

## STANDARDS HEARING STATEMENT 13 – CLLR ANDY MACPHERSON

### Notes:

1. Andy Macpherson spoke to me after I produced the initial draft of his statement and I produced a second draft. However Andy did not formally agree to the second draft as his final statement despite prompting. I made it clear to Andy that comments from the draft would be included in my Reports if he did not formally sign the document off but I heard nothing. He was given the opportunity to redact his statement before it was formalised for the Standards Hearing but again I heard nothing. This draft is therefore presented as is to the Standards Hearing as Cllr MacPherson's Statement.

## STANDARDS HEARING STATEMENT 13 – CLLR ANDY MACPHERSON

### SOUTH DERBYSHIRE DISTRICT COUNCIL (WILLINGTON PARISH COUNCIL) – Complaints against Cllr Paul Cullen

Summary notes of telephone conversation between Andrew MacPherson (AM) and Melvin Kenyon (MK - Investigating Officer), 8am, Wednesday 8<sup>th</sup> April 2020.

MK read the following preamble before starting the interview:

*My name is Melvin Kenyon and I am an investigator for the Monitoring Officer of South Derbyshire District Council who has asked me to assist her in this matter.*

*We are going to be talking today about seven complaints made against Councillor Paul Cullen that relate to his alleged behaviour at meetings on three separate occasions last year relating to Willington Parish Council. The complainants have asked for confidentiality, so I am unable to share with you who made the complaints.*

*I am conducting this interview under the powers given to the Monitoring Officer by the Localism Act 2011 which places councils under a duty to promote and maintain high standards of conduct.*

*Once we have finished talking I will prepare a write-up of our discussion and I will share it with you and ask you to agree that it is an accurate record of what was said before issuing it as a final record.*

*Once I have completed all my interviews and obtained sign-off of my interview notes I will produce a draft report of my Investigation. That will be shared first of all with the Monitoring Officer so that she can confirm that the Investigation has been thorough and of the right standard. I will then send the Subject Member and Complainants copies of the reports to enable them to make any representations they consider necessary. Having considered comments on the draft report, I will then issue my final report. Parts of what we say today may be included in the draft and final report.*

*If the case is considered at a hearing, the summary of what you say may be submitted as evidence and you may be called as a witness. I appreciate that you might want to preserve confidentiality and, if needs be, that can be discussed with the Monitoring Officer before any Standards Committee hearing, should a hearing take place.*

*If you provide me with information of a private or sensitive nature, I will ask the Standards Committee that this be kept confidential. However, there is no guarantee that my request will be followed, and the information may end up in the public domain.*

*Please treat information provided to you during the course of this discussion as confidential.*

*That's the end of the formal piece. Are you content with what I have said?*

MK asked AM about his views on confidentiality. AM said that, if this went to a hearing he was expecting to stand up and say what he was going to tell MK.

MK explained that he reached his conclusions based upon the balance of probability and the available evidence. MK intended as part of his investigation to try to speak to all members of

## **STANDARDS HEARING STATEMENT 13 – CLLR ANDY MACPHERSON**

Willington Parish Council and he would be giving equal weight to the testimony of every councillor he spoke to. His aim was to be independent, open-minded, and objective in his investigation.

### **PERSONAL BACKGROUND**

MK asked AM about his “political” background and the broader political background in Council.

AM said he was a District Councillor in his second term. He was previously a Parish Councillor but realised he could only influence to a certain degree which is why he took the opportunity to become a District Councillor. He was approached by the Conservative Party as he is seen around by many people and was asked to stand.

AM is now the Chair of Environmental and Development Services and the substitute on Planning. He is also a member of Finance and Management and a couple of other outside bodies. He was elected as a District Councillor on both occasions.

AM said that he was elected onto the Parish Council some 20 years ago and did a seven or eight year term and was on most committees but work got in the way. At that time, it was a very coherent, together Council working for the good of the Parish. AM was asked back onto the Parish Council because they were struggling for numbers, so he re-joined just before he became a District Councillor.

