

PRIVATE AND CONFIDENTIAL: REPORT

MAYFIELD PARISH COUNCIL

REPORT INTO COMPLAINTS MADE AGAINST
COUNCILLORS RELATING TO THE CODE OF CONDUCT

REPORT

PRIVATE AND CONFIDENTIAL: REPORT

Table of Contents

<i>Introduction</i>	4
The nature and structure of this Report	4
<i>Responses to the draft report</i>	5
Some common ground	9
<i>Appendices to the Report</i>	11
<i>The Complaints</i>	12
Complaint 1	12
Complaint 2	13
Complaint 3	13
Complaint 4	14
<i>Chronology of key events (“Summary Chronology”)</i>	14
<i>The Code of Conduct and Standing Orders</i>	15
The Code of Conduct	15
The Standing Orders	16
<i>Discussion</i>	16
Complaint 1	16
Complaint 2	19
Complaint 3	22
Formal Complaint 3.1: Chair making unfounded allegations	22
Formal Complaint 3.2: Chair refusing to accept proper motions	22
Formal Complaint 3.3: Chair bringing MPC into disrepute	24

PRIVATE AND CONFIDENTIAL: REPORT

Formal Complaint 3.4: Chair knowingly allowing DC to speak and vote when he had a DPI	26
Complaint 4	27
The complaint as it relates to DC	27
The complaint as it relates to JW	29
<i>Conclusions</i>	31

PRIVATE AND CONFIDENTIAL: REPORT

Introduction

The nature and structure of this Report

1. I am instructed to consider four complaints made in relation to alleged breaches of the code of conduct governing the behaviour of Councillors of Mayfield Parish Council (“the Complaints”, “the Code of Conduct” and the “MPC” respectively). I have dealt with the four complaints together because they involve issues of significant overlap both as the substance of the issues complained about and in relation to the evidence provided to me.
2. This report is **PRIVATE AND CONFIDENTIAL** to the parties to whom it is sent. Accordingly, it should not be disclosed other than as necessary for taking legal advice or so far as the law otherwise requires, pending the direction of the Standards Committee.
3. My role is to conduct an investigation and reach findings in relation to the facts and whether I consider there have been breaches of the Code of Conduct. Where I have made factual findings I have done on the balance of probabilities.
4. In conducting my investigation I have had the advantage of interviewing a number of parties. A list of those parties is set out as **Appendix 1** to this Report. I have also been provided with a substantial amount of documentation and evidence, some at my request and other documents which were volunteered.
5. I have considered all of that material. However, due to the volume of material provided overall, and the need to deal with the Complaints in a proportionate and digestible way, I have not addressed all of that evidence specifically within this Report. In **Appendix 2** to this Report I have summarised the key points and issues which appeared to me to arise from the various interviews I carried out.
6. My provisional conclusions are set out at the start of the discussion of each of the respective complaints.

PRIVATE AND CONFIDENTIAL: REPORT

Responses to the draft report

7. The report was issued in draft to all relevant parties for comment.
8. I have received short representations from a number of parties essentially dealing with matters of detail which I have incorporated in this final version of the report. I am grateful for those corrections and observations on the draft report.
9. I have also seen a letter from SD and a letter and emails from CW.
10. I received substantive representations from LB and AG. I have taken into account those representations in producing the final version of this report. I deal below in summary with why those representations have not caused me to change the essence or conclusions of the draft report, which remains substantially in the text of the draft as set out below.
11. In relation to the representations made by LB, they have not altered my essential conclusion below that JW did not breach the Code of Conduct in her treatment of lb. Insofar as LB has concerns and criticisms of the way AG referred to her during his interview,¹ it seems to me that concern can be met by **Appendix 2** remaining private and confidential should the Standards Committee consider that appropriate. I should repeat that those interviews record the views *of others interviewed*, not my views (except where indicated in the appendix or by this report). I have not found it necessary in reaching my conclusions to reach a substantive view about the matters raised relating to the performance of LB in her role as a clerk.
12. In relation to the representations made by AG, they are detailed, running to nearly 9,750 words over some 21 pages. Whilst I have considered the representation in full, it is not proportionate or appropriate to respond to it on a “blow by blow” basis. It is provided as part of **Appendix 9** so that the committee can consider it in full. It does, however, raise a number of central themes which I briefly address below:

¹ I anticipate, those concerns will also apply to AG’s response to the draft report where it addresses LB.

PRIVATE AND CONFIDENTIAL: REPORT

a. **The draft report is heavily influenced by evidence given during interview:**

This is correct. As I pointed out previously, AG emphasised the importance of the written record. But oral evidence can provide important detail and context to such evidence, and can indicate where the written record may be incomplete, wrong or (when taken as a whole) misleading. I found the interviews very useful in assessing the situation overall. That is no different in principle from a judge hearing evidence during a trial. There is a good reason why, for many years, trials where factual evidence is contested have involved the oral examination of witnesses.

b. **The complaints are not dealt with in chronological order:** I do not regard this as important. The characterisation and analysis of the complaints is what, in my view, matters. As the complaints were made over time it became clear to me that MPC was becoming dysfunctional as a whole in its decision making, and that was a key issue to address in understanding the situation. No-one seriously disagreed with that assessment. That is one of the reasons why the interviews and report covered as much ground as they did.

c. **The report does not reference all the documents:** It is important for the report to be proportionate and digestible. It is not clear to me how this observation goes to the central conclusions of the report.

