

CONFIDENTIAL REPORT



PRIVATE AND CONFIDENTIAL

Report of an investigation by Wilkin Chapman LLP, appointed by the Monitoring Officer for Gedling Borough Council, into allegations concerning Councillor Paul Winfield of Calverton Parish Council.

8 June 2022

VOLUME 1 REPORT

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Appendix A Schedule of evidence taken into account and list of unused material

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1. Executive Summary

1.1 Councillor Marks and Councillor Winfield are both members of Calverton Parish Council. Councillor Marks' [REDACTED]

1.2 Councillor Marks made a formal complaint to the Monitoring Officer of Gelding Borough Council in February 2021 that Councillor Winfield had failed to treat her, her family ([REDACTED] [REDACTED]) and others with respect and that Councillor Winfield had bullied and harassed her and others.

1.3 This complaint was initially made to the Monitoring Officer in February 2021. Further information was then requested by the Monitoring Officer and the complaint was disclosed to Councillor Winfield on 14 June 2021.

1.4 [REDACTED]

1.5 [REDACTED]

1.6 [REDACTED]

1.7 [REDACTED]

1.8 [REDACTED]

1.9 Following receipt of the complaint Councillor Winfield confronted Councillor Marks in the presence of Councillor Inger and Brown. It is evident that he called Councillor Marks a sad woman and swore when he shouted at her.

1.10 We have concluded that Councillor Winfield:-

- (a) was acting in an official capacity and was subject of the Code of Conduct;
- (b) did not breach the part of the Code of Conduct relating to treating others with respect;
- (c) did not breach the part of the Code of Conduct relating to bullying;
- (d) did intimidate Councillor Marks the complainant;
- (e) did bring his office or the Council into disrepute.

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2. Councillor Paul Winfield's official details

- 2.1 Councillor Winfield was first elected in May 2019. He is presently the lead for the Councils HR group.

3. Relevant legislation and protocols

3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant authority (of which the Council is one) must promote and maintain high standards of conduct by members and co-opted members of the Authority. In discharging this duty, the Authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity.

3.2 Section 28 of the Act provides that the Authority must secure that its code of conduct is, when viewed as a whole, consistent with the following principles: -

- (a) Selflessness;
- (b) Integrity;
- (c) Objectivity;
- (d) Accountability;
- (e) Openness;
- (f) Honesty;
- (g) Leadership.

3.3 The Authority adopted a Code of Conduct on 10 June 2019 (attached at WC 1), we note however that the code was not approved until 17 July 2019. The following paragraphs are included:-

5 (1) You must:

- (a) treat others with respect, including the organisations and public you engage with and those you work alongside.
- (b) value your colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect between you that is essential to good local government.

(2) You must not:

- (b) bully or harass any person.

The definition of bullying and harassment and examples of behaviour which amounts to bullying and harassment are set out in Appendix 1 to the Code of Conduct (set out at paragraph 3.4 below);

(c) Intimidate or attempt to intimidate any person who is or likely to be:

- (i) a complainant

7 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.

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3.4 Appendix 1 to the Code is as follows:-

Definitions and examples of behaviour which amount to bullying or harassment

Bullying may be characterised as behaviour, or an abuse or misuse of power in a way that undermines, humiliates, unfairly criticises or injures someone.

A non-exhaustive list of behaviour which amounts to bullying includes:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying correspondence that is critical about someone to others who do not need to know
- ridiculing or demeaning someone – picking on them or setting them up to fail
- exclusion – deliberately excluding someone from meetings or written correspondence in matters for which they have responsibility or professional interest or deliberately excluding someone from events or celebrations that it would ordinarily be expected that they might legitimately attend
- victimisation – taking action detrimental to someone as a result of them raising a complaint or issue of concern in good faith through formal and correct procedure whether or not the complaint was upheld or proven
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances-touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- publicly criticising the work or efficiency of someone where the issue has not been formally raised with that person through proper process and the right of explanation or appeal has not been made available
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities

harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.

