

# Standards Committee Hearing Panel

17 March 2025

## Member Code of Conduct Complaint



FS-Case-479253074, FS-Case-479484178, FS-Case- 479665269, FS-Case-480006325, FS-Case-480451746, FS-Case-482384231, COM 414 and FS-Case-511652546

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## Report of Helen Bradley, Director of Legal and Democratic Services and Monitoring Officer

### Electoral division(s) affected:

Romaldkirk Parish

### Purpose of the Report

- 1 This report summarises the issues relating to eight Member Code of Conduct Complaints referred for determination by a Hearing Panel of the Standards Committee (the Panel) to take place on 17<sup>th</sup> and 19<sup>th</sup> March 2025.

### Executive summary

- 2 During the period January 2023 and June 2023, the Monitoring Officer received nine complaints against Councillors Cutting, Carter, Nixon and Barningham (the Subject Member's). The complaints, following an initial assessment under the Procedure for Member Code of Conduct Complaints were referred for an investigation. The outcome of that investigation was a referral of eight of the complaints to a Hearing Panel of the Standards Committee for consideration and determination.
- 3 The complaints relate to allegations of misconduct of the Subject Member's in their capacity as a Romaldkirk Parish Councillor's which engage aspects of Romaldkirk Parish Council's Code of Conduct.

## **Recommendation(s)**

4 The Panel is recommended to:

- a) Determine as a preliminary matter whether the Panel Hearing should be open to the Press and Public in full or in part; and
- b) Consider the investigation report dated and reach decisions in respect of the complaint 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 Councillors Cutting, Carter, Nixon and Barningham are Members of Romaldkirk Parish Council. As members of the Parish Council, they are expected to conduct themselves in accordance with the Parish Council's Member Code of Conduct (**Appendix 2**).
- 6 Between January 2023 and June 2023, the Monitoring Officer acknowledged receipt of thirteen Code of Conduct of complaints which were submitted by members of the public and other Members of the Parish Council.
- 7 On 25 October 2023, a combined decision notice (provided at **Appendix 5**) was issued and referred nine of the thirteen complaints for an investigation. The allegations related to the Subject Members conduct and alleged that a number of allegations which engaged all aspects of Romaldkirk Code of Conduct.
- 8 A summary of the complaints to be considered by the Hearing Panel of the Standards Committee (the Panel) is set out below.

## Preliminary Consideration

- 9 As a preliminary consideration, the Hearing Panel are to determine whether the Hearing should be open to the public and press. There is a presumption that meetings of the Hearing Panel will be open to the public and press unless confidential information or exempt information (within the meaning of Schedule 12A to the Local Government Act 1972) is likely to be disclosed.
- 10 The Procedure for Member Code of Conduct Complaints shown at **Appendix 4** to this report sets out the circumstances in which hearings (or parts of hearings) can or should be held in private. These are:
  - (a) A hearing must be held in private where this is necessary to prevent confidential information being revealed. Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.
  - (b) The law also gives the Hearing Panel the power to hold a private meeting to prevent 'exempt information' being revealed to the public. The categories of exempt information are those set out in Schedule 12A to the Local Government Act 1972. However, regulations also provide for three additional categories of 'exempt information' in relation to the Hearing Panel:

- (i) Information which is subject to any obligation of confidentiality.
- (ii) Information which relates in any way to matters concerning national security.
- (iii) The deliberations of an Audit & Governance Committee or of a Sub-Committee of an Audit & Governance Committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of Section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.