d. **Matters were referred to in the draft report which AG had not yet had a chance to comment upon:** It is in the nature of these kinds of investigations that information will come to light during the interview process. Where there is allegation and counter-allegation; complaint and counter-complaint, a view has to be taken about when it is proportionate to end the interview process and proceed to writing a draft report (in the knowledge that that draft can be subject to, as I pointed out to each witness – see the draft report – the ability to make substantive comment on that draft which contained provisional conclusions). AG, like other witnesses, was interviewed for an extended period of time. Late material dealing with subsequent points in time was

PRIVATE AND CONFIDENTIAL: REPORT

provided for my attention, which I considered relevant to the overall complaints, as going to a pattern of behaviour by AG which many MPC councillors (and clerks) found unacceptable over time. The draft report provided an appropriate opportunity for AG to comment, as he wished, upon those issues. In my view there is no substance in this complaint.

- e. **The “two-camps analysis”:** As the interview notes show, the “two-camps analysis” was, in substance, accepted by the majority of witnesses who could speak to it. It is supported by the written material. It remains, in my view, a key reason for the discord and conduct that arose.
- f. **AG’s response to para 41 of the draft report:** In my view, the ripostes by AG to each of the points contained in para 39 of the draft report (now para 45 below) continue to demonstrate a lack of insight into the impact of his behaviour. I do not regard his responses as substantive answers to the points I made.
- g. **The need for “statistical evidence” of email production by AG:** In my view this is not necessary or proportionate to reach a view upon the point. My report records the views of a succession of experienced clerks as to the approach taken by AG, supported by some councillors. It is, perhaps, noteworthy, that nowhere in his detailed riposte has AG actually said that any of the specific evidence received by me and recorded in Appendix 2 of the draft report amounts to (a) views that individuals could not reasonably have taken; or (b) is, in fact, demonstrably wrong. The written communications I have seen from AG are supportive of the allegation made in relation to his approach to emails.
- h. **AG’s conduct during the meeting of 6 January 2021:** I set out in the draft report my analysis of what probably occurred, and why, during that meeting. The draft report is consistent with some of the contemporaneous written evidence. It is not surprising, when recollections are varied and individuals

PRIVATE AND CONFIDENTIAL: REPORT

had different takes on the meeting, that it is not consistent with all of it. My conclusions on the meeting are supported by the evidence base set out in Appendix 2 and summarised in the relevant section of the draft report. I explained why AG's later request for an apology was inappropriate. I did not, in fact, conclude that his behaviour was the *sole* reason for LB's resignation. Rather, I concluded it was the trigger for the resignation and dominant cause for the meeting breaking down.

i. In relation to complaint 3:

- i. I have set out my reasoning in the report below (which remains as per the draft report). There I noted the difficulty in resolving conflicts of fact relating to the departure of a particular councillor who did not wish to be participate in the investigation.
- ii. I should make clear that I do not accept that AG sought alterations to the Grant Policy solely as a neutral change to benefit *any* funding proposal which came forward. My conclusion is that he sought those changes as a result of his desire to see the Playground application and project succeed.
- iii. AG's observations regarding the way the Clerk dealt with her view about the lack of clarity in the Special Motion are not supported by the local rules, which I set out in my draft report. The Clerk *might* have acted differently, but was under no obligation to do so, and in my view acted reasonably in discharging her functions in that respect.
- iv. AG's reference to the resignation of four councillors demonstrates the seriousness of the position facing MPC, but my investigation sought to examine more closely *why* those individuals took the decisions they did, and whether they were, in fact, caused by any conduct which was in breach of the Code of Conduct. That is what is addressed in **Appendix 2** and the report below.

PRIVATE AND CONFIDENTIAL: REPORT

- v. For reasons already set out I do not accept that JW's ultimatum was more widely broadcast than was necessary in order for it to be considered by those who needed to make a decision on the point raised.
- vi. For reasons already explained below, whilst the situation which arose with DC was plainly unfortunate (and, as I have found, in breach of the Code of Conduct so far as DC was concerned), I do not consider JW breached the Code of Conduct in governing the meeting in the way she did. Nor did the Chair and Clerk thereafter respond inappropriately to the guidance as to the law issued by the Monitoring Officer (and there is no suggestion from the Council to the contrary, as far as I am aware).

Some common ground

- 13. It is worthwhile, in terms of setting the overall scene, to record some high level matters which were explicitly or implicitly substantially common ground between the various people I interviewed. This is because they go to the root of some of the main issues I have had to decide.
- 14. First, by the conclusion of the period my investigation relates to MPC had become dysfunctional in terms of its decision-making processes. There is a related point to this. Whilst it was not perhaps acknowledged so clearly as common ground, all of the parties interviewed in fact had concerns of one kind or another about the *way* in which committee meetings were being conducted.
- 15. Second, that dysfunction was affecting the relationship of MPC with its community.
- 16. Third, the dysfunction was broadly reflected in the emergence of two "camps" within the councillors of MPC.
- 17. Fourth, the camps were split by three key issues namely:

PRIVATE AND CONFIDENTIAL: REPORT

- a. The approach that should be taken to funding the Playground;
 - b. The approach that should be taken to investigation of alleged breaches of planning control at Alder Carr Farm (“the Farm”); and
 - c. The above two issues leading to a situation where JW was giving an ultimatum that MPC members had to choose between her or AG continuing to serve MPC.
18. Fifth, at relevant times MPC had access to what was historically a very large amount of money, totalling over £20,000, which councillors were concerned to see was spent appropriately.
19. Sixth, subject to one possible alleged exception,² the councillors were each doing what they considered was the right thing for the community at large. In other words, none of the councillors were being motivated by bad faith or improper purposes.
20. Seventh, MPC had, over the relevant period, suffered a significant number of resignations. All occurred under circumstances of one difficulty or another. As I have found below and as recorded in **Appendix 2**, all related to a greater or lesser extent on the way that MPC was operating. A feature that stands out starkly in those resignations is that over the course of events I have considered no less than three clerks to MPC resigned from their employment with MPC.
21. Eighth, in relation to two of those clerks (FR and NTS), the near universal view was that they were excellent in performing their roles. Feedback in relation to the third clerk (LB) (who was actually the second in time) was more mixed. In relation to each clerk, they had significant clerking experience and were, during the time of their employment, also clerking other authorities.

² AB’s complaint against DC is, in part, based on a contention that he acted for improper motives and/or not in good faith.

PRIVATE AND CONFIDENTIAL: REPORT

Appendices to the Report

22. **Appendix 1** contains a list of people interviewed. **Appendix 2** contains a summary of the key points arising from those interviews. **Appendix 3** contains a chronology of key events. **Appendix 4** contains MPC minutes of some key meetings. **Appendix 5** contains a transcript made of the meeting of September 2021. **Appendix 6** contains a transcript made of the meeting of October 2021. **Appendix 7** contains a Glossary of terms used in this Report. In the responses to my draft report there were no additional suggestions for inclusion within residual **Appendix 8**, which therefore includes (as per the draft report) the Local Code of Conduct, Standing Orders, Grant Policy, and the Special Motion. **Appendix 9** contains the responses of LB and AG to the draft report.
23. In some parts of **Appendix 2** I have set out my observations on parts of the evidence. Where that is done those observations are set within square brackets.
24. I considered carefully whether it was proper for me to take into account the recordings of the September and October meetings made by DC. In my view their probative value outweighs any reason for excluding them from my consideration. I say that in particular having regard to the fact that (a) the events of September and October have been central to some of my conclusions; (b) the facts relating to those two meetings are disputed; (c) it appears that at least one other attendee who was not a councillor may have made recordings; (d) the recordings are of public events. I weighed those main factors against the fact (a) that DC was sitting in his role as a councillor at the time the recordings were made and (b) that members of the public were not alerted to the fact that the meeting was being recorded. Incidentally, it appears that more recently recordings are continuing to be made of MPC meetings so that the accuracy of the minutes can be ensured without the kind of controversy that dogged those meetings during 2021.

PRIVATE AND CONFIDENTIAL: REPORT

The Complaints

25. The text of the complaints made will be before the Standards Committee. I therefore do not repeat the text of those documents (some of which are lengthy), but instead provide an overall summary.

26. Two of the complaints, those made by NTS and LB, are made by individuals who were clerks to MPC and concern how they were treated in the discharge of their duties. I have labelled those complaints 1 and 2. **Complaint 1** made by NTS on 9 November 2021 is against AG in his capacity as a councillor. **Complaint 2** made by LB on 4 February 2021 is against AG, SB and JW. **Complaint 3** made by AG, and former councillors KC, MC and AW on 20 October 2021 is against JW in her capacity as councillor and Chair of MPC. It also directly relates to the course of MPC meetings.

27. **Complaint 4** made by AB and Mrs B on 4 October 2021 against DC and JW in their capacity as councillors and, in respect of JW, as Chair. It also contains an element of criticism of MPC meetings, but is more fundamentally directed towards how a specific issue was considered for referral to ESBC for potential planning enforcement. It related to land owned by AB at Alder Carr Farm (“the Farm”) and therefore is a complaint of a slightly different nature.

Complaint 1

28. NTS complains about AG’s behaviour over time both inside and outside of council meetings. The gravamen of the complaint is that by his conduct AG:

- a. Has shown a persistent lack of respect for the clerk;
- b. Has undermined the professional integrity of the clerk;
- c. Has behaved in a way which a reasonable person would regard as bullying/intimidatory;

PRIVATE AND CONFIDENTIAL: REPORT

- d. Has caused disproportionate and inappropriate work in meeting requests he has made of the clerk.

29. AG does not accept that any substantive element of the claim is well founded.

Complaint 2

30. LB complains about the behaviour of AG, SB and JW over time both inside and (perhaps more specifically related to AG) outside of council meetings. The gravamen of the complaint is that:

- a. JW showed a lack of respect for the clerk in correspondence;
- b. The MPC meeting of 6 January 2021 was a “*chaotic shambles*” which terminated prematurely preventing MPC business from being completed. It is alleged this was driven largely by AG not respecting the authority of the Chair;
- c. Following the meeting AG inappropriately followed up with email correspondence requiring an apology from the Chair and an assurance that future meetings would be carried out in accordance with the Standing Orders;
- d. AG caused disproportionate and inappropriate work in meeting requests he has made of the clerk.

31. AG substantially disputes the claim against him. JW and SB now accept that the substance of the claim, insofar as it relates to AG, is well founded. They dispute the complaint as it relates to them individually.

