

Supplementary Agenda



Rural Capital of Food

Meeting name	Meeting of the Governance Committee
Date	Tuesday, 18 September 2018
Start time	6.30 pm
Venue	Parkside, Station Approach, Burton Street, Melton Mowbray LE13 1GH
Other information	This meeting is open to the public

Meeting enquiries	Catherine Richards
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No.	Item	Page No.
9.	<p>CODE OF CONDUCT UPDATE</p> <p>The Monitoring Officer to submit a report to update the Committee on the latest position with regard to standards matters including the Code of Conduct, the Registration of Disclosable Pecuniary Interests and Other Interests and any complaints against Councillors dealt with under the Council's process.</p> <p>The relevant Governance Sub Committee 1 papers are available here</p>	1 - 10

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GOVERNANCE COMMITTEE

18 SEPTEMBER 2018

REPORT OF MONITORING OFFICER

CODE OF CONDUCT – UPDATE

1.0 PURPOSE OF REPORT

- 1.1 To update the Committee on the latest position with regard to standards matters including the Code of Conduct, the Registration of Disclosable Pecuniary Interests and Other Interests and any complaints against Councillors dealt with under the Council's process.

2.0 RECOMMENDATIONS

- 2.1 **The update on the position of standards matters including Parishes' Registration of Disclosable Pecuniary Interests and Other Interests and complaints against Councillors dealt with under the provisions of the Localism Act be noted.**
- 2.2 **To note that in respect of Member Complaint Reference GOV 53, in accordance with the Member Complaints Process and the Investigating Officer's finding of no breach, the case be closed.**

3.0 KEY ISSUES

3.1 Registration of Disclosable Pecuniary Interests and Other Interests

Registration of Disclosable Pecuniary Interests (DPI) and other interests appears to have become the norm for Borough and Parish Councillors to complete when there is any change. Updates from both Borough and Parish Councillors are generally received when there is change to the submitted form such as change of address or when new Councillors are appointed and the Council's website is updated with such amendments.

3.2 Complaints

There are two complaints in progress and two that have been closed since the last meeting. At the time of writing this report, two are under consideration by the Monitoring Officer and are at the informal resolution stage. Another complaint was received and progressed to closure by the Monitoring Officer.

The fourth complaint had been referred for investigation and the Investigating Officer's report (summarised at Appendix A) had concluded that there was no case to answer. Therefore in accordance with the Member Complaints Process at paragraph 13 set out below, the Committee is requested to note that it was the Monitoring Officer's intention to close the complaint.

'13 If during or at the conclusion of the investigation it becomes obvious that there is no case to answer the Monitoring Officer will have discretion to

close the complaint. This will be in consultation with the Independent Person and Chair or Vice Chair of Governance Committee.'

3.3 Independent Persons and Parish Representatives

One of the Council's Independent Persons, Adam Lowe, resigned his position as an Independent Person with effect from 17 August 2018 for personal reasons. Therefore the Council currently has one Independent Person to consult on Member complaints. The Monitoring Officer intends to review this arrangement in light of the recent difficulties in recruiting to this role.

4.0 **POLICY AND CORPORATE IMPLICATIONS**

4.1 Strong Corporate Governance is important in order to ensure high standards of conduct are maintained.

5.0 **FINANCIAL AND OTHER RESOURCE IMPLICATIONS**

5.1 Any financial implications are able to be met from existing resources. However following the Borough and Parish elections the registering of Members' interests and publishing these to the website will have a significant impact on the Council's democratic services resources.

6.0 **LEGAL IMPLICATIONS/POWERS**

6.1 Of particular note in the Localism Act is the change making the non-registration of a disclosable pecuniary interest within 28 days a criminal offence.

7.0 **COMMUNITY SAFETY**

7.1 There are no specific community safety implications in this report.

8.0 **EQUALITIES**

8.1 An Equalities Screening Assessment has been completed and outlines the Council's responsibilities with regard to matters within the report under the Localism Act.

9.0 **RISKS**

9.1 The risks associated with the report are considered to relate to managing the requirements of the Localism Act and the implications of this not being followed by Councillors impacting on the Council's decision-making process and reputation.

L I K E L I H O O D	A	Very High				
	B	High				
	C	Significant				
	D	Low		1		
	E	Very Low				
	F	Almost Impossible				
				Negligible 1	Marginal 2	Critical 3
			IMPACT			

Risk No	Risk Description
1	Decisions of the Sub Committees challenged due to processes not followed in line with legislation and the Council's agreed process.

