

Supplementary Agenda



Meeting name	Meeting of the Audit and Standards Committee
Date	Tuesday, 28 July 2020
Start time	6.30 pm
Venue	This meeting will be held by remote access - details belowGH
Other information	This meeting is open to the public

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No.	Item	Page No.
10.	<p>ALLEGATIONS OF BREACH OF THE CODE OF CONDUCT - REPORT OF INDEPENDENT INVESTIGATOR The Monitoring Officer to submit a report.</p> <p>To follow</p>	1 - 16

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Allegations of a Breach of the Code of Conduct by Councillor Lumley - Report of Independent Investigator

Corporate Priority:	All
Relevant Ward Member(s):	N/A
Date of consultation with Ward Member(s):	N/A
Exempt Information:	No

1 Summary

- 1.1 To note the report of the independent Investigator in relation to complaints received by the Monitoring Officer against Councillor Simon Lumley.

2 Recommendation(s)

That Committee:

- 2.1 **Notes the report, findings and recommendations of the independent Investigator (Appendix A)**

3 Reason for Recommendations

- 3.1 The Committee are asked to consider and note the findings of the independent Investigator and the recommendation that no further action is taken in respect of the complaints received.

4 Background

- 4.1 Three complaints were received by the Monitoring Officer in relation to comments posted by Councillor Lumley on the Twitter social media platform.
- 4.2 On 18 June 2020, following a fact finding exercise and consultation with the Chair and Vice Chair of the Audit and Standards Committee and the Council's Independent Person, the Monitoring Officer decided to refer the complaints for independent investigation.
- 4.3 The Complainants allege that on the Twitter social media platform Cllr Lumley published messages that were racist or had racist connotations. The material facts of the social media comments are contained at Section 4 of the attached report.

5 Main Considerations

- 5.1 An external Investigator was appointed by the Monitoring Officer to ensure an entirely independent investigation of the complaints. The Investigator has 39 years Local Government experience including acting as a legal advisor, Standards and Deputy Monitoring Officer and ACAS certified workplace mediator.
- 5.2 The independent Investigator was provided with terms of reference for the investigation (Appendix B) and asked to determine:
 - 5.2.1 the facts in relation to the complaints;
 - 5.2.2 whether the subject members actions fall within the ambit of the Code of Conduct;
 - 5.2.3 whether the subject members conduct amounts to a breach of the Code of Conduct.
- 5.3 The outcomes of the investigation are contained in the Report of the Investigating Officer (Appendix A).
- 5.4 The Investigator concludes that there has been no breach of the general conduct rules, nor the Code of Conduct. As such the recommendation is that no further action is taken in respect of the complaints.

6 Options Considered

- 6.1 The Audit and Standards Committee has a choice as to whether or not to accept the findings of the Independent Investigator and may comment on the outcome of the investigation.

7 Consultation

- 7.1 The Chair and Vice Chair of the Audit and Standards Committee and the Council's Independent Person have been consulted on this matter.
- 7.2 The Investigator has conducted interviews with the complainants and the subject member.
- 7.3 The Independent Person who is a member of the public appointed by the Council to assist in delivering high standards of conduct amongst Councillors will present his views to the Committee.

8 Next Steps – Implementation and Communication

- 8.1 If the Investigating Officers report is accepted then the complaint will be concluded

- 8.2 If the Investigating Officers report is not accepted then the Committee may decide to convene a Standards Sub Committee to determine whether they consider there to have been a potential breach of the Code of Conduct.
- 8.3 The Constitutional Review Working Group shall be determining ongoing training for all elected members. Recommended mandatory training shall be Equalities Training and Social Media Training for all elected members.

9 Financial Implications

- 9.1 The Investigation was conducted by an external Investigator and was included within the budget for member conduct.

