



AUDIT & GOVERNANCE COMMITTEE

Monday, 28 June 2021

Subject	Report on Outcome of Investigation of a Complaint
Report by	Christopher Bing Interim Monitoring Officer chris.bing@eastsoffolk.gov.uk

Is the report Open or Exempt?	EXEMPT
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Category of Exempt Information and reason why it is NOT in the public interest to disclose the exempt information.	<p>This report is to be considered during the CLOSED part of the Agenda because it contains exempt information as defined in Paragraphs 1 (information relating to an individual) and 2 (information which is likely to reveal the identity of an individual) of Schedule 12A to the Local Government Act 1972.</p> <p>It is considered that the public interest in not disclosing the exempt information outweighs the public interest in disclosing the information because (1) it contains information relating to individuals or which is likely to reveal the identity of an individual, (2) the information relates to a complaint and an investigation which the Council has thus far treated on a confidential basis, and (3) which if released, prior to the meeting, may affect the Committee's consideration of this information.</p>
Wards Affected:	None

Purpose and high-level overview

Purpose of Report:

The purpose of this report is for Audit and Governance Committee to receive and consider an Investigatory Report into a Code of Conduct complaint against Councillor Taylor of Lowestoft Town Council, and to determine the matter. The consideration by the Committee takes place on the written material only and is not in the form of a hearing. Therefore, neither the complainant nor Councillor Taylor have a right to address the Committee.

Options:

In arriving at its decision on this matter the Committee is recommended to consider:

- i. whether the way the complaints have been handled and investigated has been fair and thorough;
- ii. whether the investigation findings of fact and the breach of the Code are agreed; and
- iii. if the breach of the Suffolk Local Code of Conduct identified in the investigation report is considered proved, after a fair and thorough investigation, whether it is appropriate to recommend to Lowestoft Town Council to impose any sanction on Councillor Taylor

Recommendation/s:

That the Committee, having considered this report and the Investigatory Report decides what action, if any, it wishes to take in response, to determine the matter.

Corporate Impact Assessment

Governance:

Under Section 27 of the Localism Act 2011 (the Act), East Suffolk Council must promote and maintain high standards of conduct including the handling of any allegations that a district, town or parish councillor has breached the adopted Suffolk Local Code of Conduct (the Suffolk Code).

Section 28(6) of the Act requires that authorities have arrangements in place under which allegations that a Member has failed to comply with the Code can be made. A copy of these arrangements can be found at Appendix B to this report.

The arrangements put in place for making decisions on allegations must include provision for the appointment of at least one “independent person”, whose views must be sought, and considered, before any decision is made to investigate an allegation of breach of the Code. East Suffolk Council’s current independent persons are Dr Peck and Mr Urey. Mr Urey is the Independent Person who has been consulted on this complaint.

Audit and Governance Committee’s terms of reference provide that, in relation to its “Standards Functions”, it “receives reports summarising the results of the allegations made and investigations conducted into possible breaches of the Members’ Code of

Conduct and to determine those cases referred to it by the Council's Monitoring Officer".

ESC policies and strategies that directly apply to the proposal:

Not applicable

Environmental:

Not applicable

Equalities and Diversity:

Not applicable

Financial:

Not applicable

Human Resources:

Not applicable

ICT:

Not applicable

Legal:

Not applicable

Risk:

Not applicable

External Consultees: Mr Urey, East Suffolk Council's Independent Person

Strategic Plan Priorities

Select the priorities of the Strategic Plan which are supported by this proposal: (Select only one primary and as many secondary as appropriate)		Primary priority	Secondary priorities
T01	Growing our Economy		
P01	Build the right environment for East Suffolk	<input type="checkbox"/>	<input type="checkbox"/>
P02	Attract and stimulate inward investment	<input type="checkbox"/>	<input type="checkbox"/>
P03	Maximise and grow the unique selling points of East Suffolk	<input type="checkbox"/>	<input type="checkbox"/>
P04	Business partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P05	Support and deliver infrastructure	<input type="checkbox"/>	<input type="checkbox"/>
T02	Enabling our Communities		
P06	Community Partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P07	Taking positive action on what matters most	<input type="checkbox"/>	<input type="checkbox"/>
P08	Maximising health, well-being and safety in our District	<input type="checkbox"/>	<input type="checkbox"/>
P09	Community Pride	<input type="checkbox"/>	<input type="checkbox"/>
T03	Maintaining Financial Sustainability		
P10	Organisational design and streamlining services	<input type="checkbox"/>	<input type="checkbox"/>
P11	Making best use of and investing in our assets	<input type="checkbox"/>	<input type="checkbox"/>
P12	Being commercially astute	<input type="checkbox"/>	<input type="checkbox"/>
P13	Optimising our financial investments and grant opportunities	<input type="checkbox"/>	<input type="checkbox"/>
P14	Review service delivery with partners	<input type="checkbox"/>	<input type="checkbox"/>
T04	Delivering Digital Transformation		
P15	Digital by default	<input type="checkbox"/>	<input type="checkbox"/>
P16	Lean and efficient streamlined services	<input type="checkbox"/>	<input type="checkbox"/>
P17	Effective use of data	<input type="checkbox"/>	<input type="checkbox"/>
P18	Skills and training	<input type="checkbox"/>	<input type="checkbox"/>
P19	District-wide digital infrastructure	<input type="checkbox"/>	<input type="checkbox"/>
T05	Caring for our Environment		
P20	Lead by example	<input type="checkbox"/>	<input type="checkbox"/>
P21	Minimise waste, reuse materials, increase recycling	<input type="checkbox"/>	<input type="checkbox"/>
P22	Renewable energy	<input type="checkbox"/>	<input type="checkbox"/>
P23	Protection, education and influence	<input type="checkbox"/>	<input type="checkbox"/>
XXX	Governance		
XXX	How ESC governs itself as an authority	<input checked="" type="checkbox"/>	<input type="checkbox"/>
How does this proposal support the priorities selected?			
Section 27 of the Localism Act 2011 provides that East Suffolk Council is under a statutory duty to promote and maintain high standards of conduct by Members and co-opted Members of the district, town and parish councils.			

Background and Justification for Recommendation

1	Background facts
1.1	On 5 June 2020, Ms Brooks submitted a Code of Conduct complaint against Councillor Taylor of Lowestoft Town Council. In summary, the allegation against Councillor Taylor was that she breached the Suffolk Code of Conduct (the Suffolk Code) in failing to declare a local non-pecuniary interest (LNPI) in the Excelsior Trust (ET), at the Lowestoft Town Council meeting on 26 May 2020, when she advocated for heritage organisations to be given priority when applying for grants under the emergency Covid 19 rules. Councillor Taylor had declared a LNPI in ET on her Register of Interests.
1.2	Paragraph 7.4 of the Suffolk Code states: "You must declare any DPIs or LNPis to a meeting where business is relevant to those interests, including those interests that are already registered with the Monitoring Officer or where registration is pending."
1.3	On 22 June 2020, Councillor Taylor provided the Monitoring Officer with her response to the complaint. Councillor Taylor refuted the allegation and denied breaching the Suffolk Code.
1.4	On 12 October 2020, the Monitoring Officer issued her initial assessment decision on the complaint to Ms Brooks and Councillor Taylor. The Monitoring Officer after consulting Mr Urey (the Council's Independent Person), determined that paragraph 7.4 of the Suffolk Code had been engaged by Councillor Taylor's conduct at the Lowestoft Town Council meeting on 26 May 2020, where she failed to declare a LNPI in the ET despite having declared it in her Register of Interests. The Monitoring Officer recommend that Councillor Taylor provide a written apology to Mrs Brooks for her failure to declare her LNPI in the ET at the meeting. The Monitoring Officer also recommend that Councillor Taylor review her Register of Interests to ensure it was accurate, and up-to-date, and sought appropriate guidance and/or training from the Town Clerk or the Suffolk Association of Local Councils (SALC) if she was at all uncertain as to what required to be declared or when it was required to be declared.
1.5	On 11 November 2020, Councillor Taylor advised the Monitoring Officer that she had reviewed her Register of Interests and believed it to be correct.
1.6	On 13 November 2020, Councillor Taylor advised the Monitoring Officer that she disagreed with her initial assessment decision and she would not be apologising to Ms Brooks. On 13 November 2020, the Monitoring Officer advised Councillor Taylor that she would consult with the Independent Person on Councillor Taylor's response to the initial assessment decision.
1.7	On 30 November 2020, the Monitoring Officer met with the Independent Person to discuss the matter.
1.8	On 1 December 2020, the Monitoring Officer advised Councillor Taylor she had, after consulting the Independent Person, decided to have the matter investigated.
1.9	On 29 January 2021, Mr Goolden, Solicitor Partner and a former local authority Monitoring Officer, and Mr Hayward, a former senior police officer who has held the positions of Divisional Commander, Detective Chief Superintendent and Head of Professional Standards, both now of Wilkin Chapman LLP Solicitors, were instructed to investigate. On 16 February 2021, Councillor Taylor was interviewed as part of the investigation.

