

## Standards Committee Hearing Panel

17 September 2019

COM 211-213, 223 and 236



### Report of Helen Lynch Monitoring Officer and Head of Legal and Democratic Services

#### Electoral division(s) affected:

Ferryhill

#### Purpose of the Report

1. This report summarises the issues for the Panel to determine at the Standards Committee Hearing Panel on 17 September 2019.

#### Executive summary

2. The Monitoring Officer has received five complaints against Councillor David Farry (the Member) of Ferryhill Town Council. Following initial assessment and investigation of the complaints, these have been referred for consideration and determination by a Standards Committee Hearing Panel.
3. Three out of the five complaints relate to a single event in November 2018.

#### Recommendation

4. The Panel is recommended to consider the investigator's report and reach decisions on:
  - i. Factual findings;
  - ii. Whether, and if so how, the Code has been breached by the Councillor; and
  - iii. If there has been a breach of the Code what action, if any, is required.

## Background

5. The Monitoring Officer received five complaints relating to the conduct of Councillor David Farry (the Member) of Ferryhill Town Council. The complaints are dated, 11.11.18 (COM 211), 12.11.18 (COM 212), 13.11.18 (COM 213), 06.01.19 (COM 223) and 15.02.19 (COM 236). The allegations relate to the time when the Member was the Mayor of the Town Council. The Member's term of office as Mayor came to an end in May 2019 and he remains at the time of this report a Councillor for Ferryhill Town Council.
6. The complaints made against the Member were considered accordance with the Local Assessment Procedure and were referred for investigation. The complaints were referred for investigation on 03.01.19 (COM 211-213), 06.02.19 (COM 223) and 13.03.19 (COM 236).
7. The Monitoring Officer appointed Matt Lewin of Cornerstone Chambers as the Investigating Officer. The investigation was carried out and a final report was produced which is shown at Appendix 2 of this report.

## Complaints

8. A summary of each of the complaints to be considered by the Standards Hearing Panel are set out below.
9. It is alleged that the Member has breached the following paragraphs of the Ferryhill Town Council code of conduct:

*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.*
6. *You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a member of the Council, into disrepute.*

### COM 211 – 213

10. Three allegations were made in relation to the Members conduct at the Lighting of the Beacon of Hope Service at Ferryhill Town Hall which was held on 11 November 2018.
11. In COM 211 it is alleged that the Member attended the event under the influence of alcohol and showed no response thought the service. It is alleged that the Member displayed unprofessional conduct and that he did not fully complete his Mayoral duties as detailed in the Order of Service nor was he wearing his Mayoral Chains of Office.

12. In COM 212 it is alleged that the Member displayed appalling behaviour during the service, it is alleged that the Member talked with his party and appeared under the influence of alcohol. The Complainant states that this behaviour was totally inappropriate and disgraceful, that she would expect more of someone who hold public office. The Complainant notes that the Mayor or a representative of the Town Council featured in the Order of Service, but this duty was not fulfilled which she found to be unprofessional.
13. In respect of COM 213 it is accepted that the Complainant did not attend the service but has reported the complaints made to him. He reports that the service began at 6:45pm, the Member had been asked to attend the Town Hall for 6:40pm. The Member arrived late at 6:50pm and it was reported that he was unsure of his feet and incapable of talking properly because of the excessive drinking. A member of staff leaned the member against the garden wall and asked the service to proceed. The photographer asked the Member where his Chain of Office was and was told it was in the car. The staff who were in attendance deemed it too dangerous to ask the Member to light the beacon and instead this was carried out by an officer. The Complainant finds the conduct totally unacceptable, that the Member showed a total lack of respect, shamed the people of Ferryhill and brought the Council into disrepute.
14. The Investigating Officer recommends that the Standards Hearing Panel make a finding that paragraphs 1 and 6 of the Code have been breached. The Investigating Officers reasons are set out paragraphs 16 to 26 of his report at Appendix 2.

