

Complaint against Cllr Elizabeth Benner of Mountsorrel Parish Council concerning her actions at a Memorial Committee meeting 24th August 2020, from Mr Andrew Hawkey

Complaint Ref: MC6 20/21

Date: 21st September 2020

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

Mr Hawkey's complaint is that during an on-line Memorial Committee meeting where a report he had written in his role as Manager of the Memorial Centre was being considered, Cllr Benner bullied and harassed him, showed no dignity or respect towards him, and displayed behaviour to him that was totally offensive, intimidating, malicious and insulting, and abused and misused her power to undermine, humiliate and injure him.

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

3.1 You must treat others with respect.

3.2.2 You must not bully any person.

Response to the Complaint

In response to the complaint, Cllr Benner stated that:

- she does not feel that she was in any way disrespectful to Mr Hawkey during her questioning, nor that she was offensive or bullying as he suggests
- the adjectives Mr Hawkey uses are very subjective, and that although he may have felt this way, it was not her intention to make him feel like that
- as a councillor, it is her job to question information supplied to ensure that fair and informed decisions are made
- as a manager, Mr Hawkey would expect to be questioned over the information that he had provided, hence his attendance at the meeting
- these are very difficult times and that the Council wants to be sure that they are making the right decisions for all those concerned, including Mr Hawkey, who himself must be feeling stressed, though his report seemed to advise that the Centre closes, which would ultimately make his job redundant
- there were other councillors at the meeting who also took the view that the information Mr Hawkey had provided was insufficient for them to make a decision, so she is unsure why Mr Hawkey has singled her out as the councillor to complain about

- it was agreed that Mr Hawkey would go and re-fresh the report, with help from the chair and vice-chair of the committee, to include the information that councillors required and that they would meet again when it is hoped that they can make the right decision for the Centre and the village
- since the meeting there have been emails from Mr Hawkey sent to the Council with concerning content, such as “calculating councillor”, “shall be made totally accountable”, “unreasonable”, “unprofessional councillor”
- she was unaware that Mr Hawkey was referring to herself in these emails as there were in her view no concerns within the meeting, and there was a healthy dialogue between all councillors, which was a refreshing change of recent times, and she is disappointed to learn that Mr Hawkey did not feel the same after the meeting.

Conclusion of the Monitoring Officer

Although Mr Hawkey indicated that the meeting in question had been recorded, the Parish Council originally indicated that for technical reasons the recording was not available.

I therefore contacted all the persons present at the meeting (excluding Mr Hawkey and Cllr Benner) to query whether they felt that there had been any unacceptable behaviour displayed during the meeting, particularly towards staff.

Of those who responded, four stated that they did not consider that there had been any unacceptable behavior during the meeting. However, one person stated that Cllr Benner’s behaviour towards Mr Hawkey had been a matter of serious concern.

The Parish Council did then subsequently supply a recording of the meeting to me.

Having viewed the relevant section of the recording, which I note was in confidential session, I consider that although Cllr Benner did question Mr Hawkey about his report, as did some other councilors, she did so in a polite, measured and calm manner.

Consequently, I do not consider that Cllr Benner’s behaviour towards Mr Hawkey during the meeting was disrespectful, and neither was it bullying.

I therefore conclude that the complaint does not warrant any further action or investigation.

Adrian Ward
Monitoring Officer

Views of the Independent Person

Having read the documents supplied (the complaint and Cllr Benner's response) and viewed the relevant part of the recording of the meeting, my views are as follows:

It was evident that several Councillors were having difficulty understanding the information supplied in Mr Hawkey's report and drawing conclusions from it. This led to a request for further information and deferral of a decision. There was no offensive questioning or heated language and, in my opinion, the discussion certainly did not amount to bullying or harrassment of Mr Hawkey, nor did it show lack of respect for him on the part of Cllr Benner.

I therefore concur with the opinion of the Monitoring Officer that the complaint does not warrant any further action or investigation.

Michael Pearson
Independent Person

**MEMBER CONDUCT PANEL
8TH OCTOBER 2020**

PRESENT: The Chair (Councillor Tassell)
Councillors Jones, Rollings and Ward

Monitoring Officer
Independent Person
Investigating Officer
Democratic Services Officer (NC)

APOLOGIES: none

The Monitoring Officer stated that the meeting was being live streamed as a public meeting and would also be recorded and the recording subsequently made available via the Council's website. He also advised that, under the Openness of Local Government Bodies Regulations 2014, other people may film, record, tweet or blog from this meeting, and the use of any such images or sound recordings was not under the Council's control.