A non-exhaustive list of behaviour which amounts to harassment includes:

- frequent unwanted contact, including texts, letters, phone calls, emails and communication via social media or any other electronic communication
- sending unwanted gifts
- driving past an individual's home or visiting them at work without legitimate purpose or following or watching an individual
- sharing humiliating information, lies or gossip about an individual
- making inappropriate comments, critical remarks, or offensive jokes
- threatening behaviour
- excessive demands that are impossible to deliver
- making sexual comments or jokes or inappropriate sexual gestures
- making jokes or degrading or patronising comments or teasing an individual about their race, religion, age, gender, sexual orientation or disability. This would also amount to an offence under the Equality Act

4. Evidence and facts

Our appointment

- 4.1 The Parish Council's arrangements for dealing with standards complaints state that the Monitoring Officer of Gedling Borough Council (the Borough Council), in consultation with the appointed Independent Person (IP), shall decide whether or not to investigate a Code of Conduct complaint.
- 4.2 In consultation with the IP, Francesca Whyley the Monitoring Officer of the Borough Council decided on 30 September 2021 to refer for investigation allegations set out in a complaint made by Councillor Patricia Marks. She instructed Wilkin Chapman LLP on 5 October 2021 to carry out that investigation.
- 4.3 Wilkin Chapman LLP is a solicitor's firm based in Lincolnshire and East Yorkshire with a national local government legal practice. Work in relation to this investigation was undertaken by Jonathan Goolden, Dave Hayward, Mark Lambert and Peter Scarbro.

The investigation

- 4.4 During the investigation, Mr Lambert met with and obtained statements from: -
 - Councillor Patricia Marks;
 - [REDACTED]
 - Councillor Lorraine Brown; and
 - [REDACTED]
- 4.5 Councillor Joan Inger answered questions that were sent to her by email.
- 4.6 [REDACTED]
- 4.7 Councillor Winfield was interviewed via Microsoft Teams by Dave Hayward. The interview was recorded from which a full transcript was prepared.
- 4.8 Copies of the above, together with other relevant documents are annexed to this report and listed in a schedule of evidence at Appendix A.

The Complaint

- 4.9 Councillor Marks submitted her initial complaint to the Monitoring Officer on 16 February 2021. On 25 February 2021 Councillor Marks requested that the complaint was put on hold. Councillor Marks then requested that the complaint be reopened. The Monitoring Officer reopened the complaint on 18 March 2021 and requested further information which was sent to the Monitoring Officer in April 2021. Councillor Marks has alleged that:-
 - [REDACTED]
 - [REDACTED]

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- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- On Wednesday 16 June 2021 following her complaint, she was confronted by Councillor Winfield who called her a sad woman. When he was asked to leave Councillor Winfield allegedly said, "I'm not fucking going anywhere".

- [REDACTED]

4.10 [REDACTED]

4.11 [REDACTED]

4.12 [REDACTED]

4.13 [REDACTED]

4.14 [REDACTED]

4.15 [REDACTED]

4.16 [REDACTED]

4.17 [REDACTED]

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[REDACTED]

4.18 For the purposes of this investigation the investigators have focused on matters [REDACTED] the incident on 16 June 2021.

Councillor Patricia Marks

4.19 Councillor Marks was initially interviewed by Mark Lambert on 1 November 2021 and then subsequently on 11 November 2021. A signed statement was returned on 21 December 2021 (attached at WC 2). Regarding the complaint she stated:-

(a) she was an elected Councillor on Calverton Parish Council (the Council). She was first elected around 2010 and was now in her third term as a Councillor. She was currently an independent Parish Councillor;

(b) on 16th February 2021 she made a formal complaint via email to Francesca Whyley, Monitoring Officer of Gedling Borough Council, regarding Councillor Paul Winfield having failed to comply with Calverton Parish Council's Code of Conduct. On 19th June 2021, following an incident at Calverton Village Hall on 16th June 2021, she again contacted Francesca Whyley via email and provided additional information specifically in relation to the actions of Councillor Paul Winfield;

(c) her complaints related to the disrespect, bullying, harassment, and intimidation that she; her family and others had suffered at the hands of Councillor Winfield, and also the fact that he had brought disrepute upon the office of Parish Councillor by his actions. That behaviour started soon after he was elected onto the Parish Council in 2019. She had been suffering from his behaviour ever since, and that behaviour continued to date;

(d) [REDACTED]

(e) [REDACTED]

(f) [REDACTED]

(g) [REDACTED]

(h) [REDACTED]

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[REDACTED]

(i) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(j) Councillor Paul Winfield was elected onto the Council in May 2019 and was currently in his first term. She knew him before he was elected and they used to chat if they met on the street but following his election, she had seen the true Paul Winfield, and she did not like what she saw so she distanced herself from him.

