

Investigation into a complaint against The Monitoring Officer of Waverley Borough Council by Cllr Barton of Haslemere Town Council.

Introduction

I have been asked to investigate a complaint made by Cllr Nikki Barton concerning the actions of the Monitoring Officer of Waverley Borough Council (WBC) as well as other officers, in considering three Code of Conduct complaints against Cllr Barton.

The complaint made by Cllr Barton was transposed into Terms of Reference for this investigation by WBC which establish the parameters for the investigation.

In carrying out this investigation, I have considered the document bundle provided to me by WBC and emails sent to me by Cllr Barton.

I have also asked questions in writing of the Monitoring Officer, the Independent Person and Cllr Barton.

The Arrangements for dealing with Code of Conduct complaints appear in WBC's constitution.

The Terms of Reference have distilled the complaint into a set of twelve questions, as follows;

That the Monitoring Officer:-

1. Failed to identify and act on the unreasonable and malicious intent of the complainants and their complaints.
2. Failed to take account of the unsubstantiated and defamatory allegations and insinuations made in open correspondence by one of the complainants.
3. Failed to identify and act on the vexatious and political intent of one of the anonymous complainants.
4. Failed to identify the coordinated and repetitive nature of the complaints.
5. Allowed the complaints to be pursued on behalf of a property company through its lawyers and representatives.
6. Allowed two complainants to retain anonymity with no valid reason, contrary to the views espoused by the Independent Person.
7. Conducted a meeting which was characterised in advance as being an informal conversation; in an onerous, inquisitorial and unfair fashion.
8. Extended this first informal investigation beyond any reasonable timeframe (7-8 months).
9. Communicated the complaints in a reckless way or demonstrating bias and providing insufficient and unconvincing explanations for doing so.
10. Introduced new complaints without notice in the middle of a meeting on other complaints.
11. Failed to take appropriate steps to ensure the confidentiality of the complaints and the conduct of the investigation, resulting in damage to the councillor's reputation.

12. Failed to engage with any informal resolution to the complaints prior to referral to formal investigation, contrary to the views of the Independent person; and notwithstanding Waverley Borough Council having engaged with some or all of the complainants on informal resolution options.

I have also been asked to consider whether there is any evidence of more general concerns that: 'WBC's handling of complaints and investigations related to my conduct as a Member of Haslemere Town Council has been unfair, prejudicial and abusive and has caused serious damage to my health and wellbeing. Furthermore, WBC has, through its handling of these complaints and investigations, been complicit in the malicious and commercial ambitions of the complainants. As such WBC and its officers have failed to honour WBC's own standards, as well as those of due process and natural justice. I am concerned that there may even have been malfeasance in public service'.

Approach

In addressing these questions, I will follow instructions in the Terms of Reference about the scope of the investigation and limitations on the investigation. I should make it clear that in considering the actions and decisions of the Monitoring Officer, it is not for me to substitute my own opinions for his. I will consider whether the actions and decisions were reasonable given the circumstances that prevailed and the information available at the time.

In considering the complaints made against Cllr Barton, The Monitoring Officer was obliged to comply with the requirements of the Arrangements for dealing with Code of Conduct complaints, which have been adopted by WBC; and in doing so to act in a manner which is rational and reasonable. The complaint uses terms such as 'due process' and 'natural justice'. As this is not litigation, I will not take a narrow legalistic approach to such terms but will interpret them broadly to align with the duties I have outlined here. Before seeking to answer the questions put to me, I will summarise what is required of the Monitoring Officer. Any views I form on the correctness of those actions will take into account where in the process the action took place and what the Monitoring Officer could reasonably have known at that stage.

The initial action of the Monitoring Officer, upon receiving a complaint is to consider whether it is 'valid' in accordance with criteria set out in the Arrangements. If the complaint is determined to be valid, the Monitoring Officer must then consider how best to take the complaint forward. In so doing, he may investigate informally and/or commission a formal investigation. The Monitoring Officer should inform the Councillor complained about of his decision within 30 days. The informal stage should include consideration of whether an informal resolution to the complaint is possible and if it is not, the Monitoring Officer will determine whether the complaint or any part of it should be dismissed or formally investigated. If a decision to formally investigate is made, this will be commissioned externally.