- 11 The rules relating to confidential information are different from the rules relating to 'exempt information'. Hearing Panels must hold some parts of a meeting in private where confidential information is likely to be revealed. However, they have the discretion to decide whether or not to exclude the public if 'exempt information' may be revealed.
- 12 The Panel will need to have regard to Article 6 of the European Convention on Human Rights and to Section 6(1) of the Human Rights Act 1998, which place a duty to act fairly and in line with the rules of natural justice. Article 6 favours public hearings, except in specific circumstances.
- 13 If the Hearing Panel decides to exclude the public to prevent exempt information being revealed, it may decide to exclude the public for only part of the hearing. For example, if a witness' evidence is likely to reveal exempt information, the public will only have to be excluded while that witness is giving evidence. If evidence is heard in private, the Chair of the Hearing Panel will warn those present not to mention that evidence during the public parts of the hearing, or outside the hearing. The Hearing Panel may also need to use appropriate initials to protect the identity of witnesses during the hearing and in any public documentation.
- 14 The Panel, in accordance with the procedure, in considering whether the press and public should be excluded from the meeting, will take into account any representations from the Investigating Officer and, the Member concerned or his representative, and the Independent Person with reasons why the Panel should make such an exclusion.

**Complaints** (FS-Case-479253074, FS-Case-479484178, FS-Case-479665269, FS-Case-480006325, FS-Case-480451746, FS-Case-482384231, COM 414 and FS-Case-511652546)

- 15 The complaints to be considered by the Standards Hearing Panel were submitted from January 2023 to June 2023 and concern the period from October 2020 to March 2023.

- 16 The complaints can be summarised as follows:
- (a) The decision taken by all four Subject Members by all four Subject Members to pay a third party's legal fees was unlawful;
  - (b) Councillor Carter had an undisclosed interest in Land Registry applications;
  - (c) Information relevant to the applications, and cost thereof, was withheld from the Councillor Complainants and/or misleading and inaccurate information provided;
  - (d) Councillors Cutting and Nixon provided false information to a meeting of the Parish Council on 13 December 2022 in relation to whether or not a cap had been placed on the Council's liability to pay the legal expenses associated with the applications to register the village green.
  - (e) All four Subject Members were dismissive and disrespectful of their fellow Councillors and members of the public attending meetings of the council, from time to time, engaging in behaviour that may be characterised as bullying.
- 17 During the assessment stage and the investigation, the Subject Members were asked for their views in relation to the complaints. Throughout the assessment and investigation, the Subject Members have denied any wrongdoing. Detailed responses to the complaints can be found in the investigation report and relevant appendices (**Appendices 5 and 7**).
- 18 In respect of the allegations summarised at paragraph 15 above the Investigating Officer considers that there have been breaches of the following paragraphs of Romaldkirk Parish Council's code of conduct:

**Allegation (a) – In respect of all Subject Members**

*4.2 Behave in a manner that is consistent with the following principles to achieve best value for residents and maintain public confidence in the Council:*

*(a) Selflessness: act solely in terms of the public interest and not act in such a way as to gain financial or other material benefits for themselves, their family or friends;*

*(b) Integrity: not placing themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties;*

*(c) Objectivity: make choices on merit, in carrying out public business, including when making public appointments, awarding contracts, or recommending individuals for rewards and benefits;*

*(d) Accountability: be accountable to the public for their decisions and actions and must submit themselves to whatever scrutiny is appropriate to their office;*

*(e) Openness: be as open as possible about all the decisions and actions they take, and give reasons for decisions and restrict information only when the wider public interest or the law clearly demands;*

*(f) Honesty: declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.*

*(g) Leadership: promote and support these principles by leadership and example*

*4.3 Act in accordance with the principles in paragraph 4.2 and, in particular:*

*(a) Champion the needs of residents — the whole community and all constituents, including those who did not vote for them — and put the public interest first;*

*(f) Be accountable for decisions and co-operate when scrutinised internally and externally, including by local residents;*

*(h) Behave in accordance with all legal obligations, alongside any requirements contained within the Council's policies, protocols and procedures, including on the use of the Council's resources;*

### **Allegation (b) – In respect of all Councillor Carter**

#### **9. Other Relevant Interests**

*9.1 Members may have an Other Relevant Interest (which is not a disclosable pecuniary interest) in any matter to be considered or being considered at the meeting) where: (a) decision in relation to that matter might reasonably be regarded as affecting the well-being or financial standing of them or a member of their family or a person with whom they have a close association, or an organisation or body under paragraph 5.1(b), 5.1(c) or 5.1(d) above, to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which they have been elected or otherwise of the authority's administrative area; and (b) the*