[REDACTED]

(k) on Wednesday 16th June 2021 she was in a working party meeting with Councillors Lorraine Brown and Joan Inger, who was a friend of Councillor Winfield. An hour and a half into the meeting Councillor Winfield opened the door of the meeting room. She was about four feet away from him. Councillor Winfield pointed at her and shouted, *"You are a sad, sad woman. You sad woman"* and then left. Councillor Brown asked, *"What was that about?"* Councillor Inger said, *"Was it a code of conduct?"* She told them she did not know. She had thought that it related to her complaint against Councillor Winfield and thought that possibly he had just been made aware of her complaint, but she did not want to confirm that to Councillors Brown and Inger as complaints should be treated as confidential;

(l) ten minutes later Councillor Winfield came back, leaned into the room through the doorway and started shouting and pointing at her. He was red faced, and so angry and loud she could not tell exactly what he was saying. Councillor Inger went to the door and said, *"Paul, go away and calm down."* Councillor Winfield said, *"No, I'm not fucking going anywhere, don't you fucking shut this door."* She asked Councillor Inger four times to shut the door but Councillor Inger did not. Councillor Winfield was shouting over her, *"I'm not fucking going anywhere."* While Councillor Winfield was still shouting, she turned to Councillor Brown and said, *"I'm sorry Lorraine, you were witness to that, I'm sorry but I am going to have to leave";*

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(m) she felt physically intimidated as Councillor Winfield was a stocky man with an aggressive demeanour. She felt trapped and threatened as she was sitting down at the table close to Councillor Winfield, who was lunging towards her with his arms, but she could not get out of the meeting room because Councillor Winfield was in the doorway, so she stood up and walked around the other side of the table and went through the French doors onto the bowling green until Councillor Winfield had gone. She then came back into the meeting room and believed that Councillor Winfield had gone into the small office, which she had to pass to leave the building. She said to Councillors Brown and Inger, *"If he touches me?"*;

(n) Councillor Winfield was, in a loud voice, reading to the Clerk, [REDACTED], what she believed was a complaint against him because she heard the name [REDACTED] mentioned. That further added to her thought that he had just found out about her complaint against him. On her way home she had to stop to compose herself because she did not want her husband to see her as upset as she was because she knew if he had seen how upset she was, he would have gone looking for Councillor Winfield;

(o) [REDACTED]

(p) she had not sought confrontation, but Councillor Winfield had no respect for authority, and he could not control his temper;

(q) [REDACTED]

[REDACTED]

(r) [REDACTED]

[REDACTED]

(s) [REDACTED]

(t) [REDACTED]

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[REDACTED]

[REDACTED]

(v) [REDACTED]

[REDACTED]

(w) [REDACTED]

(x) she was well known in Calverton and felt that her integrity and character within the village had been attacked [REDACTED]. She worked in a Hospice Charity Shop and, on the odd occasion, Councillor Winfield had come into the shop when she had been there, had walked round whilst looking at her and then left without

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buying anything. He was simply trying to intimidate her. If he came in after that, she would go in the back of the shop and the manager would tell her when Councillor Winfield had gone;

(y) she strongly believed that Councillor Paul Winfield was not fit to hold the position of Parish Councillors;

(z) [REDACTED]

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- [REDACTED]
- [REDACTED]

Councillor Lorraine Brown

4.22 Councillor Brown was interviewed by Mark Lambert on 16 December 2021 and a signed statement was obtained (attached at WC 5). She stated:-