AM went on to say that, as a District Councillor, he was very aware of District Council procedures, there was a Whip etc. However, when it is a voluntary role in a Parish Council, it is difficult for Parish Councillors to know where the boundaries are and how they should influence and conduct themselves. AM felt that he was probably a bit of a “stick in the mud” for protocol but happy to look at new ways of doing things and challenge the status quo at Parish Council level. AM said he had a tendency to go with the flow but feels he has a duty to put things straight if they’re completely undemocratic. Recently, AM did not feel they were debating properly; it was more like arguing, which was disappointing all round because there is always more than one view. AM was disappointed because he did not feel Parish Councillors are pulling together.

### **COMPLAINTS**

#### **LAC/107 – Ordinary Parish Council Meeting held on 12<sup>th</sup> November 2019**

MK said that it was alleged that filming by Paul Cullen (PC) at the Ordinary Parish Council Meeting of 12<sup>th</sup> was intimidatory in that it was directed at a single individual. Whilst other complaints had apparently been made about such alleged filming, MK had not been asked to investigate those.

It was alleged that PC filmed an individual councillor (Claire Carter) in close proximity and that he had repeatedly moved his camera to ensure that she was “in shot”. MK had listened to an audio recording of the incident and it was clear to him that PC did make a video recording at the meeting. The meeting had been suspended by the Chair and PC was persuaded, with his

## STANDARDS HEARING STATEMENT 13 – CLLR ANDY MACPHERSON

father Joe's intervention, to pass the camera to a member of the public so that she could carry on filming. MK asked if AM recalled the meeting.

AM confirmed that he wasn't at the meeting relating to the complaint where it was alleged that a camera was pointed at Claire in an intimidatory manner, but he was at the follow-on meeting where something similar happened.

MK asked AM to explain what happened at the follow-on meeting in late December.

AM said that it seemed the filming had become a bit of an issue. The Chair and people generally were happy for the "whole meeting" to be filmed because that's democracy and if people want to see it and can't be there that's fine. Some Parish Councillors found it difficult when the camera was pointed directly at them and moved in position to capture whoever was speaking at the time. AM himself felt it was a bit intimidatory and also intimidatory when people (not PC) who are taking the images are then taking them home and dissecting every word that's said and coming back with a feed of emails thereafter relaying to individuals what was said, which in his view was not in the spirit of a Parish Council meeting.

Whatever is said is to get you to a decision no matter which side you are coming from. For example, AM said that emails had been sent to the Chair saying that the sender thought he was stupid at a particular meeting and that it had been discussed with friends.

MK asked for confirmation of the name of the person they were discussing, and AM confirmed that the person was Joe Cullen but that others were involved too.

MK queried whether if it was the case that whoever speaks PC will film, or is he selective about who he films and if AM spoke, would he film him? AM said he had filmed him but not every time he spoke. Sometimes it was focused on one councillor more than others but personally he wasn't overly offended by it because he's in the public domain anyway at District Council.

He felt that he needed to be word perfect at the Parish Council if he was reporting back on something from the District, even though it should only need to be a summary leading to a healthy debate. He was aware that what he said might be misconstrued and that could lead to criticism.

AM said that, when PC was filming, his camera would not be on a tripod and turned to focus on people. However, if PC felt someone was particularly intimidated by it PC would deliberately focus on that person.

MK asked for clarification as to whether it was done on purpose if he knows it upsets a person. AM said he thought it was done "because it's a numbers game". There was a definite split within the Parish Council and certain individuals feel that if certain characters were intimidated and their reputations questioned so much that they were driven off the Parish Council, they would have more votes in their favour.

"Their" views (those of PC and his associates) are as important as those of anyone else. They probably do represent a fair proportion of the community but there is no need for the bullying behaviour that comes from it. They ask for resignations over anything and everything. It is

## STANDARDS HEARING STATEMENT 13 – CLLR ANDY MACPHERSON

like “I’ve got that person on the run; I only need to do a little bit more to them and they’ll resign”. PC and his associates want the numbers to balance out more so that they can get things through, which is an agenda of their making. This behaviour had divided the whole of the Parish Council.

MK said that during his investigation he repeatedly heard words like; upsetting, confrontational, intimidating, threatening, aggressive, feeling vulnerable. He asked if these words rang true with AM. AM said yes, but he thought PC was feeling defensive and therefore confrontational to get his point across.

