered her a recording of the meeting “

Neither the resident nor myself have ever received an apology and he claims his fence has still not been repaired properly

As this incident cost my Parishioners considerably more than it should is it unreasonable for me to enquire what went wrong and why an minuted item was not followed up?

In a normal Council I would have expected the Chair to look into it for me and come back to me instead of trying to obstruct me at every opportunity

YOUTH INITIATIVE

Please read my comments of the 20/8/2020 where I point out it seems to cost £18 per child for each 2 hour visit and my point about Value for Money

When I stood for election I made it quite clear that one of my aims was to make the Parish Council more transparent so my Parishioners expect it of me.

I appreciate that there is a conflict between my policy of being as open as possible compared to the Parish Council's reluctance to reveal anything.

There is a worrying attitude towards releasing information and as an example I was stunned at one meeting as some of my fellow Councillors discussed how to keeping supporting papers from public view but at no stage were they told that what they were suggesting was in breach of both the Councils regulations and the Law

One comment was " can't we start the meeting earlier so we can be given the supporting papers read them and hand them back"

Another " When the agenda goes out can't we mark the envelope confidential " even though this was for an agenda for an open public meeting.

4.77 When asked about the Freedom of Information requests he had submitted through the 'Whatdotheyknow?' website Councillor Howe told us: *the Clerk has suggested that dealing with the three FOI requests I sent took her 42 hours to respond to. This is a total exaggeration in my opinion. It seems to me that the slightest attempt to ask for anything receives an automatic shutters down response and that councillors are just spectators in the process .*

- *What I forgot to mention was that the Parish Councillor's were informed that FOI requests made in June 2020 had been fully complied with.*
- *Birstall must be the only Council in any tier of Local Government where any Councillor who requires any support or information must first put a motion to a full Council Meeting for permission which rather slows matters up*
- This measure was introduced in I think 2015 and as far as I am aware to date not a single motion has been made by any Councillor
- So unless this applies only to me it appears not a single Councillor has asked for any advice or information from the

Parish Office since then which is quite remarkable to say the least.

4.78 The Clerk did confirm that other than those requests, Councillor Howe has largely been operating under the terms of this letter ever since January 2017. She reported to us: *I am not entirely clear what Councillor Howe's issues with me are, but unfortunately my working relationship with Councillor Howe is now unworkable and I cannot work with him directly. Since 2017, the problems have been largely resolved. There has been far less communications from Councillor Howe, although no one is restricting him from making contact with me via the Chair or Vice-Chair. He simply chooses not to do so. The situation for me has been vastly improved by the stipulations of the letter sent to Councillor Howe asking him not to contact me directly. I am aware that Councillor Howe is asserting that he cannot carry out his role as a councillor effectively without direct contact to me as Clerk. I do not accept this at all. He has had items put on the agenda since this time and the fact that he has to request things through the Chair or Vice-Chair makes no difference to him as far as I can see.*

4.79 At interview Councillor Howe told us: *'The frustration from my point of view is that these accusations were being made against me without any evidence to support it. Just statements that it was happening. Since the letter I feel completely hamstrung. I don't feel that I can make requests sent through the Chair or Vice-Chair. It is humiliating and the one time I did do it recently my request was simply refused. Council rules state that all motions should go to the Clerk. The Council have revised the rules to state that anything that involves the Clerk's time must be formally agreed by the Council. I do not feel this is necessary, as no councillors do make requests of the Clerk. I feel that there is no point in getting elected if the Clerk decides what is put on the agenda. There is an imbalance between the role of the Clerk and the members. I feel that the Clerk has exaggerated the amount of her time that is being utilised by my requests. I don't understand why the Council refused to take NALC up on their offer of arbitration. I would have been quite happy to sit down and try and resolve the issues in this way. I would still be happy to do this although I feel a governance review is needed.*