- (a) she was an independent Parish Councillor for Calverton Parish Council (the Council). She was co-opted onto the Council some 9 or 10 months after the 2019 election following the death of one of the serving Parish Councillors;
- (b) she was responsible for signing cheques on behalf of the Council, and she led the Community Projects Working Group, which comprised of herself and Councillors Pat Marks, Joan Inger, Andy Meads and Paul Winfield. Pat, Joan and she tended to be more involved in meetings and planning, whilst Andy and Paul did the heavy stuff, such as moving benches and other more physical tasks;
- (c) she had been asked about an incident which occurred at a meeting she attended on 16th June 2021. The following was what she could say about that meeting;
- (d) the meeting that day was a Community Projects Working Group meeting which took place in the meeting room at the Village Hall. She had previously invited all members of the group, as listed in paragraph (b) above, to the meeting. Herself, Pat Marks and Joan Inger had definitely attended, Paul Winfield had emailed her to say he would attend if he could and Andy Meads was unable to attend as he was working away. The meeting that day would have started at either 12.30pm or 2.30pm but she was unsure of the start time on that occasion;
- (e) there was a small office at the Village Hall which was shared by the Village Hall Caretaker ([REDACTED] at that time) and the Parish Clerk (either [REDACTED] or a lady called [REDACTED] at that time) if the Clerk was not working in their main office at the Parish Council offices. Occasionally the Park Keeper ([REDACTED] at that time – Pat Marks' son) used the office too;
- (f) on the day of the meeting she had been sure that no-one else was present at the Village Hall when they arrived as Joan Inger had opened the Village Hall with keys that she held to let them in. They went through to the meeting room and Joan shut, but didn't lock the main entrance door. Once they were in the meeting room, its' door to the foyer area was shut but they opened one set of the 2 sets of French doors that led out to the bowling green to allow for airflow due to Covid-19;
- (g) the meeting room was rectangular in shape and, if drawn, had short sides at the top and bottom and longer sides to the left and right. The door into the meeting room was in the bottom left hand corner, on the short side, and led into the room towards a number of chairs placed down the left side of a long rectangular table,

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which comprised of a number of smaller tables pushed together to make one large rectangular table. There were 5 or 6 chairs on each side of the table. Set into the longer right-hand side wall were the 2 sets of French doors which led outside to the bowling green;

- (h) for the meeting the first chair on the left of the table (closest to the door) was empty, then Pat Marks sat in the second chair up, the third chair was left empty and she sat on the fourth chair up, with an empty chair, or chairs, after her. On the other side of the table the first and second chairs were empty, Joan Inger sat in the third chair, which left empty chairs after Joan. They sat like that to follow Covid-19 protocols;
- (i) she had produced a 5-year plan for the Village Hall and the William Lee Memorial Park which related to an application for funding for a wildlife area, and they were going through a list of items to make the Village Hall more community focussed;
- (j) they had been talking for a good half an hour or so and were discussing moving a bench, which had been vandalised, from one part of the village to another and were, therefore, discussing getting Andy and Paul to move that bench, when the door opened and Paul came into the meeting room. She thought that he had come to join the meeting and said to him, "*Your ears must have been burning*", referring to the fact that they had just mentioned him and Andy;
- (k) having entered the meeting room Paul walked to his right towards the first of the sets of French doors, stopped behind the first empty chair on the right side of the table and touched the back of the chair. She assumed he was going to pull out the chair, sit down and join the meeting. He said, "*Yes, they are*";
- (l) she described Paul as usually being a jovial character, but that he could get stressed and was easily wound up. He did look to be stressed on that occasion. He looked at Pat and shouted at her across the table that what she (Pat) had done was wrong and that she (Pat) was being very silly. Paul was shouting at Pat. She thought he called Pat a silly old lady, or a silly old woman, possibly with the "F" word included. He did use the "F" word, when he swore;
- (m) she couldn't understand what he was talking about. She thought he was there for their meeting and, at that time, she didn't know that Pat had made a complaint against him;
- (n) Paul then left the meeting room the same way he had come in, leaving the door open. Joan followed him out of the meeting room, and she heard Joan tell him to leave, and to calm down. She heard Paul say something like, "*How can I calm down when I've got this vindictive woman to deal with*", assumedly referring to Pat;
- (o) Joan came back into the meeting room and was about to close the door when Paul appeared in the doorway. He appeared visibly wound up, upset and very angry and was shouting at Joan because she (Joan) had told him to leave. He was also shouting that Pat had it in for him because she (Pat) believed he was trying to get rid of [REDACTED] (Pat's son, who was the Park Keeper at the time). Paul was again swearing whilst shouting at Joan;
- (p) Joan ushered Paul into the foyer area and told him she (Joan) would speak to him later, that she (Joan) would ring him, and told him he needed to go home