Complaint 3

32. AG, and former councillors KC, MC and AW make four formal complaints:

- a. JW, as Chair, made unfounded allegations against named parish councillors, thus failing to treat them with respect;

PRIVATE AND CONFIDENTIAL: REPORT

- b. JW, as Chair, refused to accept proper motions contrary to MPC's Standing Orders;
- c. JW, as Chair, brought MPC into disrepute, as reflected by the resignation of two parish councillors and the (then) risk of a third resigning (KC), as, in the event, happened;
- d. JW, as Chair, proposed a motion relating to the Farm knowing that DC had a pecuniary interest in that motion, and allowed him to speak and vote on that matter in breach of the Standing Orders. The Chair also refused to release the actual text of advice given by ESBC in relation to that decision and whether it should be revisited at a later meeting.

33. JW disputes the substance of this complaint.

Complaint 4

34. AB complains about the behaviour of DC and JW in relation to the matter raised as item (d) of complaint 3, but from his particular perspective as the landowner of the Farm. He makes further allegations relating to DC's conduct, which can be summarised as DC campaigning to ruin his business and his personal reputation, due to a boundary and neighbour dispute between them.

35. DC accepts, and did accept shortly after the September 2021 meeting, that he had a disclosable pecuniary interest in whether breaches of planning control had occurred at the Farm. Subject to that acceptance, he contests the rest of the complaint.

36. JW contests the complaint insofar as it is directed at the Chair.

Chronology of key events ("Summary Chronology")

37. The chronology of key events, as I see them following the interviews I conducted, is set out at **Appendix 3** of this Report.

PRIVATE AND CONFIDENTIAL: REPORT

The Code of Conduct and Standing Orders

The Code of Conduct

38. The MPC Code of Conduct (in its 2019 version) follows the well-known Nolan Principles of public life. It requires members:

- a. To behave in such a way that a reasonable person would regard as respectful;
- b. To not act in a way which a reasonable person would regard as bullying or intimidatory;
- c. To not seek to improperly confer an advantage or disadvantage on any person;
- d. To use the resources of MPC in accordance with its requirements;
- e. To register interests in accordance with rules 6 - 8;
- f. Where a matter arises at a meeting which relates to³ an interest in Appendix A the member shall not participate in a discussion or vote on the matter;
- g. Appendix A includes the following entry "*Land: Any beneficial interest in land which is within the area of the Council*";
- h. Rule 13 provides for dispensations to be granted in certain circumstances including on the bases that "*it is in the interests of the inhabitants in the Council's area to allow the member to take part or it is otherwise appropriate to grant a dispensation*".

39. It appears that the Code of Conduct was updated at various times, but the updates do not in my view restrict the obligations set out above. Rather, they tend to provide a greater level of guidance in relation to each of those obligations.

³ This phrase is important. It is a change, and a narrowing, of the previous formulation which talked about matters which were "*relating to or affecting*" an interest.

PRIVATE AND CONFIDENTIAL: REPORT

The Standing Orders

40. The Standing Orders (2021 version supplied to me):

- a. Contain detailed provision for the conduct of committee meetings and dealing with business properly on the agenda;
- b. Make provision for points of order and how they are to be dealt with;
- c. Emphasise the role of the chair in conducting the meeting, including directing the order of speaking and deciding points of order. Any decision by the chair in relation to a point of order is final;
- d. Set out the minimum requirements of the minutes;
- e. Require that a meeting of the MPC shall not exceed a period of 2 hours;
- f. Set out the minimum requirements for revisiting a decision which has been the subject of previous resolution;
- g. Make clear that it is the role of the Proper Officer to decide whether or not to include motions on the agenda, and that that decision is final;
- h. Recite key parts of the Code of Conduct which relate to interests and dispensations, providing that any decision concerning dispensation is for the Proper Officer and shall be final;
- i. Set out the role of the Proper Officer (the clerk);
- j. Provide restrictions on unauthorised councillor activity;
- k. Provide a restrictive process for varying or revoking parts of the Standing Orders.

Discussion

Complaint 1

PRIVATE AND CONFIDENTIAL: REPORT

41. **In my view, for the reasons set out below, elements (a), (b) and (d) of this complaint are well founded.**

42. A large amount of the material covered during my interviews went directly or indirectly to this question. I have set out the key elements of those interviews in the Appendices 2, 3 and 4 to this Report. In summary, for present purposes:

- a. I accept the substance of the account provided by NTS. All accepted she was an excellent clerk in the performance of her duties. No good reason has been given for me to disbelieve her account on the balance of probabilities. She was able to give clear direct evidence of the behaviour of which she complained. I reject the suggestion that the complaint was concocted with, or substantially influenced by, JW.
- b. NTS's evidence chimed with, and was substantially consistent with, that provided by two other clerks, one of whom (FR) all again accepted was an excellent clerk.
- c. Various witnesses accepted, albeit to different degrees, that AG's conduct could be overbearing at times. Examples of this appear in Appendix 2.
- d. During interview AG seemed to me to lack any real insight into the difficulties his behaviour was causing for a sequence of employees of MPC, as well as for the chairing of meetings. His overall approach was to assertively and continuously attack any decision he regarded as wrong; both during and outside meetings of MPC.
- e. It is important to repeat that I do not consider that any of AG's behaviour was motivated by bad faith; or other than by his views of what he felt was beneficial for the local community. It is the *way* he approached those matters which is criticised in this Report. Doubtless a large degree of AG's

PRIVATE AND CONFIDENTIAL: REPORT

doggedness came from his expertise in issues of town planning⁴ (and local government more generally); which was (and is) a recognised substantial benefit of his service on the Council.