Financial Implications reviewed by: Deputy S151 Officer

10 Legal and Governance Implications

- 10.1 The Council has a duty under Section 27 of the Localism Act to promote and maintain high standards of conduct by members.
- 10.2 The Council has adopted the [Melton Borough Council Members Code of Conduct](#). All members agree to adhere to this code.
- 10.3 The Council also has a process for Member Code of Conduct Complaints (Appendix C). An updated process to reflect the change in governance processes shall be considered by Audit and Standards Committee in the coming months.
- 10.4 Decision makers should make decisions based upon material evidence otherwise the reasons for the decision may be considered not be reasonable and subject to judicial review proceedings.

Legal Implications reviewed by: Monitoring Officer

11 Equality and Safeguarding Implications

- 11.1 An Equality Impact Assessment (EIA) has not been completed as these matters relate only to the individual councillor. We have not been notified of any protected characteristics that would have a bearing on the decision before the Committee.

12 Community Safety Implications

- 12.1 There are no community safety implications.

13 Environmental and Climate Change Implications

- 13.1 There are no environmental or climate change implications.

14 Risk & Mitigation

There are no risks for the Committee in noting the report of the Investigating Officer.

15 Background Papers

15.1 There are no background papers.

16 Appendices

16.1 Appendix A – Report of the Independent Investigator

16.2 Appendix B – Terms of Reference for Independent Investigation

16.3 Appendix C – MBC Member Code of Conduct Complaints Process

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Final Report: Code of Conduct Complaints against Councillor Simon Lumley

Introduction.

On 18th June 2020, Mrs Adele Wylie the Monitoring Officer of Melton Borough Council, appointed me to carry out an investigation into separate complaints made by Mr Jonathan Read and Ms Dill Westermann-Childs and another, who has asked not to be named in the public domain, (“the Complainants”) that Cllr Simon Lumley had failed to comply with the Members Code of Conduct (“the Code”).

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2. The Relevant Legislation and Protocols
3. The Investigation
4. Summary of the Material Facts
5. Application of the Code of Conduct
6. Reasoning
7. Finding
8. Recommendation

1. Executive Summary

1.1 Summary of the Complaints

The Complainants allege that on the Twitter social media platform Cllr Lumley published messages that were racist or had racist connotations. The Complaints are set out in full at Appendix 1 to this report.

1.2 Summary of Investigation Conclusion

Councillor Lumley did not breach the Members Code of Conduct.

2. The Relevant Legislation and Protocols

2.1 The Localism Act 2011 requires local authorities to adopt a Code of Conduct that is consistent with 7 Statutory Principles. The Code adopted by Melton Borough Council sets out the 7 Statutory Principles and sets out the rules of General Conduct by which Members agree to uphold the Statutory Principles.

2.2 I have identified 2 requirements of the rules of General conduct that are relevant to the complaints (“the Relevant Provisions”):

- “You must treat others with respect.”
- “You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute”.

2.3 The Code of Conduct requires that a Member must comply with the Code whenever he acts, or claims to act, or gives the impression of acting as a

representative of his authority and references to his official capacity are construed accordingly.

3. The Investigation

3.1 I have asked questions of and received written responses from:

- The Complainants.
- Cllr Simon Lumley.

3.2 I have received written information and documents from:

- Adele Wylie, Monitoring Officer.
- Natasha Taylor, Democratic Services Manager.

3.3 I have considered the following documents and evidence relevant to the scope of the investigation:

- The Complaints.
- Cllr Lumley's written responses to the Complaints and to my questions.
- Cllr Lumley's letter of explanation and apology to his fellow MBC councillors (Appendix 2 to this report)
- Additional explanations and information provided by the Complainants.
- The Melton Borough Council Members' Code of Conduct.

4. Summary of Material Facts

4.1 The Tweets.

- On 3rd June, in a tweet, Cllr Lumley published the slogan “#WhiteLivesMatter”.
- On 5th June Cllr Lumley re-posted a tweet from a third party stating, “Kneeling to surrender British and Western values”.
- On 8th June, in a tweet, Cllr Lumley stated that “I apologise for any offence I may have caused. However my tweets were taken out of context. To be clear ALL LIVES MATTER”.

5. Application of the Code of Conduct

In considering whether or not there had been a breach of the Code of Conduct I had first to be satisfied that in publishing the tweets complained of Cllr Lumley had been acting, or claiming to act, or giving the impression of acting as a representative of the Council.

