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**Hinckley & Bosworth
Borough Council**

Bill Cullen MBA (ISM), BA(Hons) MRTPI
Chief Executive

Date: 16 March 2021

**To: Members of the Ethical Governance and
Personnel Committee**

Cllr R Webber-Jones (Chairman)	Cllr A Furlong
Cllr MB Cartwright (Vice-Chairman)	Cllr L Hodgkins
Cllr RG Allen	Cllr E Hollick
Cllr DC Bill MBE	Cllr LJP O'Shea
Cllr MA Cook	

Copy to all other Members of the Council

(other recipients for information)

Dear member,

There will be a meeting of the **ETHICAL GOVERNANCE AND PERSONNEL COMMITTEE** as a virtual meeting via Zoom on **WEDNESDAY, 24 MARCH 2021** at **6.30 pm** and your attendance is required.

The agenda for the meeting is set out overleaf.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Owen'.

Rebecca Owen
Democratic Services Manager

A G E N D A

1. APOLOGIES AND SUBSTITUTIONS
2. MINUTES OF PREVIOUS MEETING (Pages 1 - 6)
To confirm the minutes of the previous meeting.
3. ADDITIONAL URGENT BUSINESS BY REASON OF SPECIAL CIRCUMSTANCES
To be advised of any additional items of business which the Chairman decides by reason of special circumstances shall be taken as matters of urgency at this meeting.
4. DECLARATIONS OF INTEREST
To receive verbally from members any disclosures which they are required to make in accordance with the Council's code of conduct or in pursuance of Section 106 of the Local Government Finance Act 1992. **This is in addition to the need for such disclosure to be also given when the relevant matter is reached on the agenda.**
5. QUESTIONS
To hear any questions received in accordance with Council Procedure Rule 12.
6. CODE OF CONDUCT COMPLAINTS PROCESS (Pages 7 - 16)
7. COMPLAINTS UPDATE
To review the process for dealing with code of conduct complaints following a request at a previous meeting.
8. ANY OTHER ITEMS OF BUSINESS WHICH THE CHAIRMAN DECIDES HAVE TO BE DEALT WITH AS MATTERS OF URGENCY
9. MATTERS FROM WHICH THE PUBLIC MAY BE EXCLUDED
To consider the passing of a resolution under Section 100A(4) of the Local Government Act 1972 excluding the public from the undermentioned item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1, 2 and 10 of Schedule 12A of the 1972 Act.
10. COMPLAINT 2020/31 (Pages 17 - 20)
Fact finding report attached.
11. COMPLAINT 2020/32 (Pages 21 - 28)
Fact finding report attached.
12. COMPLAINT 2021/07 (Pages 29 - 32)
Fact finding report attached.

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

ETHICAL GOVERNANCE AND PERSONNEL COMMITTEE

20 JANUARY 2021 AT 6.30 PM

PRESENT: Cllr R Webber-Jones - Chairman
Cllr MB Cartwright – Vice-Chairman
Cllr DC Bill MBE, Cllr MA Cook, Cllr A Furlong, Cllr L Hodgkins, Cllr E Hollick,
Cllr LJP O'Shea and Cllr RB Roberts (for Cllr RG Allen)

Officers in attendance: Bill Cullen, Julie Kenny and Rebecca Owen

616 APOLOGIES AND SUBSTITUTIONS

Apologies for absence were submitted on behalf of Councillor Allen with the substitution of Councillor Roberts authorised in accordance with council procedure rule 10.

Mr Grimes, Independent Person, had also sent apologies.

617 MINUTES OF PREVIOUS MEETING

It was moved by Councillor Cartwright, seconded by Councillor O'Shea and

RESOLVED – the minutes of the meeting held on 17 December be confirmed as a correct record.

618 DECLARATIONS OF INTEREST

Councillor Cartwright declared that whilst he lived in Groby and some of those who had submitted complaints on the agenda were residents and business owners in Groby, he had come to the meeting with an open mind.

