

<b>Title of Report</b>	<b>ALLEGATIONS OF A FAILURE TO OBSERVE THE CODE OF CONDUCT</b>	
<b>Presented by</b>	Elizabeth Warhurst, Head of Legal and Commercial Services <a href="mailto:elizabeth.warhurst@nwleicestershire.gov.uk">elizabeth.warhurst@nwleicestershire.gov.uk</a>	
<b>Background Papers</b>	<a href="#">NWLDC Members' Code of Conduct</a>	<b>Public Report:</b> No
<b>Purpose of Report</b>	<p>1. To consider the report of the Head of Legal and Commercial Services and Monitoring Officer.</p> <p>2. To request that the Assessment Sub-committee determine what action should be taken.</p>	
<b>Recommendations</b>	<b>THAT THE ASSESSMENT SUB-COMMITTEE MAKES A FINDING ON THE COMPLAINT AS SET OUT AT PARAGRAPH 5 OF THE REPORT</b>	

## 1. COMPLAINT

- 1.1 On 19 September 2020 the Monitoring Officer received a complaint from Councillor Kneale regarding Councillor G Allman, both members of Ashby Town Council. A copy of the complaint letter from Cllr Kneale is attached at Appendix A.
- 1.2 In summary, the complaint centred around the discussion which took place during the public question and answer session at the meeting of Ashby Town Council on 27 July 2020, the way that Cllr Allman had managed the meeting thereafter and that the events at the meeting did not appear to have happened spontaneously and had been planned with and by Cllr Allman. The meeting was being held remotely via Zoom.
- 1.3 Local events which occurred prior to the meeting provide some helpful context. Members will be aware of the international and national events which occurred following the death of Mr George Floyd in America on 25 May 2020. This included a number of anti-racism marches being held around the UK. On 20 June 2020 an anti-racism march was organised and held in Ashby in and around the town centre. The marches were held during the first COVID19 pandemic lockdown when there were restrictions in place governing the movement and gathering of the public.
- 1.4 A member of the public attended the Town Council meeting held on 27 July and asked questions about the anti-racism march which had taken place on 20 June and attendance at the march by some town councillors.
- 1.5 The agenda for the Town Council meeting on 27 July also included an anti-racism motion. A copy of the agenda for the meeting, including the motion is attached at Appendix B to this report. The Town Clerk has kindly provided the Monitoring Officer with an extract from the Zoom meeting which can be accessed via the link below:  
  
<https://web.microsoftstream.com/video/a6d7730d-f238-4d6a-9119-8401d8913cbf>
- 1.6 The extract is around 1 hour long. The public question and answer session begins at around 4.50 minutes into the recording and the discussion regarding the anti-racism motion at around 19.30 minutes. The Assessment Sub-committee are advised that it would be useful to listen to the extract in full to understand the complaint and relevant context.

- 1.7 In summary, the question from the member of the public led to the agenda item on the anti-racism motion being brought forward and this, in turn, led to a discussion about letters which a member of the town council had received regarding the conduct of two members of the town council, one being Cllr Kneale.
- 1.8 Cllr Kneale was concerned about this as she believed that it was suggested that she had taken place in an unlawful act by being part of the march and also that letters regarding her conduct were discussed in a public meeting. These concerns were exacerbated as Cllr Kneale believed that the discussion was not spontaneous and was planned by Cllr Allman.
- 1.9 A copy of the Ashby Town Members' Council Code of Conduct is attached at Appendix C.
- 1.10 Cllr Kneale has identified her concerns in respect of the following sections of the Town Council Members' Code of Conduct:

**"3. Respect.**

**3.1 You must treat others with respect.**

It is the collective responsibility of all Members to create a fair, safe and enjoyable environment for Members, Officers and Residents which is free from discrimination, intimidation and abuse.