In Cllr Lumley's written response to my question on this point he says that:

“I believe you are referring to my Twitter sub-account name as, ‘CllrLumleyMelton’. I could have chosen a completely different and random name. I have seen so many Twitter sub-account names that do not even relate to their official Twitter account name in bold, on tweets, and at the top of their profile account. The official name for my Twitter account is in bold as Simon Lumley.”

I have been mindful of the guidance given by the Local Government Association in its 2020 publication on the use of social media by Councillors:

“The code of conduct for members and relevant legislation continues to apply online and in social media. If you are referring online in any way to your role as a councillor, you are deemed to be acting in your “official capacity” and any conduct may fall within the code.”

On balance I am satisfied that, in referring to himself as “CllrLumleyMelton” on the tweets, Cllr Lumley has given the impression of acting in his official capacity and that the conduct complained of was subject to the Code of Conduct.

6. Reasoning

For a Member to express racist views or to publish racist materials when acting, or giving the impression of acting, in his official capacity would be a breach of the Relevant Provisions. I have considered whether the expressions used by Cllr Lumley are racist.

On a literal interpretation of the phrases White Lives Matter and All Lives Matter it would be perverse to find that either phrase was of itself racist in that both expressions, taken at face value, are literally true. It is self-evident that white lives do matter and that all lives do matter. Similarly, the words “Kneeling to surrender British and Western values” are not in and of themselves racist.

The Complainants point to the wider context (the slogans White Lives Matter and All Lives Matter are used by far-right groups with clear racist intent, the slogan Kneeling to Surrender British Values has, to some, insular, nationalist connotations) and say that Cllr Lumley would, or should, have understood this when publishing the tweets. Councillor Lumley has, tacitly, acknowledged a lack of understanding of the wider context of the phrases and his ignorance of their use by racist groups. In his letter of explanation (Appendix 2) he says: *“I had very recently heard that the #WhiteLivesMatter discussion point was used by some worldwide extreme right wing persons and organisations, which I was not aware of. I genuinely thought this was ‘another side to the story’ type topic discussion point, from some of the tweets associated with this”*.

In his written response to me in respect of his use of the phrase “Kneeling to surrender British and Western values” Cllr Lumley says: *“So, in this case, the ‘BlackLivesMatter’ movement, whilst I would think most people around the world understood their cause and reason for protest, it has recently been widely reported on the media that its UK organisation is, or has been hijacked, by a politically hard left wing movement with some of their concerning views and policies widely reported such as defunding/scrapping the Police and the Armed Forces”*. Though this may appear to some as a wilful misunderstanding of the motivations of the Black Lives Matter movement I do not see that it is a breach of the Code of Conduct to use these words or to hold this political view.

The complaints are well founded and it seems to me that it is in the public interest that they have been raised and considered. In publishing these tweets, whether

through ignorance or naivety or by deliberate intent, Cllr Lumley has caused offence, certainly to the Complainants and probably to other members of the public. The Complainants, and probably others, see a racist sub-text to the expressions used by Cllr Lumley. In publishing the phrases he has, in the view of the Complainants and others, shown a lack of understanding and damaged his reputation and that of his office and the Council.

Notwithstanding the foregoing it is not a breach of the Relevant Provisions to display a poor understanding of a situation nor is it a breach of the Relevant Provisions to hold or express a provocative or contrarian political view. Whilst it is clear that offence has been caused by Cllr Lumley's use of these slogans, to reason that the Relevant Provisions of the Code of Conduct should be applied to a subjective interpretation of his words and not to the words themselves would be to overreach.

7. Finding

I find that Councillor Simon Lumley has not failed to conduct himself in accordance with the General Conduct Rules and has not breached the Melton Borough Council Members' Code of Conduct.

8. Recommendation.

That no further action is taken in respect of the Complaints.

END OF REPORT.

