

## **Audit and Governance Committee**

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<b>Date of Meeting:</b>	10 March 2022
<b>Report Title:</b>	Handforth Parish Council – Member Complaints
<b>Report of:</b>	David Brown, Director of Governance and Compliance
<b>Report Reference No:</b>	To be provided by Democratic Services
<b>Ward(s) Affected:</b>	All

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### **1. Report Summary**

- 1.1. This report provides a summary of recent Member Code of Conduct complaints and associated investigations involving elected members of Handforth Parish Council.

### **2. Recommendations**

- 2.1. That the Committee -
  - a) Note the content of the report; and
  - b) Agree any consequential amendments to the Code of Conduct and associated process to be included within the current review.

### **3. Reasons for Recommendations**

- 3.1. The Audit and Governance Committee is responsible for assuring the Council that its standards arrangements, including the promotion of high standards of ethical behaviour, and the development, maintenance and updating of the Member Code of Conduct and associated protocols are fit for purpose. The Committee will monitor and advise Council about the operation of the Member Code of Conduct in light of best practice and any changes in the law.

- 3.2. The Committee has established a working group to review the procedure for dealing with complaints and to consider the adoption of the revised Local Government Association Model Code of Conduct. This report and its findings are pertinent and should inform that review.
- 3.3. The complaints discussed in this report relate to Handforth Parish Council and, both former and current parish councillors. Cheshire East Council is responsible for administering the Member Code of Conduct process for town and parish councils in the Borough. The complaints discussed in this report have absorbed a significant amount of officer and member time, have resulted in external expense, and have attracted widespread negative media attention. This report ensures the Committee are adequately appraised of the particular circumstances, which include the delays and complications arising during the process, and the consequent significant impact on costs.
- 3.4. Further, the Hearing Sub-Committee involved with these complaints expressed a desire for a summary report to be presented to the Committee once all complaints had been concluded. This would include reflection on how the process could be improved and made more efficient, now that it has been in operation in practical terms for the first time since it was devised.

#### **4. Background**

- 4.1. In line with the arrangements for dealing with Member Complaints, the Monitoring Officer (MO) has over many years received complaints in respect of the conduct of councillors of Handforth Parish Council (HPC). The MO database indicates that between 2018 and Nov 2020 a total of 21 formal complaints were received, with the number and frequency of complaints increasing over the last 18 months. The number of complaints rose significantly after media attention in 2020/21.
- 4.2. The current complaints can be broadly grouped under two headings – complaints that arose within HPC’s membership, and complaints that arose as a result of virtual meetings that took place in December 2020.
- 4.3. These current complaints have resulted a total of 6 separate investigation reports which combined multiple complaints about conduct from single sources and multiple complaints from the public. Following sequential resignations arrangements to continue to process each report were revised to protect personal data.
- 4.4. **Complaints arising within HPC –**
- 4.5. The Monitoring Officer received a number of complaints about HPC councillors, mostly from fellow HPC councillors. There is a significant history of complaints on numerous topics over several years. HPC appears

historically to have Councillors with very different views on how the parish council should be run. The differences in opinion between Councillors has resulted in referrals to the Monitoring Officer over a wide range of behavioural and conduct issues. The current complaints relate largely to the same underlying issue, namely disagreements regarding the operation of section 85 of the Local Government Act 1972 which deals (amongst other things) with the issue of an elected member failing to attend meetings for six consecutive months, and the implications of this. These allegations also purported to challenge the Chief Executive in the role of Returning Officer, criticise the holding of an election and on several occasions threatened legal proceedings in relation to an election which culminated in a letter before action. Although the start point in such matters is often informal resolution, essentially the continuous threats of legal action prevented informal resolution in this case due to the immediate escalation to a formal challenge.

4.6. The complaints arising within HPC were received as follows. On 8 July 2020, the MO received a complaint about two HPC councillors (councillors A, B), reference MO010/20.