**3.2 You must not:**

3.2.1 do anything which may cause the Town Council to breach the Equality Act 2010;

3.2.1 bully any person;

3.2.3 intimidate or attempt to intimidate any person who is or is likely to be:

- (i) a complainant;
- (ii) a witness; or
- (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with his or her authority's code of conduct;

3.2.4 do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Town Council.

**5. You must not.**

5.1 Conduct yourself in a manner which could reasonably be regarded as bringing the Town Council into disrepute.

5.2 Place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

5.3 Use or attempt to use your position as a member improperly to confer on, or secure for yourself or any other person, an advantage or disadvantage including providing or offering to provide a reference for any candidate for employment or promotion with the Town Council.

5.4 Use or allow to be used Town Council resources improperly for political purposes (including party political purposes) and act in accordance with the Council's reasonable requirements.

**6. You must.**

- 6.1 When reaching decisions on any matter have regard to any relevant advice provided to you by:
  - 6.1.1 Statutory Officers; or
  - 6.1.2 Senior Officers, where that officer is acting pursuant to his or her statutory duties.
  - 6.1.3 Any advice from a third party.
- 6.2 Give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed.
- 6.3 Make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on individual and independent merit.
- 6.4 Be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions, notwithstanding your other obligations under this Code.”

**2. INFORMAL RESOLUTION PROCESS**

- 2.1 Under the arrangements for dealing with complaints about councillors adopted by the Council in 2012, the Monitoring Officer has the opportunity, in the early stages of a complaint, to work with parties to see whether it is possible to resolve the matter informally. The process does not involve deciding whether the Code has been breached or not. It is about identifying an issue of concern and looking for ways to resolve it to the satisfaction of both parties. Although informal resolution is generally very successful, there are some cases where it is not possible to resolve the complaint in this way. The Monitoring Officer will make a judgement on a case by case basis about whether and how far the informal route should be pursued before referring a matter to the Sub-committee for consideration.
- 2.2 In this case both Cllrs Allman and Kneale agreed to engage in the informal resolution process and the Monitoring Officer thanks both members for their time and co-operation. The Monitoring Officer corresponded and held a number of virtual meetings and telephone calls with both members to try and identify a mutually acceptable outcome.
- 2.3 An informal resolution meeting was held with the MO, Cllrs Allman and Kneale on 13 November 2020. Cllr Allman provided his initial response to the complaint. A copy of the summary of the informal resolution meeting is attached to this report at Appendix D. This note is not a verbatim record of the meeting but a summary of the key points discussed.
- 2.4 Following the meeting, Cllr Kneale has confirmed that she remains concerned about the issues which she raised under her complaint and that she wishes to pursue her complaint.
- 2.5 Cllr Allman has been advised that Cllr Kneale does not consider that her complaint has been fully addressed.
- 2.6 On the basis of the above, the Monitoring Officer has concluded that the informal resolution process has not been successful.
- 2.7 The Monitoring Officer is therefore requesting that the Assessment Sub-committee consider the matter and determine whether any further action should be taken by taking into account the criteria and public interest test set out for assessment of complaints. A copy of the criteria for assessment of complaints is attached at Appendix E.

- 2.8 The Monitoring Officer, subject member and complainant can seek guidance from the Independent Person (IP) at any point in the informal resolution process. The Monitoring Officer has briefed the IP and he has been invited to attend the meeting of this Sub-committee for the purpose of offering his perspective on the complaint.

### **3. INITIAL TESTS**

- 3.1 In order for the Members' Code of Conduct and associated complaints process to be engaged, 3 initial tests need to be met:

1. Does the complaint relate to a member within the NWLDC area, in office at the time of the conduct complained of?

Cllr Allman is a current serving member of Ashby Town Council.

2. Was the member acting in their capacity as a councillor at the time of the conduct complained of?

Cllr Allman was acting in the capacity as Councillor at the time of the conduct complained of as he was in attendance at a council meeting.

3. The complaint, if proven, would be a breach of the Code under which the member operates?

The complaint, if proven, could amount to a breach of the Code.