- *These comments are out of context so don't really make sense so I will explain. Out of the blue at a Full Council meeting I came under attack for recording Full Council meetings, I was told that legal action would be taken against me if I didn't destroy all my recordings as it was illegal for Councillors (but no one else on the planet) to record meetings*
- *The Clerk then sent a referral form to the ICO who ruled I had breached GDPR.*
- *I then received a series of threatening letters from the Chair saying legal action would be taken if I didn't destroy the recordings and sign an affidavit to that effect. This was about the recordings I had made at open public sessions and there was no mention of Confidential meetings*
- *To add to the surreal nature of the letters I then was told I was being reported for threatening to release a recording of a subsequent meeting to the Press when the Press were present for the entire meeting!*
- *I was so concerned that I issued a Subject Access request to the ICO and discovered that they had been seriously misled and also that the Police had been informed*
- *I complained to the ICO and they reversed their decision. It then came to light that the Parish Council had received legal advice from NALC sometime before confirming that I had done nothing wrong and that they had also offered to arrange for arbitration something that I would have been more than happy to accept.*
- *The Chair told the Councillors the ICO had changed their mind and made it appear that it was the ICO's fault, I never received an apology despite asking several times*
- *I can supply a copy of the allegation that was made to the ICO if required together*
- *This one incident makes anything I may have done pale into insignificance can you imagine how I felt being threatened with Legal action (and not for the first time)*

- *It makes me seriously wonder what exactly third parties have been told about me. and based on some of the items in this report it continues to this day.*
- *Other incidents include*
- *Having correspondence from Parishioners sent to me % The Council offices opened without my consent.*
- *When I made a Subject Access Request to the Council as I was concerned about exactly what information was being collected about me my request was put on the Agenda completely in breach of the Law*

4.80 Councillor Howe also told us: *I very rarely ask for things, the idea is that members have their place which is to discuss and vote on issues and yet I have a recording of a meeting regarding a footpath where the Clerk intervenes and says that the footpath would be a rat run and a terrible thing . She is the Clerk of the Council she is not supposed to not get involved in debates and yet it is made perfectly clear in meetings by the Clerk which way she expects members to vote. I feel that a governance review is needed. Sometimes I feel that people get confused as to who the Chair of the Council actually is. The councillors very rarely put a motion on the agenda, it is run by the Clerk. My role is to represent the interests of the public who are forced to pay for the Parish Council and I do so politely. I keep my cool in the face of allegations of lying, despite the fact that everyone knows I record meetings and can prove I am not.*

- *I stand by these comments there is something seriously wrong when the Clerk intervenes in a debate and expresses her personal opinion and I wouldn't expect it at any layer of Local Government*

5: Reasoning as to whether there have been failures to comply with the Code of Conduct?

Capacity

5.1 Before we make a recommendation as to whether Councillor Howe's conduct amounts to a failure to comply with the Code of Conduct, we need to decide if he was acting as a councillor (i.e. acting in his official capacity) at the relevant times.

5.2 Section 27(2) of the Localism Act 2011 requires all relevant authorities to adopt a code of conduct "dealing with the conduct that is expected of members ... when they are acting in that capacity" (my emphasis). The Council has reiterated this in its own Code.

5.3 The Code therefore does not seek to regulate what members do in their purely private and personal lives. The Code only applies to members when conducting Council business or when carrying out their constituency work. A distinction must be drawn between the individual as a councillor and the individual as an individual; a councillor is not a councillor twenty-four hours a day. Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by the Code; a link to that person's membership of their authority is needed.

5.4 In offering our own views on this, we recognise that the Localism Act is vague on the key point of what acting in 'official capacity' involves. Nor do we have any case law arising from the Localism Act to assist us on this. What we do have, however, is well established case law from earlier hearings. Whilst the wording in the current Code varies slightly from the previous model codes of conduct, cases concerning the former model codes remain of relevance as to how Councils must interpret what 'official capacity' means.

5.5 Clearly on those occasions that Councillor Howe was corresponding with the Clerk about Parish Council business, he was acting in his capacity as a Parish Councillor. Councillor Howe's actions in writing the blog (anonymously), attending the Broadnook

consultation event and in writing to the Birstall Post are less clear cut.

5.6 Under the previous legislation, a restrictive view on capacity was generally taken by the Adjudication Panel for England, the First Tier Tribunal (Local Government Standards) and the High Court. Though relating to the former 2007 model code of conduct, the Upper Tribunal decision in *MC v Standards Committee of the London Borough of Richmond* (2011) UKUT 232 (AAC) is a helpful distillation of the previous High court cases on capacity, those being – *Livingstone v Adjudication Panel for England* (2006) EWHC 2533 and *R(Mullaney) v Adjudication Panel for England* (2009) EWHC 72. The principles stated in *MC* are:-

- (a) was the Councillor, as a matter of ordinary English, actually conducting the business of their authority, including the business of the office of councillor?

CONCLUSION

Irrespective of the decision the Members Panel make unless something changes I have in effect been “sent to Coventry” by the Parish Council I was elected to for events that mostly happened many years ago.