It had got worse recently. PC does not want to be seen to be wrong. He will not admit that he is wrong, and he does not think he has done anything wrong or behaved inappropriately. What most people would do if they had these complaints against them would be to apologise for causing upset and curb their behaviour in future, but PC does not think he is doing anything wrong. “You can only push your own agenda so far before it’s not fair on others”.

MK asked AM how he thought “they” saw him. AM said that he was frustrated that people were not given fair opportunity to voice their view and be balanced and fair. He would not normally say anything unless democracy was really going wrong, but he got really frustrated when people felt so intimidated that they did not want to go to meetings.

Agendas have been created and things have gone in completely in the wrong direction which they would not have if it was a balanced debate. AM said he did not see himself as a gatekeeper or the “go to person” for advice. PC had been to him in the past on many occasions and asked his advice and knowledge on getting something done (how to approach a particular issue in terms of process). When PC gets positive answers, which help his journey, he is quite co-operative, and he will listen.

More recently, PC had circumnavigated AM and gone straight to the Planners, keeping AM out of the loop. He thought it might be a control thing with PC. PC would ask AM’s advice but if he thought that he could not influence AM he would go direct to the Officers. In any event, where planning was concerned, AM had to be very careful not to have a pre-determined view.

MK asked if AM thought that PC was well intentioned. AM said that he did not. Initially he did. When PC came with enthusiasm and energy and took an interest in policies and procedures he thought it was great but now he feels that PC’s interest in policies and procedures was a way of getting what he wants.

AM felt that everyone at a Parish Council meeting needed to be able to set out openly the views of those they represented. At present he did not think that was possible because people felt intimidated. MK said that it sounded to him as if AM was saying that the democratic process was being subverted. AM agreed that it was “massively compromised”. There might be merit in what they (PC and his associates) thought but if things didn’t go their way then “dummies would come out” and there would be confrontation later.

MK then summarised for the record that AM was not at the particular meeting when Claire Carter was being filmed. However certain people had been deeply upset by the way they had

## STANDARDS HEARING STATEMENT 13 – CLLR ANDY MACPHERSON

been filmed. AM confirmed that and said that he had been at other meetings where filming had taken place and that he had felt a little intimidated himself at times despite his experience as a councillor.

MK asked whether they (PC and his associates) filmed themselves when they themselves were speaking. AM said, “No”. MK suggested that the issues might perhaps be overcome by filming the whole meeting from an agreed vantage point and then publishing the output on the internet. AM said that that had been agreed already by the current and previous Chairs.

AM then recounted an incident some years ago that had been filmed and then broadcast on YouTube. Some people had come to the meeting *en masse*, the police had been involved and Joe Cullen appeared to have played a part. There was concern that footage was being made and then edited inappropriately for presentation on the internet.

### **LAC/94, LAC/95, LAC/96, & a letter by the author of an earlier complaint LAC/77 Extraordinary Parish Council Meeting held on 24<sup>th</sup> September 2019.**

MK said that, it had been alleged that at the Extraordinary Parish Council Meeting on 24th September 2019 a parishioner, Nicola Phillips (wife of John Phillips, daughter of Sue Carter), had made a statement about the need for the Council to start to work together for the benefit of the village and the treatment of clerks (MK had a transcript of the text). This statement had apparently spun out of a report that had been presented by the clerk at a previous meeting.

This was captured on an audio recording, which MK had listened to, and it appeared to him that PC had left his seat and made a statement “as a parishioner”. It had been further alleged that PC had made a personal verbal attack on Nicola Phillips in an intimidating way. After some disturbance, PC had apparently been persuaded by the Chair and the Clerk to return to his seat. MK said that there were certainly “raised voices”. Did AM recall this and what was happening? AM confirmed that he did.

It had stemmed, he said, from a statement which the Clerk had presented at a previous meeting as a professional as to how she saw the Parish Council and what her frustrations were. Some of the councillors had ignored what she had said or challenged it as unacceptable.

The report should just have been read and absorbed and possibly acted on. Nicola Phillips had seen that this was not happening. She was speaking from a pre-prepared statement in an attempt to support the clerk and bring the Parish Council back in order.