In the following paragraphs I will provide my answers to the questions put to me and explain my reasons for reaching those conclusions. Although facts are relevant to all the questions, my conclusions will require judgements to be made and these are based on my experience as a Monitoring Officer and senior manager.

Findings and Rationale

The heads of complaint are as follows:- That The Monitoring Officer;

1. Failed to identify and act on the unreasonable and malicious intent of the complainants and their complaints.

The Terms of Reference make clear that I am not to investigate the complainants and their motives for making the complaints against Cllr Barton. Indeed, it seems to me that this would be impracticable in any event, given the nature of this investigation. That said, I believe that their motives are not relevant to the Monitoring Officer's considerations, for reasons I will explain.

At the first stage, when a decision has to be made as to whether the complaint is valid, there are criteria that the Monitoring Officer should consider, including whether the complaint contains trivial allegations, or which appear to be simply vexatious, malicious, politically motivated or tit-for-tat. In my view the word 'simply' is important. Whatever the motivation of a complainant, the process should not, in my view, act to strike out what might be a relevant complaint in relation to breaches of the code.

If it appeared to the Monitoring Officer that one of these factors was the sole or principal reason for the complaint, it would be proper for him to decide not to take the complaint further. From the information available to the Monitoring Officer at the time the complaint was made, it seems to me that there was no such indication. Indeed, the complaints expressed in the complaint letters largely referenced conduct that is governed by the Haslemere Town Council code of conduct. This is how it appears to me from the documents, and it is how the Monitoring Officer explains his decision at that stage. Whether those complaints were true is not something that can be judged at that stage. I therefore conclude that the Monitoring Officer's decision in this regard was understandable and reasonable.

2. Failed to take account of the unsubstantiated and defamatory allegations and insinuations made in open correspondence by one of the complainants.

The points I have made in response to question 1 are relevant to this element of the complaint and should be considered as part of the response. There are additional points I wish to make in relation to this question.

At the time he considered whether to decide if the complaints were valid, it was inevitable that they were unsubstantiated. Their substance, or otherwise, could not be known until some form of investigation was made. As I have already observed above, I believe there was sufficient within the complaint letters to warrant further examination. In similar vein, whether an allegation is defamatory wouldn't be apparent until an investigation had taken place and in any event, defamation is an issue for the civil courts and outside the authority of the Monitoring Officer.

I take the term 'open correspondence' to mean that it was not sent 'without prejudice'. If it is simply a reference to correspondence that the sender shared with others, then

this is dealt with as part of question 11. The concept of without prejudice correspondence applies only to correspondence sent as part of or in contemplation of litigation and would not be relevant in the context of a conduct complaint.

3. Failed to identify and act on the vexatious and political intent of one of the anonymous complainants.

The points I have made in response to question 1 are also relevant to this element of the complaint and should be considered as part of the response. There is an additional point I wish to make in relation to this question. Beyond his decision whether to regard the complaint as valid and whether to undertake some form of investigation, the Monitoring Officer can take no action, even if he has concluded that a complaint is vexatious or politically motivated. If it appears during a subsequent investigation that a complaint is politically motivated or vexatious and without merit, then this will be reflected in the investigation's conclusions.

4. Failed to identify the coordinated and repetitive nature of the complaints.

It is clear from the face of the complaint letters that many of the issues raised are the same or very similar. Whilst I cannot know whether this resulted from coordination between complainants, I do not think it is relevant, even if that were the case. A complaint either has merit, or it does not. A greater number of people raising an issue makes it neither stronger nor weaker as a result. Any experienced investigator will appreciate this and will have encountered this issue. It is clear from the responses I have received from the Monitoring Officer, that he was fully aware of this and I see no indication in the documentation that his judgement was affected by the fact that similar or identical issues were raised more than once.