4.7. On 8 and 16 September 2020, the MO received three further complaints about three HPC councillors (councillors A, B, C) from three fellow HPC councillors (D, E, F). The complaints were in identical terms aside from the identity of the complainant, differences between the parts of the Code of Conduct alleged to have been breached, and differences in supporting documentation.

Complaint MO032/20 – D vs A, B, & C

Complaint MO033/21 – E vs A, B, & C

Complaint MO034/21 – F vs A, B, & C

4.8. On 15 October 2020, the Monitoring Officer received three further complaints about three HPC councillors (D, E, F) from three fellow HPC councillors (A, B, C). The complaints were in identical terms.

Complaint MO043/21 – A vs D, E, & F

Complaint MO040/20 – B vs D, E & F

Complaint MO044/21 – C vs D, E, & F

4.9. On 21 October 2020, the MO received a further complaint about a HPC councillor (councillor C), reference MO039/20. This complaint related to allegations of intimidation and bullying by a councillor.

4.10. In accordance with adopted procedure, all the above complaints were reviewed by the MO Team in accordance with the agreed process upon receipt. In each case, given that the criteria appeared to have been met, the complaints and supporting information were compiled and referred to an Independent Assessment Meeting in order to consult with the Council's Independent Person before deciding a course of action in each instance. These meetings took place on 18 September 2020 and 16 November 2020, and the MO decision in relation to all the above complaints was that they should be referred to a single external investigator for investigation because of the complexity and the nature of the allegations. This referral was made to Bevan Brittan LLP.

4.11. An external investigator is appointed only when required, and the requirement is triggered by several factors.

- Capacity - the Monitoring Officer's Team is primarily designed to respond to 82 Cheshire East councillors. It works on the premise that Councillors in general wish to uphold good behaviour, will cooperate with the process and will engage in a constructive way. This service is extended by statutory obligation to all town and parish councils within the Borough Council's area. The service provides a standards regime for 108 town and parish councils. Town and parish councils are also supported through their association, Cheshire Association of Local Councils (ChALC), with Cheshire East resources being engaged when early resolution has not worked. Again, this process presupposes a level of cooperative engagement. In this case prior to the social media interest, the volume and frequency of complaints would have left the service unable to support other Councils and Councillors
- Complexity - the complexity and serious nature of the complaints. In this case the complaints ranged from election offences, fraud, financial impropriety, to poor behaviour, and were expressed in language of significant gravity. In this case nearly every councillor complaint was expressed in terms of substantive allegations of unlawful behaviour which required careful and expert consideration (none of which materialised into a substantive issue). The complaints also crossed multiple disciplines, and even if not complex required technical expertise to be obtained.
- Conflicts of interest with Cheshire East Council itself. This manifested itself primarily in the election arena with a multiplicity of complaints and challenges to the Returning Officer and electoral process. These 'complaints' against Cheshire East Council were articulated in terms

of threatened legal proceedings and were intertwined with the behaviour complaints. A further conflict of interest also arose as some members of HPC complained about the Monitoring Officer and their staff. Essentially either complaints or threats of litigation had been made in relation to the majority of the internal resource available. It should also be noted that further complaints were made against the independent investigators.

- Additionally, over several years, previous attempts to resolve issues using internal resources had failed, and it was hoped that an objective or independent view may facilitate early resolution. Where potential litigation is threatened, whether against individuals or the Council, staff or third parties may be also be perceived to have an interest in the outcome.