PC did not think the statement was acceptable and that it was directed at him. However, the content was not inflammatory or derogatory and it was not pointed at anybody, “it was general as to the way we ought to perform”. MK pointed out that Nicola *was* speaking against the backdrop of the “Megabus email” which her husband, John Phillips, had sent which AM acknowledged.

PC reacted by getting up from his chair and going into the public area to put the counter argument. However, “he wanted to say it as a parishioner and not as a restricted Parish Councillor”. He had the opinion that, by doing that, he could then speak totally openly

## STANDARDS HEARING STATEMENT 13 – CLLR ANDY MACPHERSON

because he was speaking as a parishioner. He could then say and do what he wanted. AM recalled that he “sat fairly close to Nicola Phillips and looked across at her”.

MK asked AM if he agreed or disagreed with the statement in the complaint that PC “made a personal attack and did it in a threatening and intimidating manner”. AM confirmed that he concurred with that interpretation. AM said that, as a councillor, you could not change your head and suddenly become a private individual. Simply moving from one position to another made no difference. This was something PC had done on previous occasions though he had not always physically moved himself to the public area to do it and had instead said that he was “now speaking as a parishioner”.

What he did had made “a farce of it”. Those who had been around for some time knew that you could not “swap your head” and “come out of protocol”. By physically repositioning himself he felt that PC was saying, “I *will* say what I want when I want to say it”. In AM’s view councillors had a reputation to uphold and needed to behave appropriately even when they were not in a council setting.

AM said that similar things had happened previously with clerks. MK and AM then discussed the high turnover of clerks. AM felt that Deb was an excellent clerk, very experienced but somewhat intimidated behind the scenes. AM said that recently Tim Bartram had gone to the Clerk’s home. He had been “sent” by Joe Cullen to collect some goods unannounced and without invitation. That was intimidatory beyond what happened in the meeting. It was scary. AM said that he understood Joe had had an ASBO against him because of his behaviour towards previous clerks.

MK asked AM where he thought it would end. AM said that, looking at the Cullens and the other characters they had encouraged to join the Council, there is lots of positive work they are capable of doing. What they were not capable of doing was working together. In AM’s view, if they were not capable of working together as a group then they were not working together with the community. Others on the Parish Council were equally representative of views within the community. It could be that someone will give in and say “have it your way” but that would be a shame because there will not be a fair and balanced debate if that happens.

Alternatively, nothing would change until people are prepared to go to mediation. DALC had previously offered mediation but it had been rejected, especially by Joe Cullen. Mediation did not work unless all parties were willing to engage in it and go with an open mind. There needed to be a change in attitude and members needed to work together and actively debate without the threat of consequences, intimidation in the community or a flood of emails afterwards. There should be training to ensure that there is an understanding that one individual’s view is not the only view and on how to have a healthy debate – “that is the tangle at the moment”.

AM thought that the Council was disjointed but not totally broken because there were some good active debates put forward by the Cullens and the other characters they had brought in. It *can* be really positive.

## **STANDARDS HEARING STATEMENT 13 – CLLR ANDY MACPHERSON**

MK asked AM whether he thought there was merit in PC's assertions that *he* was being intimidated and bullied. AM said that he thought PC often felt intimidated when his views and behaviours were challenged or closed down, say, by the Clerk. However, there was a difference between being forceful and being aggressive.

AM then talked about the proposed Axis 50 development - how he had approached the debate about it in the Parish Council and the related decision to fund opposition to it as someone who is also a District Councillor and a member of the Planning Committee.

AM had heard that the outcome of these complaints might affect PC's job. If so, this was obviously high stakes for PC. He was "behaving in a really strange manner now, very aggressive and very defensive". He could not afford to "lose". His attitude and his openness to communicate had become closed, "he has gone very much into his shell and does not want to talk openly". PC would be better to acknowledge his mistakes and learn from them.

MK asked AM what other members "on their side" might say about all this. AM replied that they would say that, "Paul and Joe walk on water" though Ros Casey was perhaps slightly different. She had previously put her name forward as an assistant to the clerk but had been unsuccessful. Like Joe Cullen, Tim Bartram had been around the community for a long time. AM felt that they would just defend their actions as normal and acceptable when they are not. It could be that the new, less experienced councillors were not familiar with protocol and that might explain their behaviour. Tim Bartram, for example, was passionate but he was a "serial barracker" who said what he was thinking and talked across others.

