

**MEMBER CONDUCT PANEL
30TH MAY 2018**

PRESENT: Councillors Forrest, Gaskell and Tassell.
Councillor Marchant (Non-voting Parish Member)

Mr K. Brewin (Investigating Officer)
Mr G. Grimes (Independent Person)
Adrian Ward (Monitoring Officer)

Democratic Services Officer (NC)

1. APPOINTMENT OF CHAIR

RESOLVED that Councillor Gaskell be appointed Chair for the meeting.

2. DISCLOSURES OF PECUNIARY AND PERSONAL INTERESTS

No disclosures of interest were made.

3. DETERMINATION OF A COMPLAINT OF A BREACH OF THE MEMBERS' CODE

In accordance with the procedure for dealing with complaints, the Panel was being asked to consider the material facts concerning an investigation into a complaint against Councillor Neil Asher as set out in the report of the Monitoring Officer, and to decide whether they amounted to a breach of the Code of Conduct of Mountsorrel Parish Council by Councillor Asher, and if so, whether it felt it was appropriate to recommend the imposition of a sanction to the Parish Council.

4. ADMINISTRATION OF THE PANEL

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. All present were provided with time to consider the information within the supplementary report.

The Monitoring Officer stated that Councillor Asher was unable to attend and had explained that early mornings on a weekend would fit best with his work, and that if he was to attend a hearing his manager would apply the standard company policy of one month's notice for taking annual leave and that he would consider asking for the cost of his time to be reimbursed. In response to the Monitoring Officer's information and with regard to Councillor Asher's absence the Panel agreed to proceed with the hearing.

Introductions were then made and the Chair explained the order of proceedings. All present confirmed they understood the procedure and it was agreed to hold the hearing in public.

5. DETERMINATION OF A COMPLAINT OF A BREACH OF THE MEMBERS' CODE OF CONDUCT OF MOUNTSORREL PARISH COUNCIL BY COUNCILLOR NEIL ASHER (Ref: MC5 17/18)

The Investigating Officer questioned Councillor Pirt about what had caused her concern at the council meeting on 8th January 2018. She clarified that she had sought the advice of the Chairman of the Council regarding this matter and that she had made efforts to resolve the issue informally. She was particularly concerned that it had progressed to a Panel hearing with regard to its potential impact on the reputation of Mountsorrel Parish Council. In respect of the counter complaint, she stated she had apologised if she had caused offence but didn't think her comments had been slanderous or libellous.

The Panel clarified with Councillor Pirt details regarding who was sat nearby at the time of the incident, how many members of the public were present, whether the picture was indecent in her view, the policy of Mountsorrel Parish Council with respect to the use of mobile phones in meetings, and the frequency of phone usage by Councillor Asher at meetings.

The Investigating Officer noted that:

- it had been difficult to complete the investigation because Councillor Asher had not been willing to be contacted by phone or to meet face-to-face, all communication had been by email and Councillor Asher had repeatedly refused to expand upon his initial written statement.
- the recent press article regarding this matter contained more details and explanation from Councillor Asher than had been provided by him during the whole investigation, despite concerns raised by Councillor Asher about data protection issues preventing him from giving any more details to the Investigating Officer.
- in his view, it was difficult to consider Councillor Asher's lack of cooperation and conduct during the investigation as complying with Principles 1 and 4 of the Nolan Principles of Public Life.

Summary statements

The Independent Person gave his views to the Panel regarding the matter and stated that:

- although he recognised an individual's right to not take part in any investigation, he was very concerned that Councillor Asher had not engaged with the enquiry and was disappointed by the tone and attitude in some of the comments he had made.
- although there wasn't hard evidence to determine whether Councillor Asher had breached the Code of Conduct, he had shown disregard bordering on contempt of the process and it was clear in his responses, particularly to the Deputy Monitoring Officer, that his conduct had fallen far short of that expected from someone holding public office.
- Councillor Asher's subsequent attitude towards Councillor Pirt, the investigation and the hearing process, and what was said by him to the Press,

indicated in his view, potential breaches of the Principles 1, 5 and 7 of the Nolan Principles.

The Investigating Officer summed up his case by stating that although it was not possible to prove or disprove that Councillor Asher was looking at inappropriate material on his phone, he supported the Independent Person in his views regarding potential breaches of the Nolan Principles 1, 5 and 7 regarding Councillor Asher's conduct. He noted that this was mainly due to the lack of cooperation from Councillor Asher, his refusal to expand from his initial statement and provide details of what was on his phone, and that his responses appeared to be designed to deflect from the investigation process.

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

Once all parties had returned to the room, the Chair of the Panel announced the Panel's decision. He particularly noted that the Panel wished to express its disappointment with Councillor Asher's failure to cooperate in a meaningful way with the process for dealing with the complaint against him and, had he done so, this issue could have been dealt with more expeditiously.

In relation to an issue raised by the Investigating Officer with regard to viewing confidential material, the Panel's view was that if a third party inadvertently viewed confidential information in a public setting, they could not be held at fault, and that the potential data protection breach rested with the person who placed the confidential information in the public domain where it could be seen by other people.

RESOLVED

1. that the Panel's decision in relation to Councillor Asher's use of his mobile phone during the meeting in question, was that its use was not in itself a breach of the Code of Conduct of Mountsorrel Parish Council;
2. that the Panel's decision in relation to the alleged image displayed on the device during the meeting in question was that there was insufficient evidence to indicate that Councillor Asher had breached the Code of Conduct of Mountsorrel Parish Council;
3. that it be recommended to Mountsorrel Parish Council that Councillor Asher be formally reminded in writing of his obligations with regard to the Nolan Principles of Public Life, and in particular Principle 4, with regard to 'Accountability for their decisions and actions: Councillors must submit themselves to the scrutiny necessary to ensure this'.

Reasons

1. The Panel considered that the use of mobile devices during Parish Council meetings was a matter for the Chair, and there was no indication that the Chair of the meeting in question had asked Councillor Asher to stop using his mobile phone because it was becoming disruptive.

2. The Panel considered that due to the lack of firm evidence it could not determine whether or not the image displayed on the device was appropriate.
3. Although the Panel did not find Councillor Asher to have breached the Code of Conduct of Mountsorrel Parish Council in respect of the complaint, it considered Councillor Asher's conduct during the course of the consideration of the complaint and investigation process fell short of the standards to be expected of a parish councillor.

The Monitoring Officer stated that as no breach of the Code of Conduct of Mountsorrel Parish Council had been found, Councillor Asher did not have a right of appeal and the matter was now closed.

The Panel's decision will be published in the form of these minutes.