- 4.12. The independent investigation into the above complaints resulted in three separate investigation reports dated 30 May 2021.
- 4.13. The first investigation report, in relation to the complaint received on 8 July 2020, concluded that both subject members had potentially conducted themselves in breach of the provisions of the Members Code of Conduct relating to Objectivity, Openness, Leadership, and Respect for others.
- 4.14. The second investigation report, in relation to the complaints received on 8 and 16 September 2020 concluded that all three subject members had potentially conducted themselves in breach of the provisions of the Members Code of Conduct relating to Objectivity, Openness, Leadership, Respect for others.
- 4.15. The investigator notes in this second report that the Subject Members did not initially agree to come forward for interview. The investigator provided a firm deadline by which interviews must be conducted (29 January 2021), however it was not until 2 March 2021 that interviews were able to be conducted with 2 of the 3 subject members. A third subject member did not engage by way of interview at all.
- 4.16. The third investigation report, in relation to the complaints received on 15 October 2020, concluded that all three subject members had not breached of the provisions of the Members Code of Conduct relating to Objectivity, Leadership, Respect for others, Information, or Bullying. The investigators report did however note *“that the subject members, as well as all other members of the Council, might benefit from appropriate advice and training in relation to ethical standards and the management of employment issues.”*

- 4.17. The final complaint referred for investigation (received 21 October 2020) was investigated and the findings were added to the first investigation report as there was a high degree of similarity. The conclusion reached by the investigator was that the subject member (councillor C) had potentially conducted themselves in breach of the provisions of the Members Code of Conduct relating to Leadership, Respect for others, and Bullying.
- 4.18. **Complaints arising in December 2020 –**
- 4.19. The Monitoring Officer received a large number of complaints about HPC councillors in relation to two virtual meetings which took place on 10 December 2020 via Zoom (the majority of complaints from members of the public arose much later after an edited version of the meeting was publicised in social media). The meetings were an extraordinary meeting of the Council's Planning and Environment Committee, and an extraordinary meeting of the full Council. Both meetings were facilitated by the Cheshire Association of Local Councils (ChALC) in the absence of the permanent HPC clerk.
- 4.20. In accordance with adopted procedure, all the above complaints were reviewed against set criteria by the MO upon receipt. In each case, given that the criteria appeared to have been met, the complaints and supporting information were compiled and referred to an Independent Assessment Meeting before deciding a course of action in each instance. The MO decision in relation to all the above complaints was that they should be referred to an external investigator for investigation.
- 4.21. Section 28(4) of the Localism Act 2011 requires the investigation to follow the procedure adopted by the Council. Given that the external investigator appointed in relation to the earlier complaints had the benefit of the wider context, and in the interests of expediency and cost, it was decided the same investigator should be appointed to investigate these new matters.
- 4.22. The independent investigation into the above complaints resulted in three additional separate investigation reports dated 27 May 2021. The reports contain multiple recommendations and conclude that all three subject members had potentially conducted themselves in breach of the provisions of the Members Code of Conduct relating to Objectivity, Openness, Leadership, Respect for others.
- 4.23. The reports were provided to the Sub Committee for adjudication. Due to the resignations of the subject Councillors prior to the Sub Committee hearing none of the reports have been considered by the Audit and Governance Sub Committee and no formal findings made against any Councillor.

4.24. A total of six reports had to be produced, the later reports having substantial supporting documentation in excess of 100 pages each to deal with variety of complaints made, involving 6 councillors.

## **5. Post investigation**

5.1. In accordance with adopted procedure, each investigation report was reviewed on receipt by the MO in consultation with the Independent Person. On 16 June, the Monitoring Officer issued Determination Notices to all three subject members who had been found potentially in breach of the Code, confirming the course of action to be taken in relation to each complaint. Two of the three subject members resigned from office, and it was accordingly not possible to pursue these matters against former councillors. The remaining complaints would be directed to a Hearing Sub-Committee meeting.

5.2. During the final stages of investigation, and following receipt of the draft investigation reports, a number of complications arose which prolonged the process and increased the total cost. These include:

5.2.1. The sequential resignation from office of all three subject members destined to attend a Hearing Sub-Committee, over a prolonged period of time as the Hearing Sub Committee approached.

a) Councillor A resigned during the latter stages of the investigation process as the draft report was substantially completed.

b) Councillor C purportedly resigned during the investigation process in March 2021. The resignation was however misdirected and of no effect. Confirmation of correctly tendered resignation was not received for some time, but it was necessary to continue with the outstanding investigations in the intervening period.

c) Councillor B resigned after the finalised reports had been provided prior to the third rearranged Sub Committee hearing. The previous hearings having been changed upon the subject member's request.