### **COM 223**

15. It is alleged that on 4 January 2019 the Complainant received a call from the Member, during the call he enquired why he had not been informed about the working arrangements of an Officer of the Council. The complainant explained that it was not her responsibility to keep him informed about the arrangements, it alleged that the Member became very aggressive stating that he had been told that it was the Complainants duty to keep him informed. It is alleged that the member counted to be very verbally aggressive, say that he would "make sure that the complainant has no further contact with HR. The Complainant believes that the Member was implying that she was stupid. The complaint ended the call and states that she was left shaken by the aggressive manner of the Member of Paragraphs 1 and 2
16. The Investigating Officer recommends that the Standards Hearing Panel makes a finding that paragraph 1 of the Code has been breached. The Investigating Officers reasons are set out at paragraphs 27 to 33 of the report at Appendix 2.

## **COM 236**

17. The Complainant is the Clerk to the Town Council and the Member subject to the complaint is the Chairman and Mayor of the Town Council. The Complainant alleges that he has been subject to harassment, bullying, discrimination and victimisation by the Member. The Complainant reports that he feels there have been clear signs that the Member is out to destroy him as a person by making malicious and unjustified statements that have caused harm to his reputation.
18. The Complainant states that the actions of the Member have caused him serious humiliation, harassment, disruption and at times he considers to be a form of bullying. The Complainant reports that the alleged behaviour has been witnessed at meetings of the Council by other Councillors, members of the public, press and officers of the Council. This was an alleged breach of paragraph 1, 2 and 6 of the code of conduct.
19. The Investigating Officer recommends that the Standards Hearing Panel makes a finding that there has been a breach of paragraph 2 of the Code for the reasons set out in paragraphs 34 to 42 of his report.

## **ROLE OF THE PANEL**

20. The role of the Panel is to consider each of the complaints and allegations separately. The Panel will need to consider the evidence presented by the investigator and the Member.
21. The Member was able to comment on the draft report and has been provided with a copy of the final report on which he has also commented, the responses to the Member are shown in the hearing bundle. Additionally, the Investigating Officer provided a covering letter to the Committee to accompany the final report which outlines his response to the Member's representations on the draft report.
22. The pre-hearing process has been followed with a view to limiting the issues for decision by the Panel.
23. Having heard from the Investigating Officer and the Member, it is the role of the Panel to make findings of fact in relation to the conduct complained of and determine whether or not they consider that the Member has breached the Code of Conduct. The Panel is entitled to reach a different conclusion to the Investigating Officer. Before reaching a decision on the allegations, the Panel must consider representations from the Independent Person as to whether or not there has been a breach of the Code.
24. If the Panel conclude that there has been a breach of the Code of Conduct it must decide what action, if any, should be taken. The Panel will consider representations from the Investigating Officer, Member and Independent Person on the issue of sanctions.

25. The Localism Act provides the following sanctions for current Councillors which are set out in Appendix Four of the Local Determination Procedure:
- i. Censure of the Member;
  - ii. Recommending to Full Council, or to the Town or Parish Council that the Member be removed from any or all Committees or Sub-Committees;
  - iii. Recommending to Full Council, or to the Town or Parish Council, that the Member be removed from all outside appointments to which s/he has been appointed or nominated by the authority;
  - iv. Recommending to Full Council, or to the Town or Parish Council, that the Member's access and use of resources of the Authority be restricted for a maximum period of six months, provided that any such restrictions imposed upon the Member:
    - v. are reasonable and proportionate to the nature of the breach; and
    - vi. do not unduly restrict the Member's ability to perform his functions and duties as a Member;
  - vii. A requirement that the Member submit a written apology.
  - viii. A requirement that that Member undertake training as specified by the Hearing Panel.
  - ix. A requirement that that Member undertake conciliation as specified by the Hearing Panel;
26. The Hearing Panel will announce its decision and the end of the Hearing and as soon as practicable after the hearing the Hearing Panel provide a written decision notice, which will be sent to the Complainants, the Member, the Clerk to the Town Council and published on the Council's website.

### **Background Papers**

- Local Determination Procedure (July 2016)  
<https://democracy.durham.gov.uk/documents/s63981/Local%20Determination%20Procedure.pdf>
- Hearing bundle

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## **Appendix 1: Implications**

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### **Legal Implications**

The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles.

### **Finance**

None.

### **Consultation**

None.

### **Equality and Diversity / Public Sector Equality Duty**

None.

### **Human Rights**

None.

### **Crime and Disorder**

None.

### **Staffing**

None.

### **Accommodation**

None.

### **Risk**

None.

### **Procurement**

None.