5. Allowed complaints to be pursued on behalf of a property company through its lawyers and representatives.

It is plainly true that one of the complaints was submitted by a firm of solicitors on behalf of their client, who is the proposed developer of the site at Red Court. There is, however, no reason why such a complaint should not be considered. The Arrangements of WBC make no requirement as to the sorts of people or organisations who might make a complaint. Were that to be desirable, the legislation {The Localism Act} would have said so. I have never heard of a set of arrangements that sought to restrict who could make a complaint and it seems to me that this is entirely right. If a complainant has a commercial interest in a matter that is relevant to a complaint, this can be considered in addressing the initial credibility of a complaint or in assessing the quality of evidence during an investigation.

6. Allowed two complainants to retain anonymity with no valid reason, contrary to the views espoused by the Independent Person.

In this or any other complaints process, both complainants and those complained about will have reasonable expectations and these can sometimes come into conflict. This is the case with regard to the anonymity of some complainants in this complaint. There will be occasions where complainants are concerned that disclosure of their identity may lead to victimisation by someone about whom they have complained, or

others. Such fears can discourage people from pursuing what might be legitimate complaints and should not be taken lightly. Equally, a person about whom a complaint is made will naturally wish to know the identity of someone who has made a complaint against them; and more importantly, must not be disadvantaged in their ability to defend themselves. Balancing these two expectations is often difficult.

The Arrangements provide for a situation where the identity of the complainant may be kept from the councillors complained about in exceptional circumstances. When explaining to Cllr Barton that he would not at this stage disclose the identity of two complainants, the Monitoring Officer made it clear that this was during the informal stage of the process and would be kept under review.

My response to this question should be read in conjunction with my response to question 8. In fact, it would be useful to read that response first.

The time taken to conclude the informal stage of the process, was significantly longer than any of the parties had expected and in my view that is an entirely reasonable opinion. This length of time has had an impact on the effect the decision about anonymity had on Cllr Barton.

At the outset, the Monitoring Officer received representations from two complainants to the effect that due to past experience of harassment, including online, they were fearful for their wellbeing if their identities became known to Cllr Barton and subsequently to others concerned with development in Haslemere South. At the time, the Monitoring Officer didn't know and couldn't have known the veracity of those fears but regarded them as of concern. He recognised that anonymity should not be granted other than in exceptional circumstances in order to ensure a reasonable and fair approach to Cllr Barton and that for the same reason, any anonymity should be kept under review. He explained this to Cllr Barton.

In striking a balance, the Monitoring Officer concluded that any disadvantage to Cllr Barton would be sufficiently limited so as not to outweigh the fears of the complainants. In the circumstances, and given the nature of those concerns, it seems to me that he acted reasonably at the time. The decision was initially limited to the informal phase of the process and was not anticipated to have been in effect for a significant period without review.

At the outset, it would not have been in the Monitoring Officer's contemplation that the informal stage might last as long as it did. In the end, the formal stage of the process; and with it the reconsideration of the anonymity decision, did not take place until December. I have no difficulty in accepting that during this period of time, the level of stress experienced by Cllr Barton, would have been considerable and that not knowing the identity of some complainants contributed to that.

With the benefit of hindsight, I think that an earlier review of the decision might have been carried out. I think that it would be harsh to criticise the Monitoring Officer for not having done so, as at any point earlier in the process he would not have appreciated how long it would take to complete the informal stage. This is referenced in my response to question 8.

7. Conducted a meeting which was characterised in advance as being an informal conversation, in an onerous, inquisitorial and unfair fashion. (This is taken to refer to the meeting on 18th June 2020).

In looking at this question, I have had the opportunity to see the recording of the zoom meeting and to read the transcript, in addition to seeing the exchange of emails that led up to the meeting. Cllr Barton was invited to the meeting by an email from the Monitoring Officer on 26th May 2020. This email said that an informal investigation was going to be undertaken and invited Cllr Barton to a meeting to discuss the complaint in more detail and for her to provide a response to the allegations. Cllr Barton responded on the same day, asking if she could be accompanied by a professional representative. In so doing, it seems to me that some degree of formality would have been anticipated.