5.2.2. Following each resignation from office, extensive combined investigation reports and numerous supporting documents required review and redaction to ensure no former councillor information was disclosed inappropriately. The reports and appendices extended to over 1000 pages in total.

5.2.3. The investigation process itself was characterised by repeated and prolonged delays. For example, insistence on revisiting, repeatedly and in detail over the course of approximately two months, matters falling

outside the scope of the investigation (namely section 85 of the Local Government Act 1972) or a refusal to engage at all.

- 5.2.4. On 25 November 2020, the Monitoring Officer wrote to HPC with reference to a large number of complaints and referrals received about the conduct of HPC councillors, fundamental issues of poor governance, unlawful decision making, and the role of the Returning Officer appointed by Cheshire East Council. The letter sought to clarify the position and assist HPC, and was subsequently published to the HPC website. The publication of the letter generated numerous complaints and representations both about the content and publication of the letter and the actions of Cheshire East Council officers, predominately from councillors B and C.
- 5.2.5. By letter dated 8 February 2021, councillors A, B, C wrote to the Council threatening Judicial Review of various matters related to the operation of section 85 of the Local Government Act 1972 which had underpinned the initial tranche of councillor complaints. The Council was obliged to engage further independent legal representation to compile a response to the threatened claim. This was arranged and a response dispatched to the claimants.
- 5.2.6. By further letter, councillor C made a number of very serious allegations of financial impropriety. Due to the nature of these allegations, it was incumbent on the Council to liaise with the Police and audit (to whom the allegations had also been made). It was established that there was no foundation whatsoever to these allegations, however they served to delay the process and incur additional costs.
- 5.2.7. Further separate allegations were made by councillor C regarding the perceived illegality of an electoral process. Again, the Council was obliged to consider these in detail, and again they were found to have no foundation.
- 5.2.8. Numerous letters and emails of complaint from subject members in the above matters challenging the Council and its officers and the conduct of the code of conduct investigation process. The independent investigator was, as the matters were concluding, also subject to complaints which necessitated resolution. The nature and the manner in which the complaints were expressed resulted in the external investigators firm engaging their own staff protection protocols. This has included complaints to external statutory bodies such as Information Commissioner and professional associations.

5.2.9. There continue to be information requests, complaints and correspondence from former HPC councillors on the same issues that were subject to investigation. Additional correspondence continues to be received relating to ongoing potential litigation and complaints against Cheshire East Council officers.

## **6. Recommendation following investigations**

An authority must have an effective, fair, impartial, and transparent complaints and investigation procedure, in which both councillors and the public can have confidence.

### Timeliness:

- 6.1 In the current case complaints had been made over many years culminating in the recent circumstances and which manifested themselves in a multiplicity of complaints over a wide range of issues. The Council must adopt a process to investigate complaints and then must follow the process. The recent series of reports arose from complaints in September 2020 and resulted in the first reports being available in May 2021. In normal circumstances 8 months would be an excessive period of time and potentially prejudicial to a fair outcome. In this case given the current process, complexity, volume of complaints and given the level of cooperation and engagement, the committee may conclude 8 months is proportionate. A clearer, simpler, more succinct and transparent process may facilitate both timeliness and fairness. The issue of cooperation and engagement and what happens if subject members do not engage should also be clarified in the new process.
- 6.2 The delay between May 2021 and November 2021 of 6 months relates solely to trying to arrange and agree the process to set committee hearings. Whilst the Monitoring Officer has the power under current legislation to investigate and make decisions on allegations, it is not suggested that Councillors are excluded from the hearing process. The Monitoring Officer in consultation with the Independent Person and chair of Audit and Governance Committee should publish clear criteria for any councillor-to-councillor complaint, and any complaint involving only councillor and officers. Complaints from the public or of such seriousness they should be considered by committee should be progressed expeditiously; arbitrary imposition of dates would be unfair but significant savings in time and cost could be made by a robust approach to this element in the new process. It is suggested that no more than two hearing dates occur in any investigation.