10.0 CLIMATE CHANGE

10.1 Publishing the Registration of Disclosable Pecuniary Interest forms and information on the Councillor Complaints process to the website encourages paper free access to information and helps to meet the Council's green targets.

11.0 CONSULTATION

11.1 There is consultation with the Independent Persons on Member complaints as well as consultation with the Parish Representatives on Parish Councillor complaints.

12.0 WARDS AFFECTED

12.1 All indirectly.

Contact Officer: Adele Wylie, Monitoring Officer
Date: September 2018
Appendices: Appendix A – Summary of GOV 53 Investigating Officer's report
Background Papers: Localism Act 2011
Minutes of Council Meeting held on 18 July 2012
Minutes of Council Meeting held on 17 July 2013
Minutes of Council Meeting held on 11 December 2013
Previous Minutes of Standards Committee
Previous Minutes of Governance Committee
Reference: Governance/2018-19/180918/Code of Conduct – Update on Progress

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Member Conduct Complaint GOV 53 Councillor John Wyatt

Summary of Independent Investigation Report

1.0 Introduction

- 1.1. On 14 May 2018 Melton Borough Council's (MBC) Governance Sub-Committee 1 considered a complaint from Clawson in Action against Cllr John Wyatt in respect of the latter's conduct at the Planning Committee Meetings held on 9 November 2017 and 4 December 2017. The Sub Committee papers are available at this link :-
<https://democracy.melton.gov.uk/ieListDocuments.aspx?CId=154&MId=849&Ver=4>
- 1.2. The Sub-Committee resolved
 - (1) no action be taken in relation to Principle 1 - Selflessness;
 - (2) the complaint be referred to the Monitoring Officer for investigation, in relation to the following principles:
 - Principle 4 – Accountability
 - Principles 5 and 6 – Openness and Honesty
 - General Obligations.
- 1.3 On 22 May 2018 Guy Goodman was appointed by the Monitoring Officer of MBC to investigate the complaint (Guy Goodman hereafter called the Investigating Officer (IO)).
- 1.4 The Investigating Officer (IO) invited Clawson in Action to submit further evidence which they kindly did on 31 May 2015.
- 1.5 On 5 July 2018 the IO interviewed Cllr Wyatt by telephone.
- 1.6 The IO has considered the papers considered by the Sub-Committee, the additional evidence from Clawson in Action and the response of Cllr Wyatt in interview in compiling this report.
- 1.7 The purpose of the investigation is to determine whether Cllr Wyatt has a case to answer ie. whether there is sufficient evidence to establish that there has been a potential breach of the MBC's Code of Conduct (see paragraphs 13 and 14 and the Flow Chart of MBC's Member Code of Conduct Complaints Process - Explanatory Notes included with the Sub Committee papers at the link above).
- 1.8 On 5 August 2018, a draft of the report was sent to the Clawson in Action and Cllr Wyatt. The IO received representations from Clawson in Action on 10 August 2018. The IO has taken their comments into account in finalising this report. Cllr Wyatt responded on 15 August 2018 with no comments.

2.0 **MBC's Code of Conduct**

2.1 MBC's Code of Conduct as approved at Full Council in February 2017 is in 3 parts :-

1. The Principles (the Committee on Standards in Public Life's 7 principles)
2. General Provisions (a list of unacceptable behaviours)
3. Interests

2.2 This complaint engages the 3 Principles of Accountability, Openness and Honesty. It also engages the following General Obligations :-

- 3(1) - treating others with respect
- 3(2)(b) – bullying
- 3(2)(c) – intimidation
- 3(2)(d) - compromising the impartiality of those who work for MBC
- 7(1) - have regard to any relevant advice provided to you by officers
- 7(2) - give reasons for decisions

3.0 **Legal principles**

3.1 For each area of the complaint as listed below, the report applies legal principles as appropriate including legislation, case law and advice from the now abolished Standards Board for England (SBE) :-

- Respect
- Bullying
- Intimidation
- Compromising impartiality
- Having regard to any advice
- Giving reasons for decisions

4.0 **Complaint and response**

4.1 The report includes the full complaint which is set out within the Sub Committee papers at the link at paragraph 1.1 above as well as the response of the Councillor.

5.0 **Discussion and findings**

5.1 At all material times Cllr Wyatt was undertaking his official duties as an elected councillor and therefore his actions fall within MBC's Code.

