

Code of Conduct Investigation

- To: Constitution and Ethics Committee
- Meeting Date: 25 February 2022
- From: Director of Law and Governance & Monitoring Officer
- Outcome: Consideration of Code of Conduct investigation report.
- Recommendations: The Committee is recommended to:
- a) Note the external investigation report at confidential Appendix B into whether there was a failure by former councillor Roger Hickford to comply with the Council's code of conduct whilst he was a Member of the Council;
 - b) Consider any objections to the findings in the report received from Roger Hickford, following the receipt of the final report, received by 23rd February 2022, and any representations about whether he wishes to participate in a local hearing;
 - c) Consider if a local hearing should be held to consider any objections and representations received further before considering the conclusions in the report;
 - d) If no objections are received, or if the Committee considers that a local hearing is not necessary following consideration of any objections and representations received, consider in relation to confidential Appendix B if the public interest in maintaining the exemption outweighs public interest in disclosing the information, and if not to then publish Appendix B immediately following the decision; and
 - e) Consider if it wishes to make any recommendations to the Chief Executive or any other recommendations concerning the findings of the report.

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1. Background and History

- 1.1 The tenancy of Manor Farm was advertised publicly as the smallest of ten vacant County Farms Estate holdings in early 2017. The tenancy was awarded to Mr Roger Hickford on 5th April 2017 with a business tenancy signed on 20th December 2017. On 15th January 2019, the Chairman of Audit and Accounts Committee formally received a request from Councillor Nethsingha to review the process leading to the award-of the tenancy and subsequent decisions made regarding the tenancy. It was agreed that Internal Audit would conduct the investigation. and the subsequent decisions made regarding the tenancy.
- 1.2 The first draft of the 'Tenancy of Manor Farm, Girton' report was completed in June 2019. Some of the early findings showed financial concerns and in line with standard audit practice, the matter was referred to the police on 4th July 2019 to consider whether a formal criminal investigation was required. The police confirmed on 9th October 2019 that they would progress an investigation. At this point the audit work stopped to ensure that there was no prejudice to the police investigation, although Internal Audit continued to support the police investigation throughout.
- 1.3 On 5th March 2020 the police confirmed that they were closing their investigation, with no further action. This was formally confirmed in writing on 29th April 2020, with the audit able to commence again once this notification was received. Following this, there were some delays due, firstly, to the Chief Internal Auditor being deployed on the response to the pandemic, then with dealing with process challenges that had been raised.
- 1.4 The report also went through two rounds of fact checking with key stakeholders which allowed those stakeholders to see the parts of the report that related to them and allowed them to confirm or challenge the facts in those parts of the report which relate to them. The report was due to be completed and issued at the beginning of December 2020, but on 7th December 2020 the Chief Executive was informed that the Chief Internal Auditor would not be able to complete the audit due to sickness.
- 1.5 The Council subsequently appointed Mazars LLP, an international firm and 10th in the UK top accountancy and business assurance practices, to review the internal audit work and conclude on the matters involved. The report and recommendations produced by Mazars were considered by the Audit and Accounts Committee at a number of meetings in March 2021.
- 1.6 Mazars recommended referral of certain matters to the Monitoring Officer for consideration under the Council's arrangements for determining whether Mr Hickford, when a councillor, had failed to comply with the Council's code of conduct in respect of his actions concerning Manor Farm.
- 1.7 The Monitoring Officer sought the views of Mr Hickford with respect to the matters raised with her by Mazars.

- 1.8 The Council obtained Counsel's advice on whether the Council could carry out an investigation and determination as to whether Mr Hickford had failed to comply with the code of conduct when he had ceased to be a councillor. Advice was received that the Council did not have the power to consider any allegation of a breach of code of conduct by a former councillor, but that it did have the power to carry out an investigation pursuant to other powers.

The Council has a duty pursuant to section 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its Members. It also has powers under section 111 of the Local Government Act 1972 to do things which are incidental or conducive to or facilitate the carrying out of its functions.

- 1.9 On 27th July 2021 the Committee agreed a process to consider whether Mr Hickford failed to comply with the Code on the basis that it would facilitate compliance with the Council's duty under section 27 of the Localism Act. The Committee agreed it was important that the public had faith in the integrity of local democracy. The issues connected with the tenancy of Manor Farm had received significant public attention and concern, therefore the Committee believed it was important to have a clear response to any suggestions of impropriety. The procedure that was agreed is attached as Appendix A.
- 1.10 The Committee noted that, as Mr Hickford is no longer a councillor and therefore any investigation would not be carried out under the Council's arrangements under the Localism Act, no sanctions could be applied to Mr Hickford if he were found to have failed to comply with the Code. However, if the Council published the outcome of the investigation, it would demonstrate that the Council had acted on concerns and any lessons learned in relation to the Code and the way Councillors interacted with officers could also be considered.
- 1.11 The Monitoring Officer also consulted with the Council's Independent Person who stated that, in their opinion, the conduct matters raised in the Mazars report should be investigated.