## Proportionality

- 6.3 An investigation process needs to be proportionate and fair. The process must have an independent element as a check on the impartiality of decision-making. The more significant the likely sanctions that can be imposed, the more robust the independent element needs to be in order to safeguard the fairness of the process. The allegations in this case were of an extremely serious nature and if accepted, likely to invoke sanctions. In this case our independent oversight is provided by the independent person.
- 6.4 The committee may be satisfied that the process is fair, but proportionality also applies to the reasonableness of the resources used as against potential sanction. This investigation has cost £85,716. The annual precept for Handforth Parish Council is £85,000. Although the process is undoubtedly fair it is arguable it is not proportionate in respect of cost against potential sanction.
- 6.5 The Cheshire East Council is statutorily obliged to undertake this role for town and parish councils. The cost of investigations into poor behaviour even when proven to have occurred cannot (in whole or part) be recovered from those councils. This cost is equivalent to employing a social worker to support a family in need.
- 6.6 It is suggested that following best practice as suggested in the Local Government Ethical Standards Review January 2019 that Cheshire East revise, adopt and publish a clear robust public interest test. For example, Article 10 of the European Convention on Human Rights states that “everyone has the right to freedom of expression”, although this right is not absolute, and is subject to “such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society...for the protection of the rights and interests of others”.
- 6.7 In *Heesom v Public Service Ombudsman for Wales*, the application of Article 10 to local councillors, taking into account judgments by the European Court of Human Rights found that “Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the 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.” It added that politicians, including councillors, have “enhanced protection as to what they say in the political

arena” but by the same token are “expected and required to have thicker skins and have more tolerance to comment than ordinary citizens”.

- 6.8 This 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 do not extend to “gratuitous personal comments”. We should be clear about the bar necessary to consider and investigation on councillor-to-councillor complaints.
- 6.9 The current process also significantly favours confidentiality over transparency. The underlying policy consideration in respect of councillor conduct is simply the public have the right to know about the behaviours of the councillor they voted into office. When complaints are made, and unless there is good reason otherwise, in all councillor-to-councillor complaints if a complaint is accepted and determined, the decision to investigate should be published and where individuals cease to be in office any information, draft report etc available at that point should be available for inspection.

#### Conflicts of Interest

- 6.10 A clear approach to conflicts of interest created by complaints and proposed litigation against officers and investigators should be created and published. It is not appropriate for participants in the process to be able to ‘select by complaint’ those individuals they are prepared to engage with.

### **7. Hearing Sub-Committee**

- 7.1. The remaining complaints pertaining to subject members who were still in office were directed to the Hearing Sub-Committee for consideration.
- 7.2. In accordance with the Council’s adopted procedure, a series of pre-hearing meetings were held virtually to consider the practical aspects of the hearing process, ahead of the actual hearings.
- 7.3. A total of 7 pre-hearing meetings were held, largely due to the ongoing need to amend arrangements and for the Monitoring Officer to issue further directions.

14 June 2021	Training / Briefing for Sub-Committee, 2 hours
17 June 2021	Hearing arrangements, follow up meeting

23 June 2021	Pre-hearing meeting
28 June 2021	Continuation of 23 June
26 August 2021	Pre-hearing meeting
15 September 2021	Pre-hearing meeting
11 November	Meeting following cancellation of last formal Sub-Committee meeting

7.4. A total of 4 formal Hearing Sub-Committee meetings were scheduled, all of which were deferred or aborted for the following reasons:

30 June 2021	Postponed on subject member request	First scheduled date, arranged 15 June 2021
8 September 2021	Cancelled	
1 October 2021	Cancelled	Replaced by hearing 'on the papers' to be held on 11 November 2021
11 November 2021	Cancelled	Final subject member resigned