5.2 The IO considers each potential breach of MBC's Code set out in the complaint in turn.

Principle 4 – Accountability

5.3 This principle states “You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office”.

In the context of an elected councillor this means to the public via the ballot box. It can also mean accountable in the legal sense but in the case of a planning decision any accountability is as part of a decision-making collective in which individuals express their views and decision is made by majority vote. I am not aware that the decision of the Planning Committee has been the subject of judicial challenge and therefore it remains a lawful one. Finally, a councillor is responsible for maintaining high ethical standards by compliance with their code of conduct and this includes co-operating with an investigation which Cllr Wyatt has done.

5.4 In this context there is no evidence of Cllr Wyatt lacking accountability.

Principles 5 and 6 - Openness and Honesty

5.5 The complainants say that they do not believe that the reasons given by Cllr Wyatt were considered planning reasons for permitting the North Canal Farm application.

5.6 It is not uncommon for Officers to assist Members in formulating their reasons in a planning decision. In this case, prior to the vote being taken, Mr Worley (Head of Regulatory Services) did just that as the transcript of the meeting indicates.

5.7 Mr Worley neatly summarised the position in his letter of 26 January 2018 to Dr Cooper.

5.8 As Mr Worley indicates the decision on the merits is that of the Members. They are not bound to follow the recommendation of the Planning Officer.

5.9 Whether the reasons for the decision in this case meets the legal test set out in s.70 of the Town and Country Planning Act 1990 is outside the scope of this investigation and is a matter for the courts (or possibly the Local Government and Social Care Ombudsman).

5.10 Principles 5 and 6 state "You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions".

5.11 Cllr Wyatt articulated his reasons for his view on the North Canal Farm application as the transcript of the meeting demonstrates and was assisted by Mr Worley in summarising these into reasons for permitting the application. This is a perfectly acceptable practice.

5.12 There is no evidence of a breach of Principles 5 and 6.

Respect

5.13 Clawson in Action were entitled to express their views under Article 10 via their petition and covering letter and Cllr Wyatt and other Members were entitled to respond. This is an essential part of our democratic arrangements.

- 5.14 Cllr Wyatt as an elected local politician has “enhanced protection” under Article 10 and is free to speak his mind within the law and constraints set out in *Heesom*.
- 5.15 Cllr Wyatt says that his comments were neither personal nor insulting. The IO agrees. There were no gratuitous personal comments and Cllr Wyatt’s words as set out in the transcript from the meeting on 9 November 2017 clearly fall within the “enhanced protection” afforded to him.
- 5.16 There is no evidence of a breach of MBC’s Code.

Bullying

- 5.17 There is no evidence that the comments made by Cllr Wyatt at the meeting 9 November 2017 constituted the types of behaviours which fall within the SBE’s definition of bullying.
- 5.18 Cllr Wyatt was engaged in normal political discourse exercising his Article 10 rights with no gratuitous personal comments and there is no evidence of a breach of MBC’s Code.

Intimidation

- 5.19 This provision only applies to behaviour by the Member in respect of the complaints procedure.
- 5.20 There is no evidence of Cllr Wyatt behaving inappropriately in response to the complaint made by Clawson in Action by means of intimidation.
- 5.21 There is no evidence of a breach of MBC’s Code.

Compromising the impartiality of those who work for MBC

- 5.22 The IO sought clarification from the complainants about the factual basis for this element of the complaint. The clarification he received provided no additional evidence upon which this element could be founded.
- 5.23 There is no evidence that Cllr Wyatt attempted to put pressure on Officers to carry out their duties in a way that is biased or partisan.
- 5.24 There is no evidence of a breach of the MBC’s Code.

Have regard to any relevant advice provided by Officers

- 5.25 As the SBE guidance indicates “As a general principle, members should take account of the advice of officers. They do not need to follow it if they believe that they have good reason not to do so.”
- 5.26 There is no evidence to suggest that Cllr Wyatt and indeed the other Members of the Planning Committee had not read the papers, that they were not aware of the Officer’s recommendation and that they did not have regard to this.

5.27 As was his right Cllr Wyatt took a different view to the Planning Officer on the individual merits of the application.

5.28 There is no evidence of a breach of MBC's Code.

Give reasons for decisions

5.29 The IO dealt with this issue in paragraphs 5.3 – 5.10 above.

5.30 There is no evidence of a breach of MBC's Code.

6.0 Conclusion

6.1 Having carefully considered the complaint the IO has come to the view that there is no evidence that Cllr Wyatt has breached MBC's Code of Conduct.

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