Investigator's Response to Cllr Howe's Submission

Response to Julian Howe's comments:

- 1) Councillor Howe comments that he is 'extremely disappointed that despite two requests' he was not shown the full "evidence" against him until after the report was prepared. Throughout the investigation Councillor Howe did request the evidence that we would be referencing in the report. This evidence was almost all documentary or email evidence that Councillor Howe had either been the author of or had been the recipient of. When this evidence was requested by Councillor Howe he was given full disclosure of the topic areas that had been mentioned by the Clerk and he was signposted to the relevant emails or documents all of which he already had in his possession. Therefore, we are unable to understand quite why Councillor Howe feels he has not been shown evidence. He has never elaborated on quite what the evidence is that he thinks he should have had access to.
- 2) In relation to Councillor Howe's comments on the appointment of the Clerk, we have no comments to make on this. Our report at 4.11 simply details what we were told by the Clerk. Councillor Howe's comments dispute this.
- 3) Councillor Howe's comments on whether he monopolised the Clerks time repeat what he told us at interview, his views are already represented in the report and at 5.21 we have dealt with the issue of whether the amount of emails he sent the Clerk could be considered harassment on their own.
- 4) Councillor Howe's comments on the blogs posted to the CPALC website are noted, however our reasoning on whether his conduct was in capacity is set out in paragraphs 5.5-5.12 and our reasoning as to why we consider this conduct to be a breach of the code is set out in paragraph 5.34.
- 5) Councillor Howe's comments seems to challenge whether the contents of his blogs were covered by copyrighting law and should not have been reproduced in the report. It is likely the blog posts were copyrighted but that is not relevant to our considerations. It is not in dispute that Councillor Howe wrote the blog and the content was provided to us by the Clerk. If Councillor Howe thinks that passing us this content for the limited purpose of considering it in our report is a breach of copyright then it is up to him to take the necessary action. We understand that sharing blog posts in their entirety does not represent a breach of copyright but would only do so if it was amended or if the person sharing it claimed it as their own work. The key here is that the person sharing it provided proper attribution, the Clerk in providing the blog was absolutely clear who she believed the author was and this was confirmed by Councillor Howe

- 6) In terms of Councillor Howe's comments on the claims that he was suggesting that fraudulent activities were taking place at the Parish Council. We have dealt with this at paragraph 5.33 'And we accept Councillor Howe's assertion that at no time did he ever explicitly allege fraudulent activity'
- 7) Councillor Howe's comments on the appropriateness of his comments on the reserves are a response to the comments made by the Clerk and as such we have no comment to make on this.
- 8) Regardless of whether the Lydney case related to Fraud we found that Councillor Howe had not made any allegations of Fraud (see point 6) so we have no comment to make on Councillor Howe's lengthy comments on this issue.
- 9) Comments at 4.24 already covered
- 10) Comments at 4.25 no comments to make
- 11) The emails mentioned by Councillor Howe at 4.29 were requested by us and despite him providing a large amount of other evidence, he did not provide us with the emails requested. We made the same request of the Clerk and she refused to provide them. Councillor Howe made this complaint against himself and he had in his possession emails that would have been useful to the investigation. The Clerk did not make this complaint and therefore there was no onus on her . In any event our finding was that Councillor Howe's emails did not represent unreasonable or intimidatory requests.
- 12) Comments at 4.31 already covered
- 13) No comments to the points at 4.37
- 14) No comments to the points at 4.38
- 15) Our report made no negative comment about Councillor How's use of FOI requests.
- 16) Our reasoning on Councillor Howe's blogs on the CPALC website has already been addressed at point 5)
- 17) Points at 4.42 no comments to make
- 18) In relation to the events at the Broadnook Consultation Councillor Howe made no mention to us of Councillor Bentley having been at this event or that he may be able to provide an account of what happened.
- 19) Points at 4.45 no comments to make

- 20) Points at 4.47 no comments to make
- 21) Points at 4.50 no comments to make
- 22) Points at 4.54 no comments to make
- 23) Points at 4,58 no comment to make
- 24) Points at 4.66 no comments to make
- 25) Points at 4.70 no comments to make
- 26) Points at 4.73 no comments to make
- 27) Points at 4.74 no comments to make
- 28) Points at 4.76 no comments to make
- 29) 4.77 ditto
- 30) 4.79 no comments to make
- 31) 4.80 no comments to make