Councillor Roberts declared a personal interest in two items on the agenda and in item 10 as the complainant and subject member were known to him.

Councillor Cook declared a personal interest in items 12 and 13 as a member of Witherley Parish Council but stated she was attending the meeting with an open mind.

Councillor Hollick declared a personal interest in item 10 as a member of Groby Parish Council and whilst he had an open mind, stated he would not take part in the vote on this item.

Julie Kenny, whilst not a member of the committee, stated she would leave the meeting during discussion on item 9.

619 MATTERS FROM WHICH THE PUBLIC MAY BE EXCLUDED

On the motion of Councillor Webber-Jones, seconded by Councillor Bill, it was

RESOLVED – in accordance with section 100A(4) of the Local Government Act 1972, the public be excluded from the following item of business on the grounds that it involves the disclosure of exempt information as defined in paragraphs 1 and 10 of Part I of Schedule 12A of that Act.

620 COMPLAINTS UPDATE

In relation to the review of the code of conduct, it was noted that an updated version had recently been received from the LGA. Work would be undertaken across the county with the intention of producing a common code that could be adopted by all authorities in Leicestershire and that consultation would take place with members and parish councils in due course, with the aim of adopting a new code at Council in May. It was noted that suggested amendments to the procedure for dealing with code of conduct complaints would be brought to the next meeting of this committee.

It was further noted that following consideration of complaints 2020/24a & b at the previous meeting, counter complaints had been received from the subject members. It was moved by Councillor Cartwright, seconded by Councillor O'Shea and

RESOLVED – the counter complaints be passed to the independent investigator to consider alongside complaints 2020/24a & b.

621 INDEPENDENT REVIEW OF COMPLAINTS

The Chief Executive reported on an independent review carried out by East Midlands Councils into complaints from a member of the public about a parish council, the chairman of the parish council and the council's Monitoring Officer. It was confirmed that the investigator from East Midlands Councils had been sent the vast amount of correspondence from the complainant and responses that had been provided by officers. In response to members' questions, the following points were raised:

- The powers of a principal authority with regard to parish councils are limited to code of conduct matters in relation to the behaviour of individual councillors. As a separate legal entity, parish councils were responsible for their own processes, procedures and decisions, except in very rare and exceptional circumstances;
- The Independent Person, who was often in attendance to comment on complaints about councillors, had been unable to attend the meeting but had submitted written comments on the complaint. The chairman would discuss with officers the possibility of calling on other Independent Persons for future meetings, however it was noted that Independent Persons did not generally attend meetings at other authorities but we had been fortunate to have regular attendance;
- The decision whether to invoke the persistent complainant policy was a matter for senior management, however due to the nature of the complaints, members' views and support would be taken into account;
- The original complaint about the chairman of a parish council was a separate matter on the agenda for this meeting.

During discussion, members made the following comments:

- No one, including officers of the council, should be subjected to bullying and harassment and a strong message should be sent that this would not be tolerated;
- The number of complaints received from this one complainant was considered excessive and unreasonable.

It was moved by Councillor Furlong and seconded by Councillor Bill that officers be sanctioned and supported in invoking the persistent complainant policy against the complainant. Upon being put to the vote, the motion was CARRIED.

It was moved by Councillor Bill and seconded by Councillor Furlong that the remaining recommendations within the report be supported. Upon being put to the vote, the motion was CARRIED and it was subsequently

RESOLVED –

- (i) The content and outcomes of the independent review be endorsed;
- (ii) The finding of the investigating officer be agreed in that
 - a. complaints relating to the parish council are not a matter for the council's Monitoring Officer to investigate; and
 - b. the appropriate advice has been provided to the complainant on the matter.
- (iii) The recommendation of the review in relation to the need to consider the original complaint made about the chairman of the parish council be noted and addressed at the relevant point on the agenda;
- (iv) The conclusions of the review in respect of the council's Monitoring Officer, confirming that she has not acted inappropriately or outside of the council's code of conduct in respect of her dealings on these complaints, be endorsed;
- (v) The placing of the complainant on the council's list of persistent complainants be supported.