1. APPOINTMENT OF CHAIR

RESOLVED that Councillor Tassell be appointed Chair for the meeting.

2. DISCLOSURES OF PECUNIARY AND PERSONAL INTERESTS

No disclosures of interests were made.

3. DETERMINATION OF A COMPLAINT OF A BREACH OF THE MEMBERS' CODE OF CONDUCT OF MOUNTSORREL PARISH COUNCIL BY CLLR MICK LEMON

In accordance with the procedure for dealing with complaints, the Panel was asked to determine the complaint of a potential breach of the Members' Code of Conduct of Mountsorrel Parish Council as set out in the report of the Monitoring Officer, and to decide whether they amounted to a breach of the Code of Conduct by Councillor Lemon, and if so, whether it felt it was appropriate to recommend the imposition of sanctions to the Parish Council.

Administration of the Panel

The Chair explained the order of proceedings and all present confirmed they understood the procedure. It was established that nobody present was aware of any interests or other reason which could prejudice the ability of the Panel to hold a fair hearing and make a sound determination on the matters in question.

It was confirmed that the Investigating Officer would not be calling witnesses and that Councillor Lemon would not be attending. Councillor Lemon had submitted additional information just prior to the meeting. The Monitoring Officer confirmed that this information, as it was received late in the proceedings, would be published with the

minutes of the meeting. Members of the Panel were given time to read the document before continuing.

The Monitoring Officer stated that having sought the views of the Investigating Officer and the Independent Person that the hearing would be held in public, although it was noted that part of the additional information submitted by Councillor Lemon was exempt. If Members of the Panel wished to refer to this part of the document, they would need to notify the Monitoring Officer to enable the Panel to proceed into exempt session.

Summary of Proceedings

The Investigating Officer, Mr Gill, presented his report and drew the Panel's attention to the following:

- regarding his participation in meetings, Councillor Lemon had not breached Sec 30 (1) of the Localism Act 2011 in relation to his disclosable pecuniary interest, in his contract for supplying drinks to the Memorial Centre. In participating in the extraordinary meeting, it was his, the Investigating Officer's view, that the dispensation should not have been given.
- that Councillor Lemon's actions in submitting a motion for calling an Extraordinary General Meeting to overturn decisions relating to staffing at the Memorial Centre was in breach of the Nolan Principle of integrity, which was incorporated into the Code of Conduct of Mountsorrel Parish Council, because of the personal financial links arising from his contract to supply drinks to the centre,
- that Councillor Lemon had been a parish councillor since 1991 and had stated he had received various training on the Code of Conduct requirements over the years, although no training records were available.
- that as an experienced councillor, he should have been aware that his involvement in submitting the motion could provoke concern and showed a lack of awareness of how the public would have perceived his actions.
- although Councillor Lemon had stated that his actions were taken in the interests of the parish and to keep the Memorial Centre open, he aware that he had a relevant disclosable pecuniary interest as was shown by him seeking a dispensation from the Clerk.
- if the Centre closed, this would have had direct financial impact for Councillor Lemon because of the contract he had for the supply of drinks.
- in his view as the Investigating Officer, Councillor Lemon had wanted to be involved in this matter despite his financial interest, regardless of the potential consequences or public perception.

The Panel Members sought clarification from the Investigating officer as to whether the Investigating Officer's conclusions were altered by the statement of Councillor Lemon (in paragraph 7.8) that he never moved or seconded an item, when he clearly had done so at the special meeting, as set out in the minutes of the meeting that he had submitted.

The Investigating Officer explained that the reference made in paragraph 7.8 related to accounts agenda items, that Councillor Lemon had declared an interest but stated that he had no opportunity to leave the meetings as the business was conducted without debate leaving little time to leave the room.

However, the Investigating officer noted that there was a wider issue in that once Councillor Lemon had declared an interest, he was required by legislation not to be present at the meeting or to vote on the relevant item. Although Councillor Lemon was entitled to rely on the Clerk's advice when he received a dispensation to attend the special meeting, he should have been aware legally that he should not be present and he could have asked other members of the Parish Council to represent his views at the meeting.

Summary Statements

Mr Grimes stated that he agreed with the findings in the Investigating Officer's report and that his role as the Independent Person was to view matters from the perspective of the 'man on the Clapham omnibus'. He considered that the view of the public would be that the actions of Councillor Lemon would not have appeared unbiased, and that this should have been apparent to Councillor Lemon. He was an experienced councillor and although he stated he was acting in the best interests of the parish he had also stated that the parish would not have been happy with any decision. In the Independent Person's view, this indicated that Councillor Lemon did not care and showed a complete negligence for the Nolan Principles and the views of the general public regarding his actions.