43. Overall I consider that AG, by a pattern of behaviour, has shown a lack of respect to the clerking function, and the individual clerks, of MPC. This lack of respect manifests itself in a number of ways and by a course of conduct over time, which requires cumulative assessment of how a reasonable person would assess it.⁵

44. There is an overlap between the events showing a lack of respect and those, which I regard as more serious, which also tend to undermine the professional integrity of the clerk, who acts as an employee of MPC and therefore has a limited ability to defend themselves in public.

45. There is a further overlap between those events, and whether or not they individually or cumulatively cross the line into bullying⁶ and/or intimidatory behaviour. In this respect whilst I accept that NTS may well have felt bullied and/or intimidated by AG's behaviour, on balance I do not think his conduct crossed that threshold.

46. Key elements of that lack of respect include:

- a. AG making the FOI Request and stating he would do so during a public meeting, following a ruling from the Clerk that he disagreed with. The repeated use of the plural pronoun "we" during the discussion of this matter during the October meeting⁷ would only have served to further undermine the Clerk's standing within a public forum.

⁴ Often relating to issues of much more significant scale and resource than those relevant to MPC business.

⁵ Cumulative assessment in these kinds of cases can be appropriate: *Sanders v. Kingston (No. 2)* [2005] EWHC 1145 (Admin) [59]

⁶ In relation to which the motivation of the person making the comments may be relevant: *Heesom v. PSOW* [2015] PTSR 222 [129]

⁷ A6/15

PRIVATE AND CONFIDENTIAL: REPORT

- b. Failing to accept the Clerk's advice in relation to the propriety of the Special Motion.
- c. Failing to accept the Clerk's advice about his conflict of interest.⁸
- d. The excessive emails generated in relation to the failure of the MRA/MARNA Playground funding application, and AG's persistent attempts to reverse the substance of that decision via emails and undermine the 3YBP.
- e. The excessive emails generated, which were advanced as dealing with accuracy of minutes, but which actually sought to raise or rehearse substantive issues.⁹

Complaint 2

47. In my view the complaint against AG is well founded insofar as it relates to his behaviour during the meeting of 6 January 2021, during which he demonstrated a lack of respect to both the Chair and the Clerk.

48. In my view the complaints against JW and SB are not well founded.

49. It is clear from the evidence overall that LB took a different and more restrictive approach to some elements of MPC arrangements and business than FR before her or NTS after her. She sought to apply the Standing Orders more strictly and sought to limit communications between councillors to more structured modes through the clerk. In one sense these were laudable goals, but they are both issues on which flexibility and dialogue may be necessary and appropriate, so long as the councillors at large consider that the arrangements are working.

⁸ A4/36

⁹ For example, the email of 4.8.21 timed at 13:34, A3/11. See NTS raising this issue in her email of 29.9.21, A3/14. See also the September minutes at A3/16 and A4/48 and A4/56; and NTS's own account at A2.10/§11, as well as KC's account at A2.5 §§30-31 and SB's account at A2.3/§§13-14.

PRIVATE AND CONFIDENTIAL: REPORT

50. I do not think JW's response to LB regarding the Standing Orders showed a lack of respect by itself.

51. In relation to JW's suggested corrections to the minutes, I think those suggestions were ones a councillor could reasonably have suggested, whether they were ultimately adopted or not. They did not show a lack of respect for the clerking function. Nor, in my view, does having one member look at the drafts to see if they may require early alteration amount to demonstrating a lack of respect for the clerking function. I agree that the use of the word "*appropriated*" would typically have connotations related to property acquisition and therefore using different wording may have been more appropriate. In circumstances where, as I understand it, draft minutes were published in the parish magazine, I can understand councillors wishing to be able to consider making important amendments to the minutes before they are published as drafts.

52. All agree that the meeting of 6 January 2021 was shambolic. Recollections of this meeting have differed significantly across the witnesses and I have no definitive record of what occurred.

53. However, I prefer LB's recollection to AG about his general behaviour during that meeting and the proposal that he put forward. I note that JW substantially supported LB's recollection of the meeting as correct. That recollection is also supported by SB. I cannot see why AG, who was one of those speaking forcefully at the meeting, would have suggested the form of motion he recounted to me during interview, viz. that it was a matter for the clerk to decide how correspondence would be disseminated. It seems to me this approach of AG, of introducing a substantive point into what should have been an item dealing with accuracy and agreement of the previous minutes, is consistent with his behaviour on other occasions. I have concluded that the reason he was the only person muted is because the clerk thought he was continually speaking over the Chair and preventing her from properly presiding at the meeting. Again, that is consistent with behaviour that AG has demonstrated during other meetings. LB describes this approach "*With total*

PRIVATE AND CONFIDENTIAL: REPORT

disrespect he would not be quiet and uproar ensued". It also appears that was the trigger for LB offering her resignation. I have no reason not to accept her evidence that she was upset and distressed by this episode.

54. The allegation against AG which led to him accusing LB of failing to keep adequate records is not straightforward. In my view AG, dealing as he was with the many planning issues MPC needed to address, was entitled to call for copies of the actual formal consultation responses as issued by the clerk, so that he could maintain an appropriately complete file. In my view it would not be proportionate to review all the email correspondence dealing with this issue. I do not think this element of the complaint is made out. I note that SB's evidence is that AG's recollection of these matters is largely correct.

55. LB's complaint that her expertise in clerking matters has not been acknowledged or respected, in my view translates to the differing approach she preferred to adopt, which appears to have led to a degree of tension. I do not think some resistance to that new approach amounts to demonstrating a lack of respect for the clerk.