622 COMPLAINT 2020/03

Members received a fact finding report about a parish councillor. The complaint consisted of two parts, the first relating to failure to declare an interest and the second relating to rude and abusive behaviour.

It was moved by Councillor Cartwright and seconded by Councillor O'Shea that both parts of the complaint be investigated in accordance with one of the recommendations of the Monitoring Officer.

Before being put to the vote, it was moved by Councillor Furlong and seconded by Councillor Hodgkins that only the first part of the complaint be investigated.

Upon further discussion, Councillor Furlong withdrew his motion.

It was noted that, in accordance with the approved procedure, should the finding of the investigator be that there was no breach of the code of conduct, the matter would be concluded without being brought back to the committee, however should a breach be found, it would be brought back to the committee.

It was subsequently moved by Councillor Cartwright, seconded by Councillor O'Shea and

RESOLVED – the complaint be referred for investigation by an external investigator.

623 COMPLAINT 2020/05

Councillor Roberts declared a personal interest in this item as the complainant was known to him.

The committee gave consideration to a fact finding report in relation to a complaint about a parish councillor. Members felt that the matter was frivolous and it was moved by Councillor Bill, seconded by Councillor Furlong and

RESOLVED – no further action be taken.

624 COMPLAINT 2020/20B

At this juncture, Councillor Cook restated her personal interest in this item and the following item.

Members received a fact finding report about a parish councillor. Members acknowledged that the members' interests were included on their register of interest form, although it was noted that this was not visible to the public due to the blanket policy to redact private addresses. It was further noted that the member had not been present at the meeting and therefore could not, and did not need to, declare an interest. Similarly, the member had not been a decision maker on this matter. It was moved by Councillor Furlong, seconded by Councillor Hollick, and

RESOLVED – no further action be taken.

625 COMPLAINT 2020/25

Consideration was given to a fact finding report about a parish councillor. Having listened to the evidence, members felt that no personal attack had taken place and in fact the meeting had been handled in an professional manner. It was moved by Councillor Furlong, seconded by Councillor Cartwright and

RESOLVED – no further action be taken.

The Monitoring Officer reported that it was likely that further complaints may be received about issues relating to the same matters as raised in this item and the previous item and requested delegated authority to address those complaints that related to matters already dealt with by the committee, thereby only bringing complaints about new matters for decision. It was moved by Councillor Cartwright, seconded by Councillor O'Shea and

RESOLVED – authority be delegated to the Monitoring Officer to address complaints about matters which have already been dealt with, updating the committee on numbers dealt with as appropriate.

626 COMPLAINT 2020/29

Consideration was given to a fact finding report into several complaints about a borough councillor and about predetermination of a group of members relating to a particular item which was considered at a recent meeting.

Members felt that there had been no malice in the comments made and there was no evidence that the councillor had failed to pay attention during the debate in the meeting in question. In relation to the suggestion of predetermination, the difficulty in proving this was noted along with the number of considerations of individual councillors which may lead them to vote in a particular way.

It was moved by Councillor Bill, seconded by Councillor Furlong and

RESOLVED – no further action be taken.

627 COMPLAINT 2020/30

Consideration was given to a fact finding report about a borough councillor. In their deliberations, Members took account of section 25 of chapter 20 of the Localism Act 2011 which addressed prior indications and predetermination. It was moved by Councillor O'Shea, seconded by Councillor Furlong and

RESOLVED – no further action be taken.

(The Meeting closed at 8.15 pm)

CHAIRMAN

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Hinckley & Bosworth Borough Council

Forward timetable of consultation and decision making

Ethical Governance & Personnel Committee 24 March 2021

Wards affected: All wards

Process for dealing with Code of Conduct complaints

Report of the Monitoring Officer

1. Purpose of report

- 1.1 To seek members' views on the draft complaints process which is under review on the request of the committee.