The Investigating Officer stated that in view of the experience of Councillor Lemon he should have been aware his actions would provoke concern but had showed indifference and continued regardless.

The Panel were also aware of the draft Governance Review that had been undertaken by the Leicestershire and Rutland Association of Local Councils that was referred to in the Investigating Officer's report, which had made a number of recommendations to Mountsorrel Parish Council to improve its governance arrangements.

The Panel and the Monitoring Officer withdrew to allow the Panel to consider the evidence in private.

Once all parties had returned to the meeting, the Chair of the Panel announced the Panel's decision in relation to the material facts.

RESOLVED that Councillor Lemon had breached the Members' Code of Conduct of Mountsorrel Parish Council, in particular, Principle 2 of the Nolan Principles relating to integrity which Mountsorrel Parish Council had adopted as part of its Code of Conduct.

Reason

Having considered the evidence and the relevant submissions during the hearing, the Panel unanimously agreed there had been a breach of the Code of Conduct. Councillor Lemon had declared a pecuniary interest, but despite this he had submitted a motion asking to call a special meeting to discuss matters in which he had a related financial interest. The Panel's view was that the average person looking at the circumstances would consider Councillor Lemon had acted with a lack of integrity. Councillor Lemon had been a councillor since 1991 and had undergone training in relation to the Code of Conduct. He should have known that his involvement in the matter would bring into question his integrity given that Principle 2 of the Nolan Principles specifically requires that councillors "*should not act or take decisions in order to gain financial or other material benefits*".

Recommendation of imposition of sanctions

Before the Panel considered whether to recommend the imposition of sanctions, the Chair asked if the Investigating Officer or the Independent Person wished to comment.

The Investigating Officer stated that given the nature of the breach of the Code of Conduct and the potential implications, he considered that a censure and a requirement to undertake further training in the Code of Conduct by an independent trainer to be appropriate. The training should provide a wider insight into member conduct implications and should be formally documented in Councillor Lemon's training record.

The Independent Person concurred with the Investigating Officer's views and added that wider consideration should be given to improving the governance of Mountsorrel Parish Council.

The Panel and the Monitoring Officer withdrew to allow the Panel to consider whether or not to recommend the imposition of sanctions.

The Panel returned to announce the Panel's decision and

RESOLVED

1. that in respect of the breach of the Members' Code of Conduct by Councillor Lemon that it be recommended to Mountsorrel Parish Council that:
 - a. a formal letter is sent to Councillor Lemon setting out the breach of the Code which has been identified by the Panel;
 - b. Councillor Lemon is censured by Mountsorrel Parish Council;
 - c. Independent training for Councillor Lemon in relation to the Code of Conduct should be arranged, which should also be recorded.
2. that independent training should be undertaken by all councillors and officers at the Parish Council as stated in the recommendations of the draft Governance Review;
3. that Mountsorrel Parish Council should implement the recommendations within the draft Governance Review as a soon as possible.

Reasons

1. The Panel considered the comments of the Investigating Officer and the Independent Person and agreed that the sanctions recommended were appropriate.

2. The Panel noted the recommendations in the draft Governance Review recently published by Leicestershire and Rutland Association of Local Councils and fully endorsed the recommendation suggesting additional training was necessary.
3. The Panel wished to strongly encourage Mountsorrel Parish Council to implement the recommendations contained with the draft Governance Review.

It was confirmed that Councillor Lemon had the right of appeal which could be exercised within 10 working days of the date of the publication of the Panel's decision.

NOTES:

1. No reference may be made to these minutes at the Council meeting on 9th November 2020 unless notice to that effect is given to the Democratic Services Manager by five members of the Council by noon on the fifth working day following publication of these minutes.

CONSIDERATION OF APPEAL SUBMISSION FROM CLLR LEMON

The Borough Council's procedures for dealing with Member Conduct complaints state that an appeal will only be progressed if there has been a procedural breach or if new evidence has come to light.

The Monitoring Officer's comments on Cllr Lemon's appeal are set out below (his appeal points are shown in blue italic text):

The grounds of my appeal will be based on the advice given by my solicitors but in essence I think the committees decision is flawed based on the following.

- 1. The minutes of the special meeting were not circulated in sufficient time for the committee to consider and a statement I had made.*
- 2. My response to Mr Gill's report was not circulated.*

Monitoring Officer Comments re Points 1 and 2

The minutes of the special meeting were circulated to the Panel the day before the hearing, and the Chair also allowed the Panel time to read them during the hearing.