In any event, I must consider whether the meeting was conducted in a manner that was onerous, inquisitorial and unfair. To some degree, the meeting was bound to be inquisitorial as its purpose was to seek information and a response from Cllr Barton, as well as to share information about the complaints. I accept that the whole process will have been stressful for Cllr Barton and she articulated this during the meeting. To a degree therefore it is inevitable that the meeting felt onerous. What I must ask myself is whether the manner in which the meeting was conducted was unduly inquisitorial and onerous.

For reasons I will explain, I do not think that this was the case. In my explanation, I will address the issue of fairness. I am clear that the overall tone and nature of the meeting was business like and respectful on all sides. It was inquisitorial, but that was inevitable given the nature of the meeting. I believe that the email inviting Cllr Barton to the meeting was a fair representation of what took place.

An issue that clearly caused Cllr Barton anxiety was the reference in an email to her 'refusal' to declare an interest, rather than her 'failure' to declare an interest. She had raised this promptly after receipt of the email and received a prompt correction and apology. Whilst it might have been more accurate to describe the change as a mistake rather than a typo, I think it was made clear that the allegation had not been changed and that this was simply an error. This was raised again at the meeting where the fact that it was a mistake was reiterated and an apology given. Whilst accepting that in the circumstances, Cllr Barton may have been distressed by this, I also accept that administrative mistakes will occasionally happen and all the Monitoring Officer and his staff can do is to correct it promptly and apologise, which they did.

As was perhaps inevitable, the discussion led to information being discussed that Cllr Barton was not previously aware of. In order to avoid Cllr Barton being disadvantaged by this, it seems to me that the Monitoring Officer took pains to offer the opportunity for a break in the meeting so that Cllr Barton could consult with her representative, or for the meeting to be reconvened on another occasion, if she wanted.

I do not make light of the degree of stress that Cllr Barton may have experienced through this process, and specifically at this meeting; but the Monitoring Officer is duty bound to handle complaints received and can only do so in the most reasonable way, which is consistent with those duties. I believe that he handled the meeting in the most

business like and fair manner that was reasonably possible, given the nature of the meeting.

8. Extended the first informal investigation beyond any reasonable timeframe (7-8 months).

For reasons I will explain, I believe that the informal stage of the process took significantly longer than Cllr Barton might reasonably have expected. There are a range of causes for this and to identify them, I will look at the process chronologically.

The first stage was between late February/early March, when the complaints were received and 26th May, when Cllr Barton was invited to a meeting to discuss the complaints. The Monitoring Officer would be expected to take a certain period of time to read and understand a complaint before sending the invitation to the councillor. Accepting that there were numerous complainants each with a range of complaints, in my judgement it would be reasonable to have expected the invitation to be sent by the end of the 30 day period in the Arrangements. Both the Chief Executive and Monitoring Officer have explained to me that in March a decision was made by the senior management team to divert all necessary resources to addressing the Covid pandemic and to accept that other duties may need to be temporarily put to one side. It should be noted that other public services also suspended non-pandemic services, such as the Local Government Ombudsman. It has been put to me, and I accept, that this is substantially responsible for the delay during this stage. This reason has been acknowledged by the Monitoring Officer and Chief Executive and an apology given. I do not think that there is more they could have done in relation to the delay during this stage.

Following the Monitoring Officer's interview with Cllr Barton on 18th June, there is a period of approximately 7 weeks before the Monitoring Officer is in a position to confirm the initial outcome of his informal investigation on 12th August. Whilst accepting that there was significant documentation for the Monitoring Officer to consider, it seems to me that the diverting of his attention to support the Council's efforts regarding the pandemic has resulted in this stage taking longer than Cllr Barton should reasonably expect.

The Arrangements adopted by WBC provide for the councillor complained about to consult the Independent Person and for the Monitoring Officer to consult them before an informal investigation can be commissioned. Following the Monitoring Officer notifying Cllr Barton of his initial decision on 12th August, this process then took until 30th October.