56. On this complaint I have therefore concluded that (a) JW did not breach the Code of Conduct by showing a lack of respect to LB; (b) the meeting of 6 January 2021 was shambolic, and doing the best I can on the evidence the dominant cause of that meeting breaking down appears to have been AG not respecting the Chair's authority; (c) in those circumstances, whilst on one level I can understand why AG sought the assurance he did by his follow up letter, his approach lacked sufficient insight as to what the actual cause of the problem had been, namely his approach to the meeting;¹⁰ and (d) I make no specific finding in relation to breaches of the Code of Conduct as it relates to AG creating disproportionate levels of work for the clerk, but I note the general consistency of that complaint with other evidence which is relevant to the

¹⁰ In my view it was that letter which caused SA to resign.

PRIVATE AND CONFIDENTIAL: REPORT

other complaints before me. I do not consider there is a basis for concluding that SB acted in breach of the Code of Conduct.

Complaint 3

57. In my view the complaint against JW is not well founded.

Formal Complaint 3.1: Chair making unfounded allegations

58. The evidence relied upon to support Formal Complaint 3.1 comprises an email of 29.7.21 timed at 11:11 from JW to AG; an email dated 29.7.21 timed at 17:05 from AG to JW cc'ed to JP; a letter from JW to AG; an email dated 3.8.21 timed at 12:27 from JW to AG and other councillors; and an email from JP to JW and KC copied to other councillors.

59. These emails concern a point in time where the “two camps” had emerged or were emerging within MPC. They relate to JW’s request and later ultimatum in relation to her inability to continue with AG remaining on MPC. They are all private communications which did not travel at that stage outside councillors (and perhaps the clerk).

60. AG’s approach was then, as it was before me, to require “*evidence*” in relation to the allegations made against him. As set out in Appendices to this Report, I consider that there is substantial evidence supporting the essence of the complaints made about AG’s behaviour.

61. Accordingly, JW was, in my view, reasonably entitled to make the criticisms she was making of AG, which did go directly to the ability of MPC to effectively conduct its business and ultimately to how it was likely to be perceived by members of the public, with the risk of damage to its reputation.

Formal Complaint 3.2: Chair refusing to accept proper motions

62. The evidence relied upon to support Formal Complaint 3.2 comprises an email dated 28.9.21 timed at 15:35 from AG to the Clerk also sent to councillors; an email dated

PRIVATE AND CONFIDENTIAL: REPORT

29.9.21 timed at 18:33 from JW to AG also sent to the Clerk and councillors; an email dated 30.9.21 timed at 11:15 from JP to JW also sent to councillors.

63. These emails substantially concern the Special Motion and the Grants Policy.

64. In my view the Clerk was entitled to conclude that the Special Motion was “*not clear in meaning*” as provided by the Standing Orders. The Standing Orders also provide that in those circumstances “*the motion shall be rejected until the mover of the motion resubmit so that it can be understood, in writing, to the Proper Officer at least (10) clear days before the meeting*”. Accordingly, in such cases it is for the mover of the motion to redraw the motion to the satisfaction of the clerk. That was not done in this case. The clerk’s decision, as the Proper Officer, on these matters is final. The Clerk took appropriate advice from the LMO who supported the position taken. The need for clarity may be thought to be more important in relation to a proposed Special Motion the likely follow on consequence of which would have been the distribution of a substantial amount of the money available to MPC.

65. This complaint also notes the Clerk’s concern that the MRA, as applicant, had not secured 50% of the funding for the Playground as required by the Grants Policy which states “*The Council will not fund the whole of a project and will only consider an application which can demonstrate that more than 50% of the required funding has already been secured*” (emphasis supplied). Accordingly, it was in order for the Clerk to conclude that on the materials presented by the MRA this criterion had not been satisfied.

66. AG’s complaint about this, in discussion with me, is that the Clerk and/or Chair had not returned to the MRA to seek an update on the position. He contended that should have been done even though the clerk was able to express a view about the position in July 2021. In my view this complaint was unrealistic. It was for the MRA by itself (being the applicant) or through provision of information to councillors supporting the Special Motion, to have provided information *demonstrating* the position. This

PRIVATE AND CONFIDENTIAL: REPORT

was not done. In fact, even as at the time of my various interviews it was not clear to me that the position had been achieved by that stage.

67. I would also observe that there appeared to me more fundamental problems with the Special Motion. It was required to be supported by five councillors in order to be properly entertained (assuming it was otherwise valid). Of the five supporters two were KC and AG.

68. In my view KC was clearly conflicted by an appearance of bias in relation to the Special Motion given his role as the Vice Chair of MARNA and the fact that the proposed alterations to the approach to the Grant Policy were directed towards facilitating the funding application for the Playground and would, I have no real doubt, have been seen in that way by members of the public.¹¹

69. Similarly, as far as members of the public were concerned, AG was on record as being a “*funding adviser*” for the MRA, having expressly declared a conflict of interest in the issue of the Playground application. In those circumstances, given my conclusion as to how the Special Motion would have been viewed, he was also conflicted by an appearance of bias.

70. These concerns were, as I understand it, shared by the Clerk and Chair. In my view they were right to have those concerns.

71. Accordingly, in my view the Clerk and the Chair were entitled to address the Special Motion in the ways they respectively did.