## 8. Costs

- 8.1. The costs associated with this long running matter comprise two separate elements – the direct and quantifiable costs incurred with external service providers, and the indirect internal costs incurred in terms of member and officer time expended.
- 8.2. There is no distinction made in terms of internal or external costs incurred between the first set and the second set of complaints outlined above. In both cases, the MO was obliged to progress each set of complaints through the Council's adopted procedure and ultimately refer for investigation. The complaints, although separate, were taken through the process together and were investigated together.
- 8.3. Because of the number and nature of the complaints, the amount of time that would need to be committed to investigating six individual councillors against a complicated factual matrix, and due to the various ongoing challenges and

complaints raised about the Council and its officers during the process, the decision was taken to appoint an external investigator.

- 8.4. As each set of complaints was investigated separately but simultaneously, and the same external investigator and independent advisor appointed, all invoices for external work completed were combined.
- 8.5. The external costs incurred in relation to the external investigations, independent legal advice to the Sub Committee, and dealing with threats of Judicial Review total £85,716 (incl VAT).
- 8.6. In addition to the external costs, there are a number of internal costs that have been incurred in the progression of these complaints. Councillors appointed to the sub-committee were obliged to spend many hours preparing for and attending pre-hearing meetings and aborted hearings. An estimate would be approximately 30 hours spent by each councillor on reading and preparation and a similar amount of time again spent on pre-hearings.
- 8.7. Officer time spent on administering these complaints, which includes briefings, preparation for meetings and hearings, attendance at hearings, dealing with correspondence, dealing with judicial review and complaints. These officer related costs total more than £10,000 based on a standard blended charge rate.

## **9. Implications of the Recommendations**

### **9.1. Legal Implications**

- 9.1.1. The Monitoring Officer of the principal council (Cheshire East Council) is deemed to be the Monitoring Officer for the purposes of the Code of Conduct and register of interests for the parish or town councils in the area of the principal Council.
- 9.1.2. The Local Government and Housing Act 1989 requires adequate resources to be made available to fulfil that role of Monitoring Officer.
- 9.1.3. Conflicts of interests arise in this case when multiple complaints are made not just between parish Councillors, but also when complainants propose litigation and make complaints against the principal council and its officers and against the independent investigator. Where substantial conflicts of interests are created by the complainants an independent report must be sought.

## **9.2. Finance Implications**

- 9.2.1. The financial implications arising from the matters outlined in this report are as noted within the body of the report.
- 9.2.2. Section 5 of the Local Government and Housing Act 1989 requires adequate resources to be made available for the purpose of resolving councillor code of conduct complaints. The cost of investigation and committee hearings cannot be recharged to the town or parish council. The cost of training recommended should be paid by the town or parish council and may be provided by the principal council or other external provider if the recommendation for training is agreed.
- 9.2.3. The cost of the independent investigation, cancelled meetings, reports, preparation for committees etc into the multiple cross complaints involving 6 Councillors is £85,716.00. This is funded by Cheshire East Council.
- 9.2.4. The annual Parish Precept for Handforth Parish Council (now styled as a town council) is approximately £85,000 for 2021/22

## **9.3. Policy Implications**

- 9.3.1. There are no direct policy implications arising from this report. The review of the Code of Conduct and the procedure will make further recommendations for improvements to be considered at full council

## **9.4. Human Resources Implications**

- 9.4.1. There are no direct human resources implications arising from this report.

## **9.5. Risk Management Implications**

- 9.5.1. There are no direct risk management implications arising from this report.

## **9.6. Rural Communities Implications**

- 9.6.1. There are no direct implications for rural communities.

## **9.7. Implications for Children & Young People/Cared for Children**

- 9.7.1. There are no direct implications for children and young people.

## **9.8. Public Health Implications**

- 9.8.1. There are no direct implications for public health.

## 9.9. Climate Change Implications

9.9.1. There are no direct implications for Climate Change

<b>Access to Information</b>	
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