### **LAC/103 + LAC/105 – Abortive RAC Meeting on 4<sup>th</sup> November 2019**

MK said that it had been alleged that, after the RAC Meeting on 4th November, which was closed by the Chair because insufficient notice had been given, PC lost his temper with an older, female parishioner who had attended the meeting, pointed his finger at her in a "menacing" way, verbally abused her before leaving the building and reduced her to tears.

MK asked if AM had been present at the meeting? He confirmed that he had not been there. He was aware that Sue Carter was the parishioner, but he had only heard rumours. Sue is old school; she knows how things work and was not afraid to stand up for democracy. If PC was challenged by her then AM could see how he might flare up because of her relationship with Nicola Phillips. It was Nicola's husband, John, who had sent the "Megabus email".

### **GENERAL POINTS**

John Phillips had been elected to the Parish Council and had made it clear early on that any attempt at intimidation would not work. He was happy to listen to others' views but would not be intimidated. There had been exchanges of private emails - some of these exchanges were banter whilst some were not.

Eventually it suited them to publicise the "Megabus email" which had been sent by John after he had had a drink. John had made reference to something indirectly in his email which should have remained as "pub banter". What followed was certainly intimidatory. Threats



## STANDARDS HEARING STATEMENT 13 – CLLR ANDY MACPHERSON

to bring characters down from Liverpool, the sharing of personal email addresses (including AM's own) and the like.

AM explained that the subgroups of the Parish Council - the Footpaths and Open Spaces and the RAC, for example, were not really operating as they should. Their agendas addressed items they should not, such as planning matters which are out of scope, and had become power bases outside the Parish Council.

The recommendations of the subgroups then appeared at Full Council and were often voted upon without proper scrutiny because that scrutiny had taken place in the subgroup. A member of the subgroup could have been intimidated in the meantime, they will not come to the Full Council meeting and things get passed that way.

The subgroups are now being used for the wrong reasons, as a power base to get "their" own agendas through. AM thought that both subgroups should be disbanded to enable everyone to be in the same room when things were discussed. This situation was really disappointing because, in years gone by, these subgroups had been very productive. At the moment they do not work.

MK asked if AM thought that the meetings were chaired well. AM said that they were reasonably well chaired, the previous Chair was not an especially strong Chair. Phill could be strong on occasion but generally let things roll out. However, "with the characters we are talking about, unless the agendas are set in ways in which they want to talk about a subject, they will not shut down". MK asked if AM thought PC and his associates had respect for the Chair and AM replied that they did not. The Chair would sometimes feel so intimidated that he would not want to go to meetings. It ought not to be like that!

MK asked if there was anything else AM wanted to discuss or thought MK needed to know.

AM said that he was expecting at any time for one of the Clerks to claim constructive dismissal due mainly to the way they were treated by Joe Cullen. This might well depend on the outcome of MK's investigation. AM did not feel that councillors had been very good at defending clerks whether inside or outside meetings, especially when email was used to intimidate them.

If it is found that behaviour had been inappropriate towards clerks and councillors then AM would expect these types of claims to come forward. For example, the last clerk gave up another post elsewhere for the role at Willington, but she had only lasted a week. She sent a letter saying she had been pushed out of her job because of some councillors. There was a trend in the behaviour towards clerks.

AM said that Paul and Joe feel that a Clerk is just a minute taker, and anyone can do it. This was patently untrue, and the Council are under a legal obligation to have a professional Clerk in post. If there was not a safe working environment for a clerk then you would end up with a minute taker.

Paul, Joe and Ros feel they could perform this role. If you are wanting things to go a particular way, you would not want a clerk questioning you. AM said he would not feel personally

## STANDARDS HEARING STATEMENT 13 – CLLR ANDY MACPHERSON

comfortable at a meeting without a clerk but that is what Paul and Joe and his associates are suggesting. If are difficult with all the professional clerks out there, then nobody will want to clerk in the parish and then you are at a point where you either run without a clerk or disband.

MK asked what AM thought about disbanding. AM said he thought it would be a real shame but considering where they were at the moment there was not another option if people's behaviours did not change. AM felt that the Parish was totally in limbo. The personality clashes had gone well beyond any business that might take place.

