

A REVIEW OF THE COMPLAINTS RECEIVED UNDER THE MEMBERS' CODE OF CONDUCT TO 17 JANUARY 2017

To: Constitution and Ethics Committee

Meeting Date: 26 January 2017

From: LGSS Director of Law, Property & Governance and Monitoring Officer

Electoral division(s): All

Purpose: To brief the Constitution and Ethics Committee on the number and nature of the complaints received about Members under the Code of Conduct from 16 November 2016 to 17 January 2017

Recommendation: It is recommended that the Constitution and Ethics Committee note the contents of this report.

<i>Officer contact:</i>	
Name:	Maria Damigos
Post:	Corporate Lawyer
Email:	Maria.damigos@centralbedfordshire.gov.uk
Tel:	0300 300 4733

1. INTRODUCTION

- 1.1. The Localism Act ("the Act") places a statutory duty on the County Council to promote and maintain high standards of conduct amongst its Members and co-opted Members. This includes the obligation on the County Council to have in place a Code of Conduct setting out the standard of conduct expected of Members when acting in their capacity as County Councillors.
- 1.2. The requirements of the Act are supported by Article 9 of the Constitution which also requires the Constitution & Ethics Committee to monitor the operation of the Code of Conduct and the complaints received under it.
- 1.3. This report serves to provide the Constitution & Ethics Committee with an overview of the complaints received under the Code of Conduct from 16 November 2016 to 17 January 2017.

2. OVERVIEW OF COMPLAINTS

- 2.1. From 16 November 2016 to 17 January 2017 no new complaints against a Member have been received by the Monitoring Officer. These are still awaiting an initial assessment. Of the seven complaints open as at 15 November 2016 four have been concluded on the basis of no breach, one is awaiting the Independent Person's comments on the initial assessment and two continue to be investigated.
- 2.2. Details of complaints which have been concluded since 16 November 2016 are set out in Appendix 1.
- 2.3. The publication of details of complaints only takes place after conclusion of the complaint to reduce speculation on limited information, ensure there is no compromise of any assessment or investigation and that the Data Protection Act 1998 is complied with.

3. UPDATE ON PREVIOUS COMPLAINTS

- 3.1. At the meeting of 24 November details of the two complaints concluded between 16 September 2016 and 15 November 2016 were provided.
- 3.2. In both cases the Independent Person had concluded that there was a potential breach of the Code of Conduct and recommended a local resolution in the form of an explanation as to why the Councillor had attended the Walsoken Parish Council meeting and an apology for any offence caused to the complainant in each case. A copy of the Decision Notices for the complaints is attached as Appendix 2.
- 3.3. Despite a letter being sent to the Councillor no explanation or apology has been given and on 13 December 2016 the Councillor has verbally confirmed to the corporate lawyer that he will not apologise.
- 3.4. The Independent Person, the complainants and the Councillor have been informed that the matter is being referred back to this Committee.

3.5. If considered necessary to take further action it is open to this Committee to move a motion for the issue of a public censure for the failure to comply with the recommendations or to refer the matter for an investigation and hearing.

Source Documents	Location
Decision Notice – Complaint against Councillor McGuire	Held by LGSS Law Limited Ref L-22674
Decision Notice – Complaint against Councillor Butcher	Held by LGSS Law Limited Ref L-22674
Decision Notice – Complaint against Councillor Clark	Held by LGSS Law Limited Ref L-22674
Decision Notice – Complaint against Councillor Clark	Held by LGSS Law Limited Ref L-23035

Report to the Constitution and Ethics Committee**Overview of complaints made against Members****16 November 2016 to 17 January 2017**

Complaint against:	Cllr McGuire
Date of Complaint:	27 May 2016
Complainant:	Cllr Lay supported by Cllr Clapp
Allegation:	Failing to declare an interest in that Cllr McGuire was a member of the executive committee of FACT, participating in an item at the Economy and Environment Committee on 24 May 2016 and a conflict of interest.
Current Status:	Concluded
Outcome:	The Independent Person concluded that as Cllr McGuire had been appointed to the FACT board by the Economy and Environment Committee as a representative for the Council there was no Disclosable Pecuniary Interest and no Non Statutory Disclosable Interest to declare and the of Code of Conduct had not been breached.
Date of final decision:	17 January 2017