2. Recommendation

- 2.1 The proposed process be supported.

3. Background to the report

- 3.1 Section 28(6) of the Localism Act 2011 states that the authority must have arrangements in place to investigate and make decisions on allegations that a member has breached the Code of Conduct.
- 3.2 The current process for dealing with complaints about councillor conduct was adopted in July 2012 and last reviewed in March 2015.
- 3.3 The process requires that most complaints are presented to the Ethical Governance & Personnel Committee for determination at every stage. This results in committee time being taken up by complaints that could be resolved by the Monitoring Officer under delegated authority.
- 3.4 This proposed new process will enable the Monitoring Officer to consider any complaints they, in consultation with the Independent Person, feel require no further action or could be resolved by way of formal apology and/or requiring the subject member to undertake training. These will be those complaints that are frivolous or not an appropriate use of the committee's time.

- 3.5 The section on 'Appeals' has also been amended to make provision for the complainant and subject member to complain to the Local Government and Social Care Ombudsman if they are dissatisfied with the way their complaint has been handled, as is the appropriate course of action for such matters.
- 3.6 In addition to the amendments in 3.4 and 3.5 above, the document has been laid out more clearly.
- 3.7 A flowchart is also attached for operational use in considering complaints.
- 4. Exemptions in accordance with the Access to Information procedure rules**
- 4.1 Report to be taken in open session.
- 5. Financial implications (IB)**
- 5.1 None.
- 6. Legal implications (MR)**
- 6.1 Section 28(6) Localism Act 2011 stipulates that the Council must have in place:
- a) Arrangements under which allegations can be investigated; and
 - b) Arrangements under which decisions on allegations can be made.
- 6.2 Section 28 (7) of that Act provides that such arrangements must include provision for the appointment of at least one independent person
- a) whose views are to be sought and taken into account before it makes a decision in an allegation that it has decided to investigate, and
 - b) whose views may be sought
 - i) by the Council in relation to an allegation in circumstances not within paragraph 7 above;
 - ii) by a member of the Council if that person's behaviour is the subject of an allegation; and
 - iii) by a member of the Council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.
- 6.3 Section 101 Local Government Act 1972 empowers the Council to arrange for the discharge of its functions by an officer.

- 6.4 There doesn't seem to be anything in the legislation which prohibits the delegation proposed in this report.

7. Corporate Plan implications

- 7.1 This report supports all aims and objectives as it ensures good governance through high standards of conduct.

8. Consultation

- 8.1 The purpose of this report is to consult the Ethical Governance & Personnel Committee.

9. Risk implications

- 9.1 It is the council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.
- 9.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.
- 9.3 The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) risks		
Risk description	Mitigating actions	Owner
None		

10. Knowing your community – equality and rural implications

- 10.1 This report does not impact any groups or communities as it is a corporate matter which support good conduct and governance across the authority.

11. Climate implications

- 11.1 Whilst this report would not have direct impacts on the climate, if the new process was adopted it would have an indirect benefit in reducing the frequency of meetings and therefore the impact of travel associated with them, and fewer and/or shorter agendas, thereby also reducing paper usage.

12. Corporate implications

- 12.1 By submitting this report, the report author has taken the following into account:
- Community safety implications

- Environmental implications
 - ICT implications
 - Asset management implications
 - Procurement implications
 - Human resources implications
 - Planning implications
 - Data protection implications
 - Voluntary sector
-

Background papers: Code of Conduct for members

Contact officer: Julie Kenny, Monitoring Officer

Executive member: Cllr S Bray

Hinckley & Bosworth Borough Council

Arrangements for dealing with complaints against councillors (Borough and Parish)

The Localism Act 2011 requires all local authorities to adopt their own Code of Conduct (“the Code”) for members (and for any co-opted members who have the right to vote in meetings). The Code has to be based on seven principles of public life namely: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

In addition the Code requires members to declare and publicly register certain financial interests that they may have. These are called Disclosable Pecuniary Interests. Failure to declare and register these particular interests is a criminal offence.