This again seems like a significant amount of time for these steps to be taken, but it appears to me from looking at the documentation, that this can be explained. Given the nature of the two elements to this stage, the Independent Person's consultation with the councillor, must clearly take place before the Monitoring Officer can consult them about the formal investigation. Through various means, including availability of diary appointments and personal circumstances, the independent Person and Cllr Barton were not able to speak until 15th October. This delay was not helpful, but no blame can attach to either of the parties, it was simply a result of circumstances. It

cannot, in my view, be considered the responsibility of the Monitoring Officer that the delay occurred.

Following the discussion on 15th October, the Independent Person was able to consult with the Monitoring Officer on 27th October, which was perfectly timely. Three days after that, on 30th October, the Monitoring Officer wrote to Cllr Barton to confirm his conclusion that an allegation of failing to declare a non-pecuniary interest would be formally investigated by an independent investigator. This was also perfectly timely.

The next stage in the process involved correspondence with the two complainants who had been granted anonymity during the informal stage. This process took from 30th October until the week commencing 7th December to resolve. The outcome was that the complaint of one would no longer proceed, as they did not agree to their identity being disclosed. The period of approximately 6 weeks that this stage lasted is plainly longer than one would normally expect. Given that two complainants had been afforded anonymity, it was necessary to review that decision before a final decision to start a formal investigation could be made. This is a requirement of WBC's Arrangements.

It is evident from the documentation that there was considerable correspondence between the Monitoring Officer and the two anonymous complainants during this time. Much of it, from the complainants, was rather argumentative. At the end of those exchanges, one complainant was prepared to have his identity disclosed, and the other was not. The Monitoring Officer has said that during the email exchanges, he was conscious of the time being taken and had to consider whether on balance, he should impose an arbitrary cut-off date and require the complainants to respond on the question of anonymity, or to pursue the correspondence to a conclusion. He chose the latter course. There is no easy answer to this dilemma in my view. Anonymity having been granted to start with, a decision to withdraw it should not be taken lightly. Against that, the process had already taken longer than one would have expected and both Cllr Barton and the complainants had a reasonable expectation that it would be taken forward without further delay. There is no right or wrong answer to this, but I think that the decision made by the Monitoring Officer was one that he was reasonably entitled to make.

Within approximately two weeks of the decision about anonymity, an independent investigator had been identified and instructed, and Cllr Barton informed of that fact. In my view, this was perfectly timely.

In summary, the informal investigation stage took longer than would reasonably be expected. I have endeavoured above to analyse why this was the case.

9. Communicated the complaints in a reckless way or demonstrating bias and providing insufficient and unconvincing explanations for doing so.

Cllr Barton's clarification of this part of the complaint is as follows;

The complaints were communicated to me in a reckless way in that they were communicated in a way that the MO knew, or should have known, both risked an inaccurate representation of the alleged breach and risked the failure in natural justice and fair process that did in fact arise, in particular by not communicating the complete

set of complaints at the outset, but adding complaints throughout the process, including in the middle of an interview. To be precise:

- *Email dated 26th May 2020 contained a summary of the complaints (including “failed to disclose”).*
- *Email dated 8th June 2020 referred to the primary complaint inaccurately as “refused to disclose”.*
- *Email dated 8th June 2020 added additional complaints, even though the complainants had raised the essence of those complaints prior to 26th May 2020.*
- *Interview on 18th June 2020 included an additional complaint (breach of confidentiality).*

The above clarification identifies three elements to this part of the complaint which are set out below.

The first element is that the summary of the complaints contained in the MO's email of 26th May was insufficient and failed to fully represent the complaints in a way that Cllr Barton could respond to.

I should first observe that the complaints investigated by the MO are defined by him by reference to the original complaint letters. The exact text of those letters will not necessarily form the Monitoring Officer's own terms of reference for his investigation, as they contain a good deal of extraneous material. In my view, the summary of the complaints in the Monitoring Officer's email of 26th May gave an accurate summary of the complaints and more particularly reflected what he then went on to investigate.