Complaint against:	Cllr Butcher
Date of Complaint:	27 May 2016
Complainant:	Cllr Lay supported by Cllr Clapp
Allegation:	A general conflict of interest existed as Cllr Butcher was the Chairman of the Highways and Community Infrastructure Committee and was also a member of the board of the Fenland Association of Community Transport.
Current Status:	Concluded
Outcome:	Cllr Butcher is not the Chairman of the Highways and Community Infrastructure Committee. The Independent Person concluded that there was no Disclosable Pecuniary Interest and there was no evidence to show that a Non Statutory Disclosable Interest had arisen which had not been declared. There was accordingly no breach of the Code of Conduct. The Independent Person did however suggest that Cllr Butcher was reminded of the procedures for interests for future reference.

Date of final decision:	17 January 2017
--------------------------------	-----------------

Complaint against:	Cllr Clark
Date of Complaint:	27 May 2016
Complainant:	Cllr Lay supported by Cllr Clapp
Allegation:	Failing to declare an interest relating to a contract with the Fenland Association of Community Transport (FACT) at the meeting of the Economy and Environment Committee of 24 May 2016. Having a business relationship with FACT
Current Status:	Concluded
Outcome:	The Independent Person concluded that there was no Disclosable Pecuniary Interest in relation to any contract with FACT but there may be a Non Statutory Disclosable Interest. A Non Statutory Disclosable Interest was declared in accordance with the requirements of the Code of Conduct. The interest was not considered to be a prejudicial interest. Accordingly there was no breach of the Code of Conduct. The Independent Person did nevertheless recommend Cllr Clark is given advice regarding interests and he is advised to fully consider his position when dealing with matters relating to FACT in the future.
Date of final decision:	17 January 2017

Complaint against:	Cllr Clark
Date of Complaint:	16 October 2016
Complainant:	Cllr Lay
Allegation:	Failing to declare an interest relating to his business relationship with the Fenland Association of Community Transport (FACT) and participation at the meeting of the Economy and Environment Committee on 13 October 2016 in an item of business.
Current Status:	Concluded
Outcome:	The Independent Person concluded that Cllr Clark's Register of Interests contained the relevant declarations required by the Code of Conduct. There was no evidence to indicate the Non Statutory Disclosable Interest was a prejudicial one and

	therefore there was no bar to participation. There was accordingly no breach of the Code of Conduct. The Independent Person did nevertheless recommend Cllr Clark is given advice regarding interests and is advised to fully consider his position when dealing with matters relating to FACT
Date of final decision:	17 January 2017

INITIAL ASSESSMENT OF COMPLAINT

DECISION NOTICE

SUBJECT MEMBER: CLLR PAUL CLAPP

Background

1. A complaint was sent on 11 August 2016 by Mr Andy Houghton ("the Complainant") alleging that at a meeting of Walsoken Parish Council on 12 July 2016 Cllr Paul Clapp ("the Subject Member") was rude and insulting towards the Parish Council thereby failing to show respect and courtesy and bringing Cambridgeshire County Council into disrepute.

Summary of the Allegations

2. The Parish Council meeting on 12 July 2016 included discussion about a controversial planning application which the Parish Council had already objected to. During that discussion the Complainant alleged that: *"Cllr Clapp then took it upon himself to shout, loudly and aggressively, "you're not doing your jobs!" whilst stabbing his finger in the general direction of the Parish Council. He continued this inflammatory tone for a short period"*.
3. The Complainant also alleges that the Subject Member's contribution was a *"bullying and bullish tirade"*.
4. The Complainant further alleges that the Subject Member stated that he was a Cambridgeshire County Councillor and was upset that he had not been consulted about the planning issue. As Walsoken comes under Kings Lynn and West Norfolk Borough Council neither Cambridgeshire County Council nor the Subject Member would have any jurisdiction and would not have been consulted or even notified of the planning application.

Evidence Considered

5. The following documents were considered for the purposes of this complaint:-
 - a) Email complaint dated 11 August 2016 Complainant to Monitoring Officer;
 - b) Comments of Subject Member in response;
 - c) Parish Council minutes

Jurisdiction

6. For a complaint to be considered in connection with the Member's Code of Conduct, the following test must be satisfied:

- a) the complaint was made against a person who, at the time the alleged action took place, was a member of Cambridgeshire County Council; and
 - b) the Subject Member had signed up to the Members' Code of Conduct in force at the time the alleged action took place; and
 - c) the Subject Member was conducting the business of their authority or acting, claiming to act or giving the impression of acting as a representative of the authority.
7. The Independent Person has concluded all three limbs of this test are satisfied in this matter. Whilst the Subject Member is not the Ward Councillor for Walsoken Parish, he attended the meeting in his official capacity after being asked to do so by residents of his Ward.