The Localism Act 2011 goes on to require local authorities to have arrangements in place to deal with formal complaints against members. Those arrangements have to include the appointment of an ‘Independent Person’ whose views must be sought by the authority before making a final decision on a complaint and can also be sought at any stage of dealing with a complaint. In addition, the member being complained about has a right to consult an Independent Person at any time in the process.

Making a Complaint

Members of the Hinckley & Bosworth Borough Council and parish councils within the borough pride themselves on their high standards of behaviour. There may however be occasions when you might consider that a member has breached the Code of Conduct. In these instances, you may complain to the Monitoring Officer who is a senior officer in the authority and has statutory responsibility for maintaining the register of members’ interests and for administering a system for considering complaints against members.

To ensure that all the necessary information is provided with a complaint a standard complaint form has been drawn up. You can access the complaints form [here](#).

Once completed the form should be sent either by e-mail or in the post to:

Julie Kenny
Monitoring Officer
Hinckley & Bosworth Borough Council
Hinckley Hub
Rugby Road
Hinckley
Leicestershire LE10 0FR

E mail: julie.kenny@hinckley-bosworth.gov.uk

It is important that you provide your contact details so that we can keep you informed of the progress of your complaint. The form includes a section for you to indicate if you don't want the member you're complaining about to know who the complainant is. However, there are only very specific situations where your details can be withheld.

Once received your complaint will be dealt with in accordance with the following process:

First steps

You will be sent an acknowledgement letter or e mail usually within five working days of receipt of your complaint.

The subject member and his/her political group leader (if applicable) will be notified of the complaint and provided with the details of the complaint.

Preliminary Assessment

The Monitoring Officer, in consultation with an Independent Person, will assess your complaint and decide whether it constitutes a breach of the Code of Conduct.

Complaints that are considered to be vexatious or politically motivated will not be accepted. If for these or other reasons the Monitoring Officer, in consultation with the Independent Person, does not feel that the complaint should be considered, you, the member being complained about and the group leader (if applicable) will be notified. If you are dissatisfied with this decision, you can request re-consideration by the Monitoring Officer.

If the complaint is deemed to relate to an alleged breach of the Code of Conduct the Monitoring Officer will decide whether or not that breach relates to the declaration or registration of a Disclosable Pecuniary Interest. (See below for information on complaints not deemed appropriate for consideration).

Alleged breaches of requirement in connection with Disclosable Pecuniary Interests

In these instances, the Monitoring Officer will consider whether the matter should be referred to Leicestershire Police for investigation. In making that decision the Monitoring Officer has to decide whether any alleged failure to declare or register an interest was intentional. The Monitoring Officer will need to be able to provide sufficient evidence to justify a Police investigation.

Other alleged breaches of the Code of Conduct.

For complaints that are **not** about Disclosable Pecuniary Interests, the Monitoring Officer, in consultation with the Independent Person, will decide whether the allegation warrants detailed consideration and, if so, whether that consideration needs to be by the Monitoring Officer or by a panel of elected members.

Complaints considered by the Monitoring Officer

These are complaints for which the Monitoring Officer in consultation with the Independent Person, feel that either no further action is required or that the appropriate remedy would be:

- a formal apology to you by the member concerned within 14 days of the request to do so;
- a requirement for the member to undertake specific training, or both.

You will be informed of the outcome of the complaint. Where members belong to a political group, the group leader will be notified of the outcome of the complaint and of any sanctions imposed.