The second element is that the Monitoring Officer's email of 8th June added additional complaints not referred to in his previous email of 26th May. I agree that in his email of 8th June the Monitoring Officer referred to concerns that Cllr Barton may have breached general obligations in the Haslemere Town Council code of conduct and that these had not been referred to in his email of 26th May. Given that this email was sent ten days prior to Cllr Barton's zoom meeting with the Monitoring Officer, I do not think this placed her at a disadvantage. I would also observe that the zoom meeting was a preliminary meeting carried out at an early stage in the process. It did not therefore represent the only opportunity that Cllr Barton had to provide responses to the complaints. Indeed, the concerns set out in the email of 8th June were not taken forward to the formal investigation stage.

The third element is that the use of the word 'refused' instead of the word 'failed' in the Monitoring Officer's email of 8th June represented a significant change to the allegation against Cllr Barton and demonstrated bias against her. It is clear that the wrong word appeared in the email of 8th June and that the allegation was that Cllr Barton had 'failed' to disclose. My first observation is that when Cllr Barton promptly challenged this change in wording, it was promptly corrected and an apology given. The explanation offered was that the use of the word 'refused' was a typographical error. Given that the erroneous word was corrected immediately and with an apology and that the apology was repeated at the zoom meeting, I see no reason to believe that the use of the word 'refused' was intentional. It seems clear to me that it was used

mistakenly. Perhaps it would have been better to have described it simply as an error rather than a typographical error, but I do not think that is a significant point.

10. Introduced new complaints without notice in the middle of a meeting on other complaints.

Cllr Barton has confirmed that this is the meeting that took place via Zoom on 18th June 2020, which I have had the opportunity to view on a recording, as well as to consider the transcript. This element of the complaint, in my view, forms part of my consideration as to whether the meeting was conducted in a fair manner and afforded Cllr Barton the opportunity to properly explain her response to the complaints. Having considered the content of the meeting, I do not see that new heads of complaint were introduced in an unfair manner.

At the beginning of the meeting, when he summarised the issues, the Monitoring Officer expanded on one of the concerns and referred to the disclosure of confidential information to the HSRA. This was picked up immediately by Cllr Barton's adviser who suggested that he and Cllr Barton might discuss this off line. The Monitoring Officer responded that he was happy for the meeting to be suspended or for Cllr Barton to provide responses to some issues at a later date. Whilst it would have been preferable for this issue to have been identified earlier, I do not believe Cllr Barton was prejudiced. She was accompanied by an adviser, and the Monitoring Officer was clear that she could provide a response to any issue at a later date. When added to the fact that this was a meeting at an early stage in the process, I do not believe this resulted in Cllr Barton being treated unfairly.

11. Failed to take appropriate steps to ensure the confidentiality of the complaints and the conduct of an investigation, resulting in damage to the Councillor's reputation.

It is important, firstly to identify the nature of this complaint. Cllr Barton does not put forward evidence that any employee of the Council has disclosed confidential information. I see no evidence that anything of this nature has taken place.

I take it that this part of the complaint alleges that confidential information has been disclosed by others and that the Monitoring Officer should have prevented this from happening, but failed to do so. The Monitoring Officer instructed those involved in the complaints to treat the complaints with confidentiality. Other than council employees and Cllr Barton, the only parties who initially would have known about the complaints would be the complainants themselves. I accept that at a fairly early stage, knowledge of these complaints became known beyond the groups of people referred to above.

Whilst it is beyond the remit of this investigation to look into the actions of the complainants, it is a reasonable assumption that one or more of the complainants may have shared the fact of their complaint with one or more members of the public. It is entirely possible that such person or persons may have further shared the information. Whilst this is undesirable; it is entirely beyond the legal or practical control of the Monitoring Officer to prevent such occurrences. I accept that the sharing of this

information will have caused distress to Cllr Barton, but the Monitoring Officer cannot be responsible for actions entirely outside his control.

12. Failed to engage with any informal resolution to the complaints prior to referring to formal investigation, contrary to the views of the Independent Person and notwithstanding WBC having engaged with some or all of the complainants on informal resolution options.

It is important firstly to distinguish between the Monitoring Officer considering informal resolution and implementing an informal resolution. For reasons I will explain, I conclude that he considered the appropriateness of informal resolution throughout the process, but concluded that it was not possible to implement such a resolution. It is also important to say that an informal resolution is one which both the complainant and the Councillor will agree to. Any other sort of resolution is either a decision by the Monitoring Officer or the conclusion of a hearing.