Alan Turner

External Investigating Officer

13th July 2020

Appendix 1

Member Complaint Gov001

“Within the current national and international situation and raised awareness of racial inequality, being highlighted through such social media handles as Black Lives Matter, I am shocked and saddened to see the recent Tweets of Councillor Simon Lumley. He has displayed a shockingly poor understanding of the situation, its context and the lived injustice faced by Black people though his tweet on 3rd June, '#WhiteLivesMatter'. And it would appear his apology from 8th June, of which I had to search his Twitter account to find, displays again an insensitivity and lack of knowledge of the wider situation. (Screen-grabs are provided below) For a MBC councillor to publicly state a slogan associated with white supremacy, without seemingly any thought of listening to and learning from the lived reality of his Black residents, shows a callousness and, I am sad to say, an inherent racism that we as a community in Melton need to challenge and educate. It ultimately brings MBC into disrepute. You will note that his apology, which was within a reply to a Tweet (and so in effect hidden from easy view), does not at all say that he recognises that racism is at work within our society, that Black lives have been consistently undervalued. But rather he says that everyone is valued. It is true that everyone matters but at this time and in this place we need our leaders and people of influence to publicly state that the racism experienced by Black people is real and is harming them. An easy way to say this would have been to also state that Black lives matter. The style of response that Counsellor Lumley used hints at an underlying racial issue, something that is widely recognised as such. I want better from our councillors, I want better from Simon Lumley. Simply put we need our council here in Melton to be going above and beyond and providing the leadership to inspire and change the culture of racism that is actively at work within our borough. This is not something that is easy but the community here looks up to its leaders and we need them, especially Simon in this instance, to have greater empathy and understanding of the issues at hand.”

Member Complaint Gov002

“Mr Lumley tweeted on his twitter account "White Lives Matter" ...this as he should know is a response that groups such as the Klu Klux Klan and Britain First have used in response to the Black Lives Matter protests. His twitter account also retweets far right accounts that are not in line with the Conservative party which he represents. Complaints were made and a vague apology issued in a reply to one tweet saying it was taken out of context...there was no context. His twitter account is now private so only people he wants to see it can...as a publicly elected official this is a worrying move, given what he was tweeting before.”

Member Complaint Gov003

“Mr Lumley denies that he is racist, yet thought it OK to retweet this 'Kneeling to surrender British and Western values' tweet on 5th June. Kneeling to surrender British and western values”

Appendix 2

From: Simon Lumley

Sent: 12 June 2020 19:26

To: Cllrs All; Alicia Kearns; Rutland and Melton Conservatives; Edd de Coverly

Subject: Tweet - explanation

Dear all,

I hope you are all keeping well. I wish to give you all an explanation into my recent controversial social media Twitter account tweet I made.

Unfortunately, my tweet was taken out of context. The recent articles in the media misreported my explanation of this, allowing many people to believe, incorrectly, that the tweet was a personal, one-sided and face value political view.

On the day of me tweeting this comment, was due to the previous day of the #BlackLivesMatter discussion point trending worldwide. So, to counterbalance the debate, I tweeted this #WhiteLivesMatter discussion point, also trending worldwide, in order to come across as in fact #AllLivesMatter.

I had very recently heard that the #WhiteLivesMatter discussion point was used by some worldwide extreme right wing persons and organisations, which I was not aware of. I genuinely thought this was 'another side to the story' type topic discussion point, from some of the tweets associated with this. For example, from the newly recent debate of removing statues of historic figures and worldwide ethnic group-to-group crime figures.

It is as simple as that. I just to reiterate again that there is often two sides to a debate or argument, so is balanced. But in this case, I wish to be clear, #AllLivesMatter .

Despite this explanation, and having apologised unreservedly, I still thought it appropriate to resign from Melton Borough Council's Conservative Group, as a result of this tweet. I am now a sole Independent Councillor.

I also wish to apologise to you all for the recent intensity, upheaval and upset this case may have caused you.

Thank you. See you all soon. Take care.

Edd: Please pass this email on internally.

Best Regards

Simon.

Terms of Reference for the investigation in respect of Conduct Complaints made about Councillor Lumley of Melton Borough Council.