2. Considerations

- 2.1 In August 2021, the Monitoring Officer instructed Jonathan Goolden, Head of Public Law at Wilkin Chapman LLP solicitors, to conduct the investigation and his investigation report is submitted for consideration as confidential Appendix B.
- 2.2 The report is being treated as an exempt appendix at this stage under Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended, as it contains information relating to any individual. The Committee will be asked to consider and make a judgement whether that exemption should be maintained or not, considering the public interest in all the circumstances of the case.

- 2.3 The First Tier Tribunal (Information Rights) concluded in *Dedman v Information Commissioner* (Appeal No. EA/2016/0142), albeit relating to a Freedom of Information Act request rather than Schedule 12A of the Local Government Act 1972, that the test for disclosure is fairness. This involves balancing the legitimate interests of the data subject in maintaining confidentiality against the public interests in disclosure. In that case, which related to disclosure of a conduct report involving a member who was no longer a councillor at the time of completion, the Tribunal held that the public was entitled to know whether a serious complaint regarding the conduct of an elected representative was found to be justified, regardless of their status when the report is disclosed as such 'transparency is essential to the maintenance of proper standards in public life, whether or not the subject of the complaint remains in office'. The fact that they were no longer in office was no obstacle to disclosure.
- 2.4 Under the agreed procedure, Mr Hickford has five working days to notify the Monitoring Officer if he objects to the findings of the investigation report and if so whether he wishes to participate in a local hearing. If Mr Hickford does lodge objections to the findings in the report and represents that he wishes to participate in a local hearing, the Committee should consider the objections raised and any representations and decide whether a local hearing should be held to consider any such objections further, before considering the conclusions in the report.

3. Council response so far

- 3.1 The Committee is asked to note that the Council has already taken the following steps in respect of some of the issues raised in the Mazars report:
- a) The Council's Respect@Work policy and guidance for staff relating to any incidents of violence and aggression at work was reviewed and updated with input from the Council's Equality and Diversity group and its recognised trade unions. This was agreed by Staffing and Appeals Committee in September 2021. It now includes information for officers on how on to address concerns with a third party such as a partner, contractor or elected Member. The revised policy was published and relaunched with a communication campaign to raise the profile both of the policy and of the Council's stance that all officers should feel comfortable to carry out their roles in a respectful and supportive working environment. This followed a staff engagement survey which specifically focused on officers' experiences of respect at work, including interactions with Members.
 - b) Work was carried out on the Council's intranet system to create a single source of information for people to access that clearly showed them which policy or process to use, depending on what they have experienced and where, and appropriate sources of support in each case.

- c) A virtual training session on the Code of Conduct and Ethical Standards for all newly elected Councillors, alongside returning Councillors, took place on Friday 18 May 2021 and was run by Weightmans solicitors. The training included guidance on conflicts of interests and the Member-Officer protocol, along with bias and predetermination. Members worked through a number of case studies in small groups. The training was well attended on the day and video recorded so that Members who were not able to attend could watch at another time alongside the training notes. All Members unable to attend were asked to watch the session as soon as possible. Democratic Services compiled a training record which was reported back to Committee on 29th September 2021, with the aim of ensuring all Members of the Council had participated. At that time, 52 out of 61 Members had completed the training.
- d) A new Conflict of Interest Guidance document for Members was also agreed by the Committee on 27th July 2021 which now forms an appendix to the Member Code of Conduct. This guidance dealt with more specific declarations of interest relating to cases where Members had more complex interactions with the Council including where they used any council service requiring an application and / or eligibility criteria, such as a tenancy.
- e) The Council's Whistleblowing Policy has been updated and agreed by Audit & Accounts Committee on 22nd July 2021. The new policy was more concise, clearer and also signposted where concerns that didn't fit under the Whistleblowing Policy could be addressed.

4. Source Documents

- 4.1 [Members' Code of Conduct](#)
- 4.2 [Audit and Accounts Committee – 23 March 2021](#)
- 4.3 [Audit and Accounts Committee - 26 March 2021](#)
- 4.4 [Audit and Accounts Committee – 22nd July 2021](#)
- 4.5 [Constitution and Ethics Committee – 27 July 2021](#)
- 4.6 [Staffing and Appeals Committee – 16 September 2021](#)
- 4.7 [Constitution and Ethics Committee – 29 September 2021](#)

5. Appendices

- 5.1 Appendix A – Investigation Procedure
- 5.2 Appendix B (Exempt) – Investigation Report