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and calm down. After Paul had gone, Joan locked the main entrance door before returning to the meeting room;

- (q) the history which she believed had led to that confrontation was that at that time Paul was passing the Park / Village Hall up to 4 times a day because he was going to help his Mum, who had been very poorly and needed help. On a number of occasions Paul had seen [REDACTED] leaving the park on his bike when [REDACTED] should have been at work so Paul reported this to the Council. Pat's take on that was that Paul was spying on her son and was trying to get rid of him;
- (r) while Joan was in the foyer dealing with Paul, she was talking to Pat as Pat was visibly upset, and she was trying to calm Pat down. Pat was saying things under her breath, but she couldn't hear the actual words Pat was saying. She offered Pat a glass of water or a cup of tea, but Pat declined both. Pat also packed up her paperwork, which she had had out on the desk for the meeting, into her bag. She thought that at one point Pat got her mobile phone out of her bag, but then didn't use it. She told Pat to wait 5 minutes to make sure that Paul had gone, and to compose herself as she (Pat) had to drive herself home. Pat had appeared to be really upset and shocked. She told Pat she was really sorry about what had happened;
- (s) when Joan came back into the meeting room there was a brief discussion. Pat said she was sorry that that had happened, and she thought Pat also said, "*Sorry you had to witness that*". Joan then offered to check that Paul had gone before letting Pat out of the main entrance, where they then watched Pat get in her car and drive away;
- (t) to her knowledge no-one else was present at the Village Hall throughout the incident although, as she stated in paragraph (f) above, Joan had shut, but hadn't locked, the main entrance door as they all entered the Village Hall on arrival. She had since been advised that [REDACTED] was in the office working, however, she had not seen or heard him.

Councillor Joan Inger

4.23 Councillor Inger answered questions sent to her by email by Dave Hayward. She stated:-

- (a) she had been a Councillor for four and half years;
- (b) she was present at a meeting on 16 June 2021 with Councillor Marks and Councillor Brown;
- (c) Councillor Winfield opened the door and said, "you sad, sad woman";
- (d) Councillor Winfield came back to the doorway due to his frustration of what information he received by post by way of a code of conduct letter;
- (e) she understood Councillor Winfield and his wife were very upset to the underhand way this had come to him;
- (f) Councillor Winfield and his wife had assisted Councillor Marks and her family in the past;

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- (g) she asked Councillor Winfield to calm down. He said that he was not going anywhere so don't shut the door. Councillor Winfield said again that Councillor Marks was a vindictive sad, sad woman;
- (h) Councillor Winfield then said I am not fucking going anywhere;
- (i) she had known Councillor Marks for 50 years but over the last 2 years a lot of issue had come to the council regarding her son who had worked for the council. He had recently taken redundancy but there was a lot of ill feeling concerning that;
- (j) she had worked with Councillor Winfield on voluntary work. He could be very outspoken.

Councillor Paul Winfield

4.24 Councillor Winfield was interviewed by Dave Hayward on 10 January 2022 via Microsoft teams. The interview was recorded from which a full transcript was prepared (attached at WC 6). Regarding this complaint Councillor Winfield stated that:-

- (a) he joined the Council in May 2019;
- (b) he was the emergency contact number for the office, the village hall and the park. He carried out allotment inspections and was lead for the HR group;
- (c) there were fifteen councillors, three members of staff in the office and two caretakers/groundkeepers;
- (d) at the moment Councillor Meads was the Council staff line manager;
- (e) [REDACTED]
- (f) [REDACTED];
- (g) [REDACTED]
- (h) the council took HR advice from a company called Exact;
- (i) [REDACTED]
- (j) he fought fire with fire. If someone had a go at him he believed he was entitled to have a go back;
- (k) [REDACTED]
- (l) [REDACTED]

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(m) [REDACTED]

(n) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(t) when he received the complaint he was angry and he had gone and told Councillor Marks that she was a sad, sad woman. He said something along the lines of, 'explain yourself, why have you had to do this';

(u) he wanted her to explain why she had taken that route;

(v) he wanted to clear the air and see what the problem was.