The investigator is instructed to:-

1. Provide to the Monitoring Officer an initial investigation plan showing persons to be interviewed, evidence to be obtained and actions to be taken
2. Conduct an investigation in accordance with the Council's arrangements and the investigation plan, such investigation to seek to determine:-
 - a) the facts in relation to the complaints;
 - b) whether the subject members actions fall within the ambit of the Code of Conduct;
 - c) whether the subject members conduct amounts to a breach of the code of conduct.
3. Obtain evidence in the investigation in the form as the investigator sees fit;
4. Provide an Investigation Report providing commentary on the following;
 - a) **The Scope and Focus of the Investigation** (Statement of complaint and outline of investigator recommendations as to whether the member was acting in member capacity and, if so, whether he breached the Code)
 - b) **Relevant Legislation and Protocols** (Relevant parts of the Localism Act 2011 and the Council's Code of Conduct for members)
 - c) **The Investigation** (An outline of the sources of evidence obtained and the conduct of the investigation)
 - d) **The Evidence** (Factual reasoning on key disputed areas and findings of fact)
 - e) **Have there been failures to comply with the Code of Conduct** (Investigator's suggestions as to whether the elected member failed to comply with the Code)
 - f) **Recommendations** (Investigator's suggestions as to recommendations)

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Melton Borough Council

Members Code of Conduct

Member Code of Conduct Complaints Process

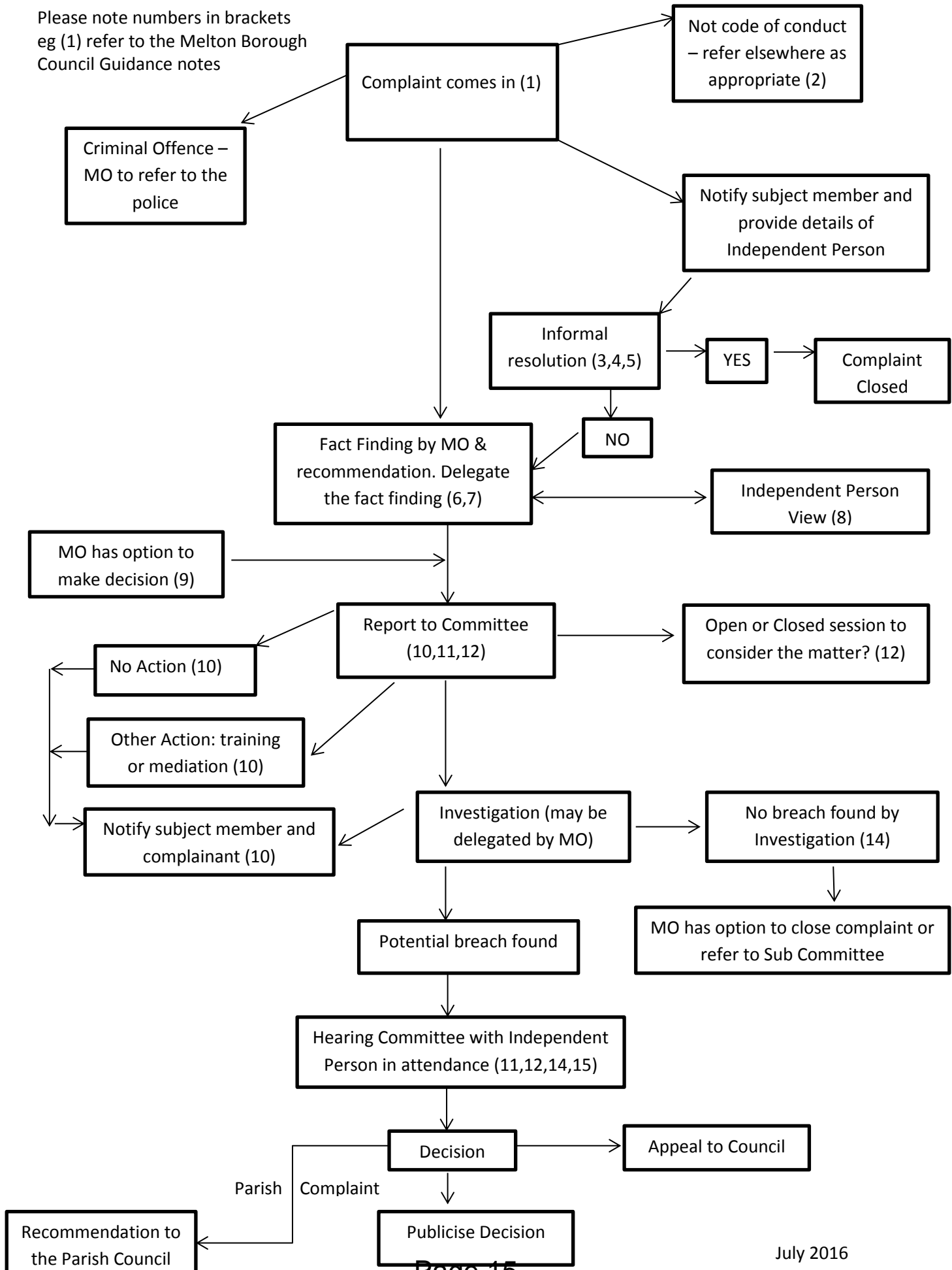
Explanatory Notes

- 1 These notes should be read in conjunction with the Complaints Flow chart (June 2016) and the Member Code of Conduct .These notes are in the order of the flow chart. (The number on the notes relate to the number on the Flow chart.)
- 2 The Monitoring Officer will decide if the complaint is a complaint under the Code of Conduct. If it is not, it will be referred elsewhere as appropriate.
- 3 Once a complaint is received the Monitoring Officer will try to facilitate an informal resolution where possible. The Monitoring Officer will not respond on behalf of the Member but will facilitate the process. If the Subject Member does not respond to the Monitoring Officers request to discuss the complaint (within 2 weeks) the Monitoring Officer may escalate the process without the Members involvement at this stage.