The emailed statement, which included Cllr Lemon's response to Mr Gill's report was emailed on the day before the hearing, but not received by officers at the Borough Council as it was blocked by the Council's 'spam' filter.

Procedurally, Cllr Lemon was allowed the specified 14 days to make any submission he wished to during the pre-hearing process, but he did not submit anything during that period. His submissions were made the day before the hearing, after the agenda and supporting papers had been published.

Cllr Lemon's statement, including his response to Mr Gill's report, has since been circulated to the members of the Panel, and all 4 of them have indicated that they would not have come to a different decision if his statement been available to them during the hearing.

I do not consider that this element of the appeal meets the criteria to be progressed further as there has been no procedural breach, and because the Panel members have all confirmed that Cllr Lemon's submission would not have resulted in them reaching a different decision if it been available to them during the hearing.

- 3. The complaint made did not mention integrity and therefore how can I be found guilty of something that was not the subject of the complaint.*

Monitoring Officer Comments re Point 3

The investigation was undertaken to determine whether the relevant matters within the complaint indicated that there had been a breach of the Code of Conduct of Mountsorrel Parish Council, and the Nolan Principal of integrity is incorporated within that Code.

I do not consider that this element of the appeal meets the criteria to be progressed further as there has been no procedural breach, and it does not present any new evidence.

- 4. The complainant Councillor Benner was not in a position to make any statements to the special meeting that Councillor Hayward had called not myself as she had left before the item was discussed.*

Monitoring Officer Comments re Point 4

I cannot see how Cllr Benner's actions at the special meeting are relevant.

I do not consider that this element of the appeal meets the criteria to be progressed further as there has been no procedural breach, and it does not present any new evidence.

- 5. When you interviewed me your only question was about Mr Buckley and this was due to Councillor Benner saying to you 10 days before the actual meeting took place that I was trying to get him a job, which is and was completely untrue.*

Monitoring Officer Comments re Point 5

Matters relating to Mr Buckley's employment were not considered by the Panel during the hearing, and therefore are not relevant to their decision.

I do not consider that this element of the appeal meets the criteria to be progressed further as there has been no procedural breach, and it does not present any new evidence.

- 6. The same with Mr Gill, but he had the opportunity to ask for the minutes of the meeting which he did not do so both of you did not have a true record of the meeting and what my question was and what was actually said.*

Monitoring Officer Comments re Point 6

The Panel considered the minutes of the meeting during the hearing, and they were therefore taken into account in the decision making process.

I do not consider that this element of the appeal meets the criteria to be progressed further as there has been no procedural breach, and it does not present any new evidence.

- 7. At the meeting I asked for the committee to consider on a health and safety aspect that with the general manager on long term sick leave and the centre being booked out for various shows could the committee employ an assistant manager so that in future there would be cover during holidays and sickness at the the centre who could deal with any problems that arised. It was a concern of not only myself but other councillors and we felt we had a duty of care to both the staff and public. This enquiry had nothing to do with financial gain so*

how can I possibly be found guilty of the Nolan principle of integrity when again I must stress this was about a health and safety issue for both staff and public.

Monitoring Officer Comments re Point 7

Cllr Lemon indicated during the fact finding process that he believed the current situation at the Memorial Centre could result in them not be able to serve alcohol and that could put the whole Centre at risk of failing.

Whilst there may have been valid concerns about health and safety and duty of care issues, due to his contract for the supply of drinks to the Centre Cllr Lemon also had a direct financial interest in the continued operation of the Centre and its ongoing ability to serve alcohol.

The Nolan principle of integrity requires that holders of public office:

'should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends'.

The Panel determined that, because of his personal financial interest arising from his contract for the supply of drinks to the Centre, by submitting the motion and involving himself in the ongoing issues at the Centre, Cllr Lemon breached that requirement.

I do not consider that this element of the appeal meets the criteria to be progressed further as there has been no procedural breach, and it does not present any new evidence.

CONCLUSION OF THE MONITORING OFFICER

For the reasons set out above, I conclude that Cllr Lemon's appeal does not indicate that there has been any procedural breach and does not bring any new evidence to light. Therefore, it does not meet the criteria to proceed to an appeal hearing.

Adrian Ward
Monitoring Officer

VIEWS OF THE INDEPENDENT PERSON

Having carefully considered the information contained in Cllr Lemon's appeal submission and the Monitoring Officer's comments in respect of the 7 points raised, I agree with the Monitoring Officer's conclusion that there is no indication that there has been any procedural breach and that no new evidence has been brought to light. I also agree that the submission by Cllr Lemon does not meet the criteria to proceed to an appeal hearing.

Gordon Grimes
Independent Person