Formal Complaint 3.3: Chair bringing MPC into disrepute

72. The evidence relied upon to support Formal Complaint 3.3 comprises an email dated 1.10.21 timed at 21:49 from JP to JW/NTS cc’ed to councillors and ESBC, an email

¹¹ NTS specifically sought advice from the LMO in relation to this point in an email dated 16.9.21 timed at 11:47.

PRIVATE AND CONFIDENTIAL: REPORT

dated 2.10.21 timed at 12:14 from KC to JW¹² cc'ed to councillors and the clerk, and an email dated 7.10.21 at 7:50 from KC to AG containing a draft of his resignation email, which was then forwarded at 9:23 to councillors.

73. The first email is JP's email of resignation. It does not attribute any blame but refers to not being treated with the respect a councillor should be given. During my interview with JP he set out his reasons for leaving which included the approach taken to his Special Motion, the emergence of the "two camps" going in completely different directions, leading to arguments and bad feeling, and what he considered was inappropriate criticism from the Chair relating to correspondence he had written on the Special Motion point.

74. There is no doubt that, by this point in time, robust opinions were being exchanged between councillors on the key issues between them, and matters had become fractious. I note, as KC noted, that JP did in fact think it appropriate to apologise to JW for the tone of his correspondence to her.

75. However, I do not consider that JP's resignation brought MPC into disrepute. It would have been seen, as I think the other resignations would have been seen, as the result of the emergence of the "two camps" and their apparent inability to reconcile the issues between them which I have set out in the Common Ground section of this Report.

76. The second email from KC concerns his considering whether to resign. It contains generalised allegations. I have reviewed the transcripts provided to me. I do not consider that the overall approach of the Chair, in what were (as it appears to me) very difficult circumstances, was such as to bring MPC into disrepute or otherwise in breach of the Code of Conduct. The debate about the reasons another councillor resigned have not been fully explored as that councillor did not wish to be interviewed, and there is conflicting information on that point.

¹² Although the email is actually sent to AG and cc'ed to others.

PRIVATE AND CONFIDENTIAL: REPORT

77. It is correct that JW issued an ultimatum to councillors privately about not being prepared to continue to serve with AG as a councillor. This was the unfortunate culmination of the events beforehand. I have not seen anything put into the public domain in that respect which demonstrates that JW brought MPC into disrepute by this conduct.

78. The third email, again from KC, raises a continuing grievance about the way the Playground and Grant Funding issues were resolved, as well as the Special Motion. But, as I have set out above, I consider that JW as Chair approached those issues in a reasonable way. I do not think those actions brought MPC into disrepute, and if KC resigned mainly or in part as a result, it follows that I do not think that resignation can have that effect. The balance of that email criticises JW's approach to the Farm, and implies improper conduct. For the reasons I set out below in addressing Complaints 3.4 and 4, I do not consider that complaint is well founded as against the Chair.

79. The more general dysfunction that has arisen out of that split within MPC would, I consider, have been likely to bring MPC into disrepute, but in my view that is not to be laid at JW's door. In the sense of what was in the public domain I do not consider that either JW or NTS behaved inappropriately in respect of those central issues.

Formal Complaint 3.4: Chair knowingly allowing DC to speak and vote when he had a DPI

80. I deal with the circumstances of this matter more fully in Complaint 4 below. I therefore here only summarise my main conclusions on the matter as far as relevant to JW as Chair.

81. First, I have not concluded that, in fact, DC had a DPI at the relevant time. In my view that position is open to debate. Second, DC told the meeting he had taken advice on the position and considered he was entitled to speak and vote. It was primarily his responsibility to address that point. Third, there is no evidence before me from which I can infer (and I do not) that JW *knowingly* allowed DC to continue in circumstances where she had concluded he did have a DPI.

PRIVATE AND CONFIDENTIAL: REPORT

82. Lastly, whilst it would not have been an answer to this complaint had I been satisfied that JW knowingly allowed such a breach, I note that corrective action was taken swiftly after the meeting by the Chair and Clerk taking appropriate advice, and then acting upon that advice.

83. For those reasons I do not consider that this complaint is well founded.

Complaint 4

84. In my view the complaint against DC is well founded to the extent that he ought not to have spoken in favour of referring the Farm to ESBC, and voting on that issue. The reason for that conclusion is that his actions raised an appearance of bias in relation to that decision.

85. Beyond that, in my view the complaint against DC is not well founded.

86. In my view the related complaint against JW is not well founded.

The complaint as it relates to DC

87. The core principles governing conduct require that decision making should be free from the appearance of bias. In my view a reasonable observer with knowledge of the background facts would have concluded that, in making the decision about a BoPC at the Farm, on land directly adjacent to DC's land, there was a real danger of bias. To that extent there was a breach of the Code of Conduct, because such acts are not consistent with avoiding conflicts of interest, and they risk bringing a council into disrepute.

88. However, in my view there are a number of factors which mitigate the position DC found himself in. They are as follows:

- a. He was articulating a complaint on behalf of a significant number of local residents whose views about the BoPC were simply consistent with his own. I

PRIVATE AND CONFIDENTIAL: REPORT

do not accept that such views were concocted or otherwise did not exist. In my experience it is far from unusual for such complainants to wish to keep both their identity and the details of their complaint (which may indirectly reveal their identity) confidential. I also note that AG had formed the view there was more than sufficient material to support a referral to ESBC, and voted accordingly.