- 4 Informal resolution will be encouraged where practical and this may involve the Subject Member writing to the complainant with a view to try to resolve the complaint or another method to reach resolution. Any attempts at informal resolution may be used at the discretion of the Monitoring Officer to provide fact finding to the Sub Committee should it reach that stage.
- 5 The complaint papers at this stage are confidential and will not be disclosed publicly.
- 6 If the complainant is not satisfied with the attempt(s) at informal resolution then the Monitoring Officer will arrange fact finding.
- 7 Fact finding is not an investigation but gathering the facts immediately/ easily available to support or otherwise the complaint.
- 8 The view of the Independent Person will be sought and the Subject Member will be asked to provide their view and comment on the complaint.
- 9 The Monitoring Officer has discretion at this point not to refer to Sub Committee 1 but to make a decision to either take no action, other action or refer the complaint for investigation. The Monitoring Officer will consult the Independent Person and the Chair or Vice Chair as appropriate prior to making a decision at this stage.

- 10 This stage does not require the Monitoring Officer and/or Members to decide if a breach of the code of conduct has occurred.
- 11 If referred to the Sub Committee, Members who consider the complaint at this stage will not normally consider the complaint at Hearing Stage should it progress to that level.
- 12 Wherever possible the Meeting will be in public but the normal rules for exclusion of the public apply (1972 Act) as amended by Access to Information Act 1985.
- 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.
- 14 The procedure for setting the hearing will be in line with the Council's agreed procedure. Where a potential breach of the code of conduct is found following investigation the procedure at hearing stage will apply. Where no breach is found the Monitoring Officer has discretion to close the complaint in consultation with the Independent Person and Chair or Vice Chair of Governance Committee or refer to Sub Committee 2. If no breach is found by the investigation normal Sub Committee procedures will apply not the Hearing Procedure.
- 15 The Sub Committee hearing the complaint at Hearing Stage will not normally be the same Members who considered it at the earlier stage. The Sub Committee will be quorate with three Members.

Melton Borough Council Member Complaints Process

Please note numbers in brackets eg (1) refer to the Melton Borough Council Guidance notes



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