### **4. INFORMATION FROM THE COMPLAINANT AND SUBJECT MEMBER**

- 4.1 In accordance with the Council's adopted arrangements the complainant and subject members are not party to the Assessment Sub-committee. However, should any further information be provided by either Cllrs Allman and Kneale it will be reported to the Sub-committee.

### **5. ASSESSMENT OUTCOMES**

- 5.1 The following outcomes are available to the Sub-committee under the Arrangements adopted by Council:

5.1.1 Refer the complaint to the Monitoring officer to take other action.

5.1.2 Request further information from the parties.

5.1.3 Refer the complaint to the Monitoring Officer for investigation.

5.1.4 No action to be taken in respect of the complaint.

### **6. PUBLIC INTEREST TEST**

- 6.1 In considering whether or not to take any further action in respect of the complaint (including requesting an investigation), members are referred to the criteria for the assessment of complaints at Appendix E.

- 6.2 There is no widely accepted definition of the public interest but has been described as "*something which is of serious concern and benefit to the public*". In this context, the public interest test requires a public authority to weigh the harm that would be caused by not investigating a complaint against the public interest served by carrying out an investigation. The public interest therefore relates to something which has an impact on the public and it is not merely a matter that the public find to be of interest or a matter

that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public).

6.3 Examples of factors which would tend to indicate there is not a public interest in investigating a complaint are:

- If the complaint is vexatious;
- Repetitive complaints; and
- Complaints about trivial matters.

6.4 Factors which would tend to indicate there is a public interest in proceeding with an investigation are:

- The complaint relates to a matter which affects a significant part of the district; and
- Complaints about serious misconduct.

6.5 These criteria in Appendix E are not exhaustive and not all are relevant in each case.

## **7. CONSIDERATION AS TO WHETHER THE HEARING SHOULD BE HELD IN PRIVATE**

7.1 The Sub-committee will need to decide whether the meeting should be held in public or private. The Sub-committee will need to consider the public interest test. Is the public interest in holding the hearing in public outweighed or not by the public interest in excluding the press and public? The Sub-committee will need to make this decision at the start of the meeting. The agenda and report for this meeting have been exempt from publication to the press and public under paragraph 1 of Schedule 12A Local Government Act 1972 - information relating to any individual.

7.2 Under the Council's Arrangements there is a presumption in favour of the hearing being held in public unless it is considered appropriate for it to be held in private.

7.3 In considering this aspect of the hearing the Sub-committee needs to consider what information is being presented before them.

7.4 The issues arose in a public meeting of the Ashby Town Council and are, to a large extent in the public domain. It is not known whether there are any pending legal proceedings as mentioned in the recording of the Town Council meeting. These events referred to and involved other members of the Town Council who are not party to the Complaint.

## **8. REVIEW OF THE DECISION OF THE ASSESSMENT SUB COMMITTEE**

8.1 The Assessment Sub-committee has the authority to allow or not a right of review of their decision to take no further action taking into consideration the views of the Independent Person as referred to in 2.4 above.

8.2 However, the complainant should be advised that no review will be granted unless further / additional evidence is submitted to the Monitoring Officer. It will be the decision of the Monitoring Officer as to whether such additional evidence warrants another assessment.

8.3 This is to ensure a fair process and to avoid frivolous / vexatious appeals.

8.4 A request for review can be made at the time the Sub-committee makes its determination or within 30 days of the decision.

<b>Policies and other considerations, as appropriate</b>	
Council Priorities:	Not applicable
Policy Considerations:	Constitution and Relevant Authority's Members' Code of Conduct
Safeguarding:	Not applicable
Equalities/Diversity:	Not applicable
Customer Impact:	Not applicable
Economic and Social Impact:	Not applicable
Environment and Climate Change:	Not applicable
Consultation/Community Engagement:	Not applicable
Risks:	Not applicable
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