Complaints considered by the Ethical Governance & Personnel Committee (EGPC)

Where the Monitoring Officer, in consultation with the Independent Person, thinks that it is not appropriate for them to deal with the complaint or that more serious sanctions might be appropriate the complaint will be referred to EGPC. Both you and the member being complained about will be invited to submit evidence for the EGPC to consider.

The EGPC will decide whether it believes a full investigation into the complaint is required or whether there is more appropriate action, such as an apology, training or indeed whether no further action should be taken. In all cases, the Monitoring Officer will be asked to advise you and the subject member of the decision.

If the EGPC requests a full investigation, this will be undertaken by the Monitoring Officer or a person appointed by them. If necessary, the EGPC can request additional information from other parties to help them consider the complaint. More serious cases might warrant the commissioning of an investigation report by either an officer not directly involved in work with the member concerned or by an independent adviser.

If the recommendation of the investigation is that there has not been a breach of the Code of Conduct and no further action be taken, the report will also be sent to the Independent Person and the Chair of the EGPC, who will be asked whether they agree with the recommendation. Where all parties agree, that will be the end of the matter and you, the member and the relevant town or parish clerk will be advised of the decision.

However, if an investigation finds a complaint is upheld and there has been a breach of the Code of Conduct then the EGPC will meet for a hearing and the subject member will be invited to attend.

Hearings by the Ethical Governance and Personnel Committee

Hearings are not a court. Evidence will not be taken on oath and persons attending the hearing will not be expected to stand. The committee is quasi-judicial and the

principles of natural justice will be applied. All comments or questions must be put through the Chair. The committee will reach its decisions on the balance of probabilities based on the evidence presented to it.

The subject member may be represented or accompanied during the meeting.

The EGPC Chair will:

- (i) introduce those present;
- (ii) establish that the hearing is quorate
- (iii) deal with any disclosures of interest;
- (iv) ensure that the participants understand the procedure to be followed;
- (v) ensure that the member, if unaccompanied, was made aware that he or she could have been represented.
- (vi) ensure that any issues of confidentiality are dealt with

If the subject member is not present, the committee will consider whether to hold the hearing in their absence or adjourn the hearing.

The investigator will act as a facilitator introducing any witnesses to give evidence. The subject member and/or his/her representative may ask questions of the investigating officer and any witnesses. The EGPC may ask questions of the investigating officer and any witnesses.

The subject member and/or his/her representative will put his/her case and may call witnesses. The EGPC may ask questions of the subject member and any witnesses.

The EGPC will withdraw to consider the case and come to a decision in private. The Monitoring Officer and the officer recording the proceedings will remain with the Committee. The Chair will announce the Ethical Governance and Personnel Committee's decision in respect to the material facts and whether they amounted to a breach of the Code of Conduct.

If a complaint is upheld:

The EGPC will decide if any of the following sanctions should be imposed:

- Formal apology
- Additional training
- Formal letter to the member concerned highlighting failings in their conduct
- Recommendation to Council / Parish Council on the removal of the member from membership of a specific committee, outside body or position of responsibility

- Recommendation to the political group leader (if applicable) on the removal of the member from a specific committee, outside body or position of responsibility
- Issue of a press release on the nature of the complaint and the committee's decision which will be published on the council's website
- A recommendation to Council that the member be censured.
- Limit the member's access to support services and officers (if a Borough member).

If the complaint is not upheld

No action will be taken against the councillor concerned.

You, the subject member, the group leader and town or parish clerk (if applicable) will be informed of the committee's decision.

Appeals

There is no right of appeal against the decision on whether to investigate a complaint or decisions made following investigation.

If you are unhappy about the way in which your complaint has been administered, a complaint can be lodged with the Local Government and Social Care Ombudsman who can be contacted as follows:

Website: <https://www.lgo.org.uk/make-a-complaint/how-to-complain>

Tel: 0300 061 0614

The subject member may also make a complaint to the Local Government and Social Care Ombudsman if they are unhappy with the way the complaint against them has been handled.

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