AM went back to the complaint regarding the RAC meeting. He said that the reason Paul went with his camera to the RAC was because the Footpaths and Open Spaces meetings (which are predominantly supported by the new councillors) have been really productive and positive. By contrast the RAC meeting is historical - some of the things are supposed to cross over and he thought PC had the idea that if they could stop the RAC meetings going on, then he could show the community that the Footpaths and Open Spaces Group were the only ones doing anything.

Therefore, the meeting was forcibly shown to be incorrect. Yet the Footpaths Group had previously not been notified to the public, so it too had been procedurally incorrect. Nor have members of the Footpaths Group even shown respect to the clerk by saying that they are even going ahead with a meeting. AM confirmed that meetings of the Footpaths Group were not professionally minuted. Paul had done them previously and Tim had done some, but they had not been accepted because they were inaccurate as some of the things discussed were out of scope of the Group's terms of reference.

AM thought that the various subgroups were being used incorrectly. Rather than disbanding the Council it would be better first to disband the subgroups and just get everything back under the Parish Council. Without doing that there would be a continuing lack of focus. AM said that the Staffing Committee had gone horribly wrong and potentially exposed them as a Parish Council or the employees due to some of the decisions made. AM felt uncomfortable about the response to the last Clerk who resigned. They would not accept her letter of resignation because it was deemed inaccurate as she had said that she felt intimidated and PC had disagreed with its content.

It would be a very sad day of the Parish Council was disbanded.

MK asked if there was anyone else he should speak to. He had heard Martyn Ford's name mentioned. AM said he was the Council Leader and was also the County Council representative for the area. AM said that he thought he would give a balanced honest view. MK asked whether Martyn Ford attends Parish meetings. AM said he does sometimes. He had been a District and County Councillor for many years, he knew the history of Willington and would give MK a very balanced view. [MK subsequently contacted Martyn Ford but received no reply].

AM went on to say that Martyn would most likely discuss the Dragon pub as Joe used to live next door to the pub. Joe and Paul would (quite rightly) get annoyed with the pub because the pub does flout the planning laws and often applies for retrospective planning permission

## STANDARDS HEARING STATEMENT 13 – CLLR ANDY MACPHERSON

for things. However, the issue is the way Joe goes about challenging them, he is very confrontational. Martyn had tried to smooth things over but AM did not know why Joe was so obsessive about the Dragon.

MK asked AM if he thought Martyn had been at any of the meetings which had been discussed and AM said he was possibly at the one at which the filming took place which had upset Claire Carter. It was worth noting that PC took advice on the legality of filming from an activist, Matt Williams, who sometimes attended meetings.

AM went on to talk about resolving the issues in the Parish Council. He was worried that new people joining the Council would see the inappropriate behaviour of councillors and think that it was acceptable when it was not. If they did then the behaviour would just carry on. DALC have offered training and mediation but that would only work if everyone agrees to take part in it and listens.

AM said that recently they have re-started a Neighbourhood Development Plan. It had been going on for about six years but the Cullens had refused to engage with it because it is seen as being acceptance of change and planning. The Neighbourhood Development Plan feeds into the Local Plan. The Local Plan is a legal requirement and the Neighbourhood Plan is an opportunity for parishioners to influence that plan, but it has to be fully supported by the Parish Council. AM said that he saw this as a vehicle that could be used to bring the community together.

The Cullens are opposed to it and will not attend meetings or engage with the NDP in any way because they see it as acceptance of planning, and they do not want any planning to go ahead at all. John Phillips had taken a lead in the plan previously.

AM suggested to MK that they should be told that their behaviour is unacceptable and suggest that training and mediation is compulsory if that is allowed, from DALC or NALC. All standards and procedures should be rewritten by someone other than Paul Cullen or a clerk who is always on the back foot. Someone should get all the conduct stuff and administration in place so that it is democratic and correct and then teach people to be nice to each other. AM said that he really would not like to see the Parish Council disbanded but it was coming close to being the only option.

In summary, AM said there is a lot of good work being done by different people. He said “We have just got to hear other people’s arguments and debates and work together”.

End of meeting 9.45am