*interest is one that a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice their judgement of the public interest.*

*9.2 Where a member has an Other Relevant Interest in an item of business as described in 9.1, the member shall declare it at the earliest opportunity. The member may make a representation on the item but will not be permitted to participate in any discussion or vote taken on the matter at the meeting. The member must leave the meeting once the representation has been made to avoid influence on those making the decision.*

- 19 The investigating officer also considers that there is breach of the previous code of conduct (which was in force prior to 14 December 2021 and can be found at **Appendix 3**) in relation to a failure to declare an interest at meetings by Councillor Carter.

**Allegation (c) – in respect of all Subject Members**

*4.2 Behave in a manner that is consistent with the following principles to achieve best value for residents and maintain public confidence in the Council: [...]*

*4.3 Act in accordance with the principles in paragraph 4.2 and, in particular:*

*(b) Deal with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially;*

*(g) Contribute to making the Authority's decision-making processes as open and transparent as possible to ensure residents understand the reasoning behind those decisions and are informed when holding the Authority to account but restricting access to information when the wider public interest or the law requires it;*

**Allegation (d) – In respect of all Councillors Nixon and Cutting**

*4.2 Behave in a manner that is consistent with the following principles to achieve best value for residents and maintain public confidence in the Council: [...]*

*4.3 Act in accordance with the principles in paragraph 4.2 and, in particular:*

*(d) Exercise independent judgement and not compromise their position by placing themselves under obligations to outside individuals or organisations who might seek to influence the way they perform their duties as a Member / Co-opted Member of the Council;*

*(e) Listen to the interests of all parties, including relevant advice from statutory and other professional officers, take all relevant information into consideration, remain objective and make decisions on merit;*

*(g) Contribute to making the Authority's decision-making processes as open and transparent as possible to ensure residents understand the reasoning behind those decisions and are informed when holding the Authority to account but restricting access to information when the wider public interest or the law requires it;*

### **Allegation (e) – In respect of all Subject Members**

*(a) Champion the needs of residents — the whole community and all constituents, including those who did not vote for them — and put the public interest first;*

*(b) Deal with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially; (i) Value colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government;*

*(m) Not to bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of the code of conduct.*

*(n) Not to bring the role of Member or the local authority into disrepute and be aware that the actions and behaviour of a Member are subject to greater scrutiny than that of ordinary members of the public;*

- 20 Detailed reasoning by the Investigating Officer can be found in their report in **Appendix 7**.
- 21 Following receipt of the investigation report and the Investigating Officer's findings, the Monitoring Officer, in consultation with the Independent Person has recommended that the complaints outlined are considered by the Standards Hearing Panel for determination. A copy of that decision notice can be found at **Appendix 9**.
- 22 On receipt of the decision notice to refer the complaints to the Standards Hearing Panel, the Subject Members have submitted further documentation detailing their disagreements of the findings of fact within the Investigating Officer's report and what they consider to be procedural errors. Using the headings above, in summary the Subject Members disagree and consider the following:



### **Allegation (a) – In respect of all Subject Members**

- The Investigating Officer has failed to provide any rationale or evidence that they have breached the Code of Conduct, breaching Article 6 of the European Convention on Human Rights Act and the Common Law principle of Natural Justice.
- The Investigating Officer has failed to substantiate the claim that the expenditure was unlawful and has failed to fully consider the extent of the Parish Council's statutory powers.
- The Investigating Officer has failed to consider the Subject Member's intentions when they voted on the payment of fees.

### **Allegation (b) – In respect of Councillor Carter**

- The Investigating Officer has unfairly interpreted the history and timeline involving Councillor Carter's legal proceedings and effect of registrations applications.
- The Investigating Officer has failed to properly interpret the caselaw they rely on and have failed to substantiate that Councillor Carter would have benefitted from, and therefore held an interest in either registration.
- That there has been a misrepresentation of Councillor Carters words and actions relating to the investigation.