Initial Assessment Decision

8. The Independent Person has considered whether the actions of the Subject Member described in paragraphs 2 to 4 above constitute a breach of the following provisions of the Members' Code of Conduct:
- a) Treating others with respect (paragraph 2.1); and
 - b) Bringing your office or authority into disrepute (paragraph 2.2(e)).
9. The Independent Person has concluded that, if proved, the actions complained of could amount to a breach of the Councillors Code of Conduct as the Subject Member was attending a meeting in another local authority area and should have been more circumspect in his comments.

Further Action

10. The Independent Person has however also concluded that any potential breach is of a relatively low level and that the matter could be appropriately dealt with by way of local resolution.
11. The Independent Person accordingly recommends that the Subject Member provides an explanation of his viewpoint/actions together with an apology for any offence which may have been caused to the Complainants.

Approved by: Gill Holmes (Independent Person)
Quentin Baker (Monitoring Officer)

Dated: 29 September 2016

INITIAL ASSESSMENT OF COMPLAINT

DECISION NOTICE

SUBJECT MEMBER: CLLR PAUL CLAPP

Background

1. A complaint was received on 21 August 2016 from Mrs Jennifer Snow ("the Complainant") alleging that at a meeting of Walsoken Parish Council on 12 July 2016 Cllr Paul Clapp ("the Subject Member") was rude and insulting towards the Parish Council thereby failing to show respect and courtesy and bringing Cambridgeshire County Council into disrepute.

Summary of the Allegations

2. Public participation during the Parish Council meeting on 12 July 2016 included discussion about a controversial planning application which the Parish Council had already objected to. During that discussion the Complainant alleged that the Subject Member stood up and *"shouted, that he was "A County Councillor and that no one had informed him about this". He continued to make comments inferring that we as a Parish Council should have consulted him."*
3. As Walsoken comes under Kings Lynn and West Norfolk Borough Council neither Cambridgeshire County Council nor the Subject Member would have any jurisdiction and would not have been consulted or even notified of the planning application.
4. The Complainant further alleges that the Subject Member was inciting the rest of the public by his behaviour.

Evidence Considered

5. The following documents were considered for the purposes of this complaint:-
 - d) Email complaint dated 11 August 2016 Complainant to Monitoring Officer;
 - e) Comments of Subject Member in response;
 - f) Parish Council minutes

Jurisdiction

6. For a complaint to be considered in connection with the Member's Code of Conduct, the following test must be satisfied:
 - a) the complaint was made against a person who, at the time the alleged action took place, was a member of Cambridgeshire County Council; and

- b) the Subject Member had signed up to the Members' Code of Conduct in force at the time the alleged action took place; and
 - c) the Subject Member was conducting the business of their authority or acting, claiming to act or giving the impression of acting as a representative of the authority.
7. The Independent Person has concluded all three limbs of this test are satisfied in this matter. Whilst the Subject Member is not the Ward Councillor for Walsoken Parish, he attended the meeting in his official capacity after being asked to do so by residents of his Ward.

Initial Assessment Decision

8. The Independent Person has considered whether the actions of the Subject Member described in paragraphs 2 and 4 above constitute a breach of the following provisions of the Members' Code of Conduct:
- a) Treating others with respect (paragraph 2.1); and
 - b) Bringing your office or authority into disrepute (paragraph 2.2(e)).
9. The Independent Person has concluded that, if proved, the actions complained of could amount to a breach of the Councillors Code of Conduct as the Subject Member was attending a meeting in another local authority area and should have been more circumspect in his comments.

Further Action

10. The Independent Person has however also concluded that any potential breach is of a relatively low level and that the matter could be appropriately dealt with by way of local resolution.
11. The Independent Person accordingly recommends that the Subject Member provides an explanation of his viewpoint/actions together with an apology for any offence which may have been caused to the Complainants.

Approved by: Gill Holmes (Independent Person)
Quentin Baker (Monitoring Officer)

Dated: 29 September 2016