4.25 A series of emails, letters and text messages have also been received as part of the investigation. These are as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.26 These items are not summarised in this section but they have been referred to in the reasoning at paragraphs 7.1-7.111. They can be found in the Schedule of Evidence at WC 6-WC 9.

5. Summary of the material facts

5.1 Councillor Marks submitted her initial complaint to the Monitoring Officer on 16 February 2021. On 25 February 2021 Councillor Marks requested that the complaint was put on hold. Councillor Marks then requested that the complaint be reopened. The Monitoring Officer reopened the complaint on 18 March 2021 and requested further information which was sent to the Monitoring Officer in April 2021.

5.2 The complaint was disclosed to Councillor Winfield on 14 June 2021. On 16 June 2021 Councillor Winfield went to the Parish Council Offices where Councillor Marks was attending a working party meeting.

█ [REDACTED]

5.12 Following receipt of the complaint Councillor Winfield confronted Councillor Marks in the presence of Councillor Inger and Brown. It is evident that he called Councillor Marks a sad woman and swore when he shouted at her.

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6. Councillor Patricia Marks and Councillor Paul Winfield additional submissions

6.1 The following comments were received from Councillor Marks on the draft version of this report:-

“Dear Jonathan,

This is my response to PW statements.

P5

It is Councillor Paul Winfield not Andrew Winfield

After two years of harassment I am finding it very difficult to read his statements without feeling upset.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

The meeting on 14 June 2021 PW where you have concluded he did breach the Code relating to bullying, the fact that I was humiliated in front of fellow councillors and was in a distressed state and felt personally threatened by PW according to P31 he is guilty of breaching the code relating to bullying.

P15 Definitions and examples of behaviour which amount to bullying and harassment.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Code of Conduct was adopted 17 July 2019.

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[REDACTED]

6.2 The following comments were received from Councillor Winfield on the draft version of this report:-

“Hello Mr Hayward.

[REDACTED]

[REDACTED]

Response to comments

6.3 We have read in detail the comments from Councillor Marks concerning the evidence in this case and in particular her comments concerning the parameters of this investigation.

6.4 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.9 Having considered all the comments made Councillor Marks and Councillor Winfield we have not found anything which would change the conclusions in our report.

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7. Reasoning as to whether there have been failures

- 7.1 Section 27(2) of the Localism Act 2011 requires the Authority to adopt a code of conduct "dealing with the conduct that is expected of members of the Council *“when they are acting in that capacity”*”.
- 7.2 The Council’s Code of Conduct reflects the requirement of Section 27(2) of the Localism Act.
- 7.3 The Authority’s code is expressed to apply whenever a member is acting in their capacity as a member of the Council. We therefore first have to consider whether the Councillor Winfield was acting in an official capacity at the time of the alleged incidents.
- 7.4 Though relating to the former 2007 model code of conduct, the Upper Tribunal decision in *MC v Standards Committee of the London Borough of Richmond* [2011] UKUT 232 (AAC) is a helpful distillation of the previous High Court cases on capacity – *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 and *R(Mullaney) v Adjudication Panel for England* [2009] EWHC 72. The principles stated in *MC* are:-
- (a) was the councillor, as a matter of ordinary English, actually conducting the business of their authority, including the business of the office of councillor?
 - (b) a fact sensitive approach is required to the above;
 - (c) the question is one for the tribunal to determine, not a reasonable observer.
- 7.5 In *McTigue v Middlesbrough Council* (2009) APE 421 (a decision of the former Adjudication Panel for England), Councillor McTigue made a series of postings on the forum of the Middlesbrough Evening Gazette using the pseudonym “Indie” which related to wheelie bin collections and were alleged to be insulting of a local resident. Councillor McTigue argued that she was not acting in her official capacity as all her comments on the forum were made in her private time and all using the pseudonym “Indie”. The tribunal:-
- “...accepted that even if it became clear from the forum that an individual who was posting on the forum was a councillor, the Code of Conduct would not automatically be engaged. The question was whether in the postings on the forum the councillor was deemed to be, or gave the impression that he or she was, “acting in the role of councillor”. This was fact-sensitive and would very much depend on the content of the postings.”*
- 7.6 The tribunal concluded that Councillor McTigue had given the impression that she was acting as a councillor, giving examples of a number of posts where she had referred to her work as a ward member.
- 7.7 Care must be taken in applying a tribunal case from a period when the relevant code of conduct (that set out in a national model) was expressed to apply not only when a member was carrying out their role as such but also when they gave that impression. However, *McTigue* is helpful in providing an example of how the principles of *MC* can be applied. When Councillor McTigue posted on the forum as “Indie” she was not acting as a Councillor when commenting about matters in general. Despite the lack of identification as a Councillor in her username, she was acting as a Councillor when the content of her posts concerned ward matters.

