

By Email only

**Executive Office**  
Westfields  
c/o Municipal Buildings  
Earle Street  
Crewe  
CW1 2BJ

DATE: 25/11/20

OUR REF: DCB/HPC

Dear Parish Councillors,

I am writing to you following a number of referrals and complaints received in respect of Handforth Parish Council. I will divide this letter into three parts to separate the issues and prevent any conflating of behavioural and conduct issues with any substantive election point.

#### Part 1

The Returning Officer appointed by Cheshire East has received multiple correspondence which appears to suggest that the Returning Officer should not comply with the statutory and regulatory regime for the calling of an election. As I will explain that suggestion is misconceived and wholly inappropriate.

For the avoidance of doubt the Returning Officer is charged with the proper administration of the election process. The Returning Officer role does not include any element of referee, policeman, judge, adjudicator or adviser. The Returning Officer is under strict obligations of impartiality and has no view on the conduct of members, clerks or other persons within Handforth Parish Council.

The Returning Officer has received a declaration of vacant office from Handforth Parish Council and this has triggered a mandatory election process.

If any individual member or resident believes Handforth Parish Council has acted erroneously they should seek independent legal advice on how to challenge Handforth Parish Council's notification to the Returning Officer. The Returning Officer is impartial and must not engage in any internal parish council dispute.

#### Part 2

As Monitoring Officer in Cheshire East I have received a multiplicity of complaints and referrals. These range from multiple complaints about councillors behaviour; to fundamental issues of governance and member/officer engagement. The most recent referrals relate to suggestions that some members of Handforth Parish Council have purported to take decisions that are plainly unlawful, and these decisions have resulted in expenditure of public funds.

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The Monitoring Officer does not provide general governance advice to town and parish councils. If the Code of Conduct matters raised are taken at face value they are sufficiently serious to warrant detailed consideration. The detailed consideration may result in a hearing before the Cheshire East Council Committee for Standards. The outcome of any such hearing may be public and may be used as evidence in related legal proceedings. The costs associated with the investigation of any misconduct are published and will become a matter for the Parish Council to defend. Until an assessment and investigation of any code of conduct issue is completed, I am unable to comment on any potential culpability of any individual or group of members.

### Part 3

Although this does not form part of the obligation of a Monitoring Officer to any Parish Council you should be aware that any member who knowingly acts unlawfully places themselves at risk of personal liability for damages to third parties, and the recovery of any public money purported to be expended by them on behalf of the parish council. It may be timely, given the nature of the referrals made, for Councillors to reassure themselves that no element of misfeasance in public office could arise. The elements of the offence are summarised in Attorney General's Reference No 3 of 2003 [2004] EWCA Crim 868 and expanded upon in the Crown Prosecution Service website.

<https://www.cps.gov.uk/legal-guidance/misconduct-public-office>

Councillors are all aware that there has been no valid challenge, upheld by a court to the declaration of vacancy as notified to the Returning Officer. It is therefore probable that any Councillor acting on the purported belief there is no vacancy may be engaging in misconduct and acting wilfully or being recklessly indifferent to that fact. Please note the offence only requires that the public trust in the officeholder to be abused and that may be achieved by relatively modest misuse of public funds or misconduct.

Handforth Parish Council, or any individual councillor, may seek advice and assistance from the local association of Town and Parish Councils for help with any potential issue and to seek advice to resolve the difficulties that have been reported. Given the high volume of complaints received, significant scrutiny of the Parish Councils actions is likely.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Brown', with a horizontal line underneath it.

David Brown  
Director of Governance and Compliance  
Monitoring Officer

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