- b. DC's land ownership was well known to the members of the Council. His interest was declared at the start of the meeting.
- c. The motion was only for a referral for ESBC *to investigate*, as the relevant LPA, whether there in fact was a BoPC and if so to communicate back its view to MPC. In my view that is distinguishable from a position where, for example, a parish council is taking a definite decision to object to a particular planning application.
- d. The motion did not relate to DC's land, and did not in that sense directly relate to him. It certainly affected him.
- e. I accept that DC took some time to satisfy himself before the committee meeting that he could, if necessary, speak on and vote upon the topic. In fact, he did not expect to have to vote, because Brook Farm had previously gone through "on the nod", with apparently less evidence to support it.
- f. The transcript shows that it was following a dispute between JW and AG as to the nature and extent of any view AG had already given, that the Chair invited DC to speak on the issue. When she did, the invitation was "[DC] *is there anything you wish to say on behalf of the residents you are representing*".
- g. DC then proceeded to outline that 14 residents had made complaints, and he made what in my view were a couple of short measured points about whether or not the issue ought to be referred to ESBC.

PRIVATE AND CONFIDENTIAL: REPORT

h. It was not DC's motion. The motion came from the Chair, and was seconded by SB.

89. In light of my findings above, it is not in my view necessary to reach a conclusion as to whether DC had a disclosable pecuniary interest¹³ in the matter. The cases do not resolve the issue as to whether *a neighbour* of an a potential enforcement site has a DPI in whether an enforcement investigation should take place.¹⁴ I am aware of discussion in the journals suggesting it may not be a DPI. At all events, in my view DC could reasonably have come to the view that he did not have a DPI before the September meeting, albeit since then a different approach has been taken based on external advice.

90. I do not accept that DC has sought to “*destroy*” or otherwise inappropriately harm the character and business of AB and/or the Farm. He was certainly entitled to bring to the attention of MPC the complaints that had been made about alleged BoPC at the Farm.

91. I cannot see that DC's approach to this issue has resulted in the misuse of MPC resources for the reasons already set out above.

92. In my view there is no sufficient evidential basis for the remainder of AB's case against DC, which appeared to me largely based on speculation and which has not been further evidenced in a persuasive way during the course of my investigation.

The complaint as it relates to JW

93. The complaint relates to JW in her role as Chair. The transcript of the meeting shows that DC told the meeting he had taken advice, and that he was permitted to speak. The Chair questioned that position by reference to the wider obligations contained in

¹³ As defined by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 S.I. 2012 No. 1464.

¹⁴ See, for example [R. \(on the application of Freud\) v Oxford City Council \[2013\] EWHC 4613 \(Admin\)](#), and [R. \(on the application of Kelton\) v Wiltshire CC \[2015\] EWHC 2853 \(Admin\)](#).

PRIVATE AND CONFIDENTIAL: REPORT

the Code of Conduct. The normal principle is that it is for councillors to satisfy themselves in relation to conflicts of interest. DC set out his position. I do not consider, given all of the circumstances set out above, that the Chair was obliged to rule that he could not speak.

94. In fact, as I have indicated above, the Chair only called on DC to speak when there was confusion as to the extent to which AG accepted that his preliminary conclusions could be relied upon to support referral of the matter to ESBC. I have set out above the measured terms in which DC expressed the position.

95. From the transcript it does not appear to me that debate of the Farm matter was shut down. JP spoke on the matter, KC spoke on the matter, AG spoke on the matter, and SB spoke on the matter. Nor do I accept that JW was misusing the authority of the Chair during this debate, whether as to AB, AG, JP or otherwise.¹⁵

96. The complaint about JW being bullying and disparaging to AG in multiple meetings is entirely lacking in detail and, in my view, it has not been substantiated.

97. Elements of the complaint are, in my view, factually incorrect. The allegation relating to DC's membership of an MPC planning subcommittee is not correct. Nor is the allegation that AG was effectively bounced into voting, having absented himself from the room. The record shows the proposed motion was read back after AG returned to the room. AG did not indicate any need for more time or any confusion as to what the vote related to.

98. In my view there is no sufficient evidential basis for the remainder of AB's case against JW, which again seemed to be speculative in significant degree.

99. For those reasons I do not consider that JW breached the Code of Conduct as alleged in this complaint.

¹⁵ As pointed out in Appendix 6, I offered AB the opportunity to provide his transcript of the meeting highlighting any points he wished me to consider further. The transcript was not provided.

PRIVATE AND CONFIDENTIAL: REPORT

Conclusions

100. I have set out my conclusions at the start of the discussion of each of the respective complaints.

WAYNE BEGLAN

CORNERSTONE BARRISTERS

9 AUGUST 2022

PRIVATE AND CONFIDENTIAL: REPORT

MAYFIELD PARISH COUNCIL

REPORT INTO COMPLAINTS MADE AGAINST
COUNCILLORS RELATING TO THE CODE OF CONDUCT

REPORT – APPENDIX 1

LIST OF PEOPLE INTERVIEWED

1.	Edward	Barker	East Staffs Cllr	EB
2.	Alex	Blackwell	Complainant Local resident	AB
3.	Susan	Bridgett	Cllr	SB
4.	Lesley	Brown	Complainant Former clerk	LB
5.	Kevin	Coates	Complainant Former Cllr, Vice Chair MARNA	KC
6.	David	Croll	Cllr	DC
7.	Albert	Golding	Complainant Cllr	AG
8.	John	Parker	Former Cllr	JP
9.	Fiona	Raistrick	Former clerk	FR
10.	Nikki	Taylor-Smith	Complainant Former clerk	NTS
11.	Janet	Watson	Cllr and Chair	JW