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7.8 As MC states, the question is whether as a matter of ordinary English was the Councillor actually conducting the business of their authority, including the business of the office of councillor? The substance of an interaction rather than outward appearance is decisive.

7.9 We have considered The Local Government Association Model Councillor Code of Conduct Guidance (LGA Guidance) published in July 2021 when discussing social media postings and capacity, it states :-

“Simply describing yourself as a councillor in a social media posting or at the top of your page or in your username or profile, for example, does not of itself mean that every posting you make is covered by the Code. There must be a link within the individual posting or thread to your role as a councillor or to local authority business. However, even if you do not describe yourself as a councillor you may fall within the scope of the code if you are discussing local authority business.

For example, a posting which is simply discussing a recent football match is not covered by the code even if you have described yourself as a councillor. However, if you make a posting threatening a fellow councillor or officer that would fall within the code even if you have not described yourself as a councillor as it relates to local authority business or your role as a councillor.”

7.10 In addition to this we have considered the findings of case LN/An/2134 Standards Commission for Scotland. The Panel in this case found:-

“that the Respondent’s Facebook page was accessible to those other than his Facebook ‘friends’; that the Respondent was identifiable as a councillor on it; and that had subsequently commented on the petition in that capacity. The Panel determined that this meant that the Respondent was acting, or could be perceived as being acting, as a councillor when posting about the petition and encouraging others to sign it. The Panel determined, therefore, that the Code of Conduct applied to the Respondent at the time of the events in question”.

7.11 In this case the conduct of Councillor Winfield towards the complainant Councillor Marks [REDACTED] is subject of a complaint. This conduct includes [REDACTED] the incident on 16 June 2021 following the receipt of the code of conduct complaint.

7.12 There is no doubt that Councillor Winfield’s conduct complained of concerns Council business.

7.13 We therefore conclude that Councillor Winfield was acting in an official capacity and was subject of the Code of Conduct.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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- 7.79 Councillor Marks then states that ten minutes later Councillor Winfield leaned into the room and again started shouting at her. When he was asked to leave and calm down, Councillor Marks states that Councillor Winfield shouted *“No, I’m not fucking going anywhere, don’t you fucking shut this door”*. Both Councillors Inger and Brown agree that Councillor Winfield was swearing when shouting at Councillor Marks.
- 7.80 Councillor Marks has stated that she felt physically intimidated as Councillor Winfield was a stocky man with an aggressive demeanour. She felt trapped and threatened as she was sitting down at the table close to Councillor Winfield, who was lunging towards her with his arms, but she could not get out of the meeting room because Councillor Winfield was in the doorway. She also stated that on her way home she had to stop to compose herself because she did not want her husband to see her as upset as she was because she knew if he had seen how upset she was, he would have gone looking for Councillor Winfield.
- 7.81 This incident is outlined at paragraphs 29-32 of Councillor Marks’ statement, attached in the Schedule of Evidence at WC 2.
- 7.82 There are three steps to the test for establishing whether a councillor has breached paragraph 5 (2) (c) of the Code relating to intimidation. These are as follows:
1. Was the conduct intimidatory or did the councillor attempt to intimidate?
 2. Was the conduct directed towards a person?
 3. Was that person, or was that person likely to be, a complainant?
- 7.83 As stated in paragraph 7.80, and in her statement, Councillor Marks felt intimidated by Councillor Winfield.
- 7.84 The second step of the test, as outlined at paragraph 7.82, can also be established. Clearly, Councillor Marks is a person and the conduct was directed towards her.
- 7.85 From his own admission Councillor Winfield confronted Councillor Marks after receiving the complaint. It was clear that Councillor Marks was the complainant and this was known to Councillor Winfield.
- 7.86 Our conclusion is that Councillor Winfield’s conduct towards Councillor Marks was intimidating. He did breach that part of the code relating to intimidating a complainant.