Cllr Barton is concerned that the complainants were engaged in seeking an informal resolution. This was part of the WBC standard code of conduct complaints form. On that form a complainant is asked to indicate whether they believe an informal resolution to their complaint is possible and what that might involve. This is, in my experience, entirely normal and helps the Monitoring Officer at the outset to consider whether an informal resolution is likely. There is nothing improper about this, it is a practical measure and is an entirely normal part of a council's arrangements.

It was the responses of the complainants that are in part responsible for the Monitoring Officer's conclusion that an informal resolution was not feasible. More than one of the complainants suggested some quite draconian measures in response to the question about informal resolution. This included actions such as Cllr Barton resigning and agreeing not to stand for election for five years. These are not measures that the Monitoring Officer could possibly have engaged with and certainly not put to Cllr Barton. The Monitoring Officer has said that this made it appear most unlikely that an informal resolution was possible. I agree with this.

As the informal process proceeded, the Monitoring Officer states that he kept the prospect of informal resolution under review. As it appeared to him that the complainants were not altering their position and Cllr Barton did not accept any part of their complaints; there was no real prospect of informal resolution. I have to say that I agree entirely with this conclusion.

Cllr Barton has suggested that the Monitoring Officer should have reconsidered the prospect of informal resolution once he set aside all parts of the complaint apart from that relating to non-pecuniary interests. By this stage it was clear, however, that no such resolution was possible. Cllr Barton, as she was perfectly entitled to do, did not accept the allegation. The complainants were then engaged with the Monitoring Officer in arguing that the formal investigation should include all their allegations. Against this background, it is entirely understandable that the Monitoring Officer proceeded to instruct an investigator.

Having sought clarity from the Independent Person, she confirms that she would have preferred an informal solution, but accepts that for the reasons I have set out, one

seemed very unlikely. She accepted, therefore, that the Monitoring Officer's decision in this regard was the correct one.

Final considerations

There are additional points included in the letter of complaint, namely that 'WBC's handling of complaints and investigations related to my conduct as a Member of Haslemere Town Council has been unfair, prejudicial and abusive and has caused serious damage to my health and wellbeing. Furthermore, WBC has, through its handling of these complaints and investigations, been complicit in the malicious and commercial ambitions of the complainants. As such, WBC and its officers have failed to honour WBC's own standards, as well as those of due process and natural justice. I am concerned that there may even have been malfeasance in public service'.

There are two elements to this part of the complaint; a general complaint about the fairness of the procedure used to investigate Cllr Barton and its impact, and that Waverley Borough Council has been complicit in the complainant's commercial ambitions and committed 'malfeasance in public service'.

I consider that the general complaint about fairness is properly addressed already within my responses to the twelve enumerated complaints and requires no further response. It is not possible for me to independently judge the effect of the process on Cllr Barton's wellbeing, although I accept that it must have and did have an effect. Unfortunately it is inevitable that anyone subject to such a process will find it very difficult. All that those running the process can do to ameliorate this is to run it correctly. As I have already observed above, I think the process has taken longer than one would expect and I have no doubt this would have added to the impact on Cllr Barton.

The suggestion that the Council has been complicit in the malicious and commercial ambitions of the complainants is a serious one. It is impossible for me to know whether there has been any knock on effect from the complaints made against Cllr Barton that have helped one or more complainant. Whether that is the case or not isn't in my view something that the Monitoring Officer can control. I think the question is whether any employee of Waverley Borough Council acted improperly in order to bring about such an effect. There is nothing in any of the documents or other information I have seen that even suggest that this may have been the case. I conclude, therefore, that this allegation cannot be supported.

With regard to the final point, I will observe that Malfeasance is a serious criminal offence involving intentional wrongdoing which can only be dealt with by the Police and cannot be addressed by this investigation. I will say, however, that I have seen and read nothing during this investigation that has caused me concern in this regard.

Stuart Caundle
Appointed Independent Investigator
21 June 2021