### **Allegation (c) – In respect of all Subject Members**

- The Investigating Officer has failed to highlight the specific evidence upon which they rely to find the Subject Members in breach of the code of conduct in paragraphs 4.2, 4.3(b) and 4.3(g). As a result, the Subject Members consider they are unable to provide a detailed rebuttal to these matters.

### **Allegation (d) – In respect of Councillors Nixon and Cutting**

- The Investigating Officer has failed to explain, provide evidence or clarify how the Subject Members have provided false information.
- The Investigating Officer has elected not to consider Article 10 of the ECHR or inform the Committee of its existence and relevance in deciding this complaint.

### **Allegation (e) – In respect of all Subject Members**

- The Investigating Officer has failed to provide any rationale or evidence that they have breached the Code of Conduct, breaching Article 6 of the European Convention on Human Rights Act and the Common Law principle of Natural Justice.
- The Investigating Officer has failed to establish any evidence of bullying or disrespect.
- The Investigating Officer has failed to consider Article 10 of the ECHR and enhanced protections for political debate.

23 The detailed responses and supporting information submitted by the Subject Members can be found at **Appendix 10**.

### **Role of the Panel**

24 The pre-hearing process has been followed with a view to limiting the issues for decision by the Panel. The pre-hearing process can be found within section 7 of the Procedure for Member Code of Conduct Complaints. A copy of the Procedure can be found at **Appendix 4**.

25 Where the assessment or investigation of a complaint finds evidence of a failure to comply with the Code of Conduct and informal resolution is not appropriate or possible, the findings will be reported to a Hearing Panel of the Standards Committee for local determination.

26 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 Investigating Officer and the Subject Members.

27 Having heard from the Investigating Officer and the Subject Members, 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 Subject Members have breached the Code of Conduct. The Panel is entitled to reach a different conclusion to the Investigating Officer.

28 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.

29 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, Subject Members and Independent Person on the issue of sanctions.

- 30 The Localism Act 2011 provides the following sanctions for current Councillors, which are set out in the Procedure for Member Code of Conduct Complaints and are as follows:
- (a) Censure of the Member;
  - (b) Recommending to Full Council, or to the Town or Parish Council that the Member be removed from any or all Committees or Sub-Committees;
  - (c) 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;
  - (d) 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:
    - (i) are reasonable and proportionate to the nature of the breach; and
    - (ii) do not unduly restrict the Member's ability to perform his functions and duties as a Member;
  - (e) A requirement that the Member submit a written apology;
  - (f) A requirement that that Member undertake training as specified by the Hearing Panel;
  - (g) A requirement that that Member undertake conciliation as specified by the Hearing Panel.
- 31 The Hearing Panel will announce its decision at 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 Complainant, the Subject Members and the Clerk to the Parish Council, and published on the Council's website.

### **Background papers**

- None

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### **Author(s)**

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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.

### **Climate Change**

None

### **Human Rights**

In deciding whether the Hearing should be held publicly, or in private, the Panel will need to have regard to Article 6 of the European Convention on Human Rights, and Section 6(1) of the Human Rights Act 1998 which places a duty to act fairly and in line with the rules of natural justice. Article 6 favours public hearings, except in specific circumstances.

### **Staffing**

None

### **Accommodation**

None

### **Risk**

None

### **Procurement**

None

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## **Appendix 2: Romaldkirk Parish Council Code of Conduct**

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**Appendix 3: Romaldkirk Parish Council – Previous Code of  
Conduct**

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## **Appendix 4: Procedure for Member Code of Conduct Complaints**

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## **Appendix 5: Decision Notice Investigation – Romaldkirk PC**

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## **Appendix 6: Appendices to Decision Notice**

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## **Appendix 7: Romaldkirk Standards Investigation Report**

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## **Appendix 8: Appendices to Investigating Officers Report**

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## **Appendix 9: Decision Notice Romaldkirk Hearing**

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## **Appendix 10: Subject Member's Responses**

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