Disrepute

- 7.87 Paragraph 7 of the code of conduct states:-

“You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.”

- 7.88 The LGA Guidance states:-

“As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. Article 10 of the European Convention on Human Rights protects your right to freedom of expression, and political speech as a councillor is given enhanced protection but this right is not unrestricted. You should be aware

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that your actions might have an adverse impact on your role, other councillors and/or your local authority and may lower the public's confidence in your ability to discharge your functions as a councillor or your local authority's ability to discharge its functions.

*In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor's behaviour in office will bring their **role** into disrepute if the conduct could reasonable be regarded as either:*

- 1. reducing the public's confidence in them being able to fulfil their role; or*
- 2. adversely affecting the reputation of your authority's councillors, in being able to fulfil their role.*

Conduct by a councillor which could reasonable be regarded as reducing the public confidence in their local authority being able to fulfil its functions and duties will bring the authority into disrepute."

7.89 The Standards Board for England Case Review 2010 (2011 Edition) Q44 o advises that:-

"An officer carrying out an investigation...does not need to prove that a member's actions have actually diminished public confidence, or harmed the reputation of the authority...the test is whether or not a members' conduct "could reasonably be regarded" as having these effects.

The test is objective and does not rely on any one individual's perception. There will be a range of opinions that a reasonable person could have towards the conduct in question."

7.90 Q42 of the Case Review indicates that:-

"A case tribunal or standards committee will need to be persuaded that the misconduct is sufficient to damage the reputation of the member's office or authority, as opposed simply to damaging the reputation of the individual concerned."

7.91 In applying the Code to the circumstances of an alleged breach of disrepute, it is established that it is not necessary for the member's actions to have actually diminished public confidence or harmed the reputation of the authority. The test is whether or not the conduct could 'reasonably be regarded' as having these effects. However, the conduct must be sufficient to damage the reputation of the member's office or the Council, not just the reputation of Councillor Winfield as an individual.

7.92 Article 10 of the European Convention on Human Rights needs to be considered in relation to disrepute in the same way for disrespect under the code.

7.93 In *Cox v London Borough of Hillingdon (2009) APE0425*, the appeals tribunal was satisfied that describing the majority group as "corrupt" was a throwaway remark made without malicious intent. However it was said in a full council meeting at which councillors, council officers and members of the public were present. By making the claim without justification, Councillor Cox brought his own office into disrepute. By making an unjustified claim that the majority group was corrupt, he brought the authority itself into disrepute.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7.96 As stated above, the LGA Guidance advises that a member's behaviour in office will bring that member's office into disrepute if the conduct could reasonably be regarded as either:-

- (a) reducing the public's confidence in that member being able to fulfil their role; or
- (b) adversely affecting the reputation of members generally, in being able to fulfil their role.

7.97 For example, circulating highly inappropriate, vexatious or malicious e-mails to constituents, making demonstrably dishonest posts about your authority on social media or using abusive and threatening behaviour might well bring the role of councillor into disrepute. Making grossly unfair or patently untrue or unreasonable criticism of your authority in a public arena might well be regarded as bringing your local authority into disrepute.

7.98 In Cox the use of a throwaway, but unjustified comment without malice was sufficient to bring the councillors own office into disrepute and those of the councillors as a whole.

7.99 [REDACTED]

7.100 However, the conduct of Councillor Winfield on 16 June 2021 following the receipt of the complaint might reasonably be said to have adversely affected the reputation of councillors generally in being able to fulfil their role in maintaining and managing the complaint process.

7.101 We therefore conclude that Councillor Winfield did bring his office or the Council into disrepute.

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8. Conclusion

- 8.1 Our conclusion is that there has been a failure to comply with the code of conduct of the authority concerned.

Wilkin Chapman LLP Solicitors

7 June 2022