1.10	On 21 April 2021, the final investigation report and schedule of evidence was produced (Appendix A). Prior to the issuing of the final report and schedule of evidence, a draft report was circulated by Wilkin Chapman to Ms Brooks and Councillor Taylor for comment. Ms Brooks provided comments on the draft report which are included at Section 6 of the final report. Councillor Taylor provided no comment on the draft report.
1.11	On 4 May 2021, the final investigation report was sent to Ms Brooks and Councillor Taylor.

2 Current position

2.1	<p>The conclusion of the final investigation report (Section 8) is:</p> <p>“Councillor Taylor has breached the code of conduct by failing to declare a Local Non-Pecuniary Interest at the Council meeting on 26 May 2020. However, we have established the declaration in her Register of Interests was incorrect as there is no membership of the Excelsior Trust. Had Councillor Taylor declared the interest she would still have been able to make the comments attributed to her on the matter. For those reasons we have concluded that there has been a technical breach of the Code of Conduct”.</p>
2.2	On 11 May 2021, the Independent Person was consulted on the outcome of the investigation. Mr Urey noted the outcome. It was Mr Urey’s view, in referring to Councillor Taylor’s reference to making her declarations with an “abundance of caution”, that it is reasonable for the public to expect Councillors to make their declarations with an “abundance of accuracy”. Mr Urey noted that Councillor Taylor’s Register of Interest still has her down as having a LNPI in the Excelsior Trust, when this investigation has found that not to be the case.
2.3	Mr Urey considered the findings of the investigation and agreed that there had been a breach of the Suffolk Code, which should be referred to the Audit and Governance Committee. Mr Urey considers that Councillor Taylor would benefit from further training on the Code of Conduct and that she should apologise to Ms Brooks as initially recommended by the Monitoring Officer in the initial assessment decision of 12 October 2020. Mr Urey noted that if Councillor Taylor had apologised when first asked to do so by the Monitoring Officer, the need for an investigation and the time and public funds spent on an investigation could have been avoided. Mr Urey also recommends that Councillor Taylor again reviews and updates her Register of Interest, to remove the Excelsior Trust as an LNPI, if, as the investigators have found, she does not have an LNPI in the Excelsior Trust to declare because it is important her Register of Interest is accurate.
2.4	On 16 June 2021, Ms Brooks and Councillor Taylor were advised that the complaint and the outcome of the investigation would be considered by East Suffolk Council’s Audit and Governance Committee on 28 June 2021. It was explained to all parties that the report would be published as an exempt report to be considered in the closed part of the meeting but that Councillors on Audit and Governance Committee may determine it to be in the public interest to disapply the exemption and consider the report in open session.

3 How to address current situation

3.1 Audit and Governance Committee needs to consider and determine whether Councillor Taylor has breached paragraphs 7.3 and/or 7.4 of the Suffolk Code:

7.3 You must register within 28 days of becoming a member of the Council (and notify your Council's Monitoring Officer of any changes within 28 days) any non statutory Local Non Pecuniary Interests (LNPIs) set out in Appendix A to this code but you may participate in any discussions or debates relating to or concerning any of your LNPI's after the date of registration.

7.4 You must declare any DPI's or LNPI's to a meeting where business is relevant to those interests, including those interests that are already registered with the Monitoring Officer or where registration is pending.

If a breach is found to have occurred, the Committee should consider and determine what sanction, if any, it should recommend to Lowestoft Town Council to impose on Councillor Taylor.

3.2 It is important to note that if East Suffolk Council's Audit and Governance Committee finds that the Suffolk Code has been breached by Councillor Taylor, it can only recommend to Lowestoft Council what action should be taken against the member.

3.3 It is a matter for Lowestoft Town Council whether they follow the recommendation of this Committee. However, after the decision of the High Court in Taylor v Honiton Town Council & Anor [2016], Town Councils cannot impose tougher (or more) sanctions on Town Councillors found by the District Council to have breached the Code than those recommended by the District Council. To do so would be unlawful.

3.4 It is not possible to disqualify or suspend a Member from office, who has breached the Code. Permissible sanctions to recommend to Lowestoft Town Council would include the following;-

- (a) a formal letter to the Member
- (b) offering advice to the Member
- (c) a motion of censure
- (d) naming the Member by way of a press release
- (e) requesting that they apologise
- (f) requesting that they undertake training on the Suffolk Local Code of Conduct

3.5 In arriving at its decision, the Committee is invited to consider:

- i. whether the way the complaints have been handled and investigated has been fair and thorough;
- ii. whether the investigation findings of fact and the breach of the Code are agreed; and

	iii. if appropriate, what sanction (if any) to recommend to Lowestoft Town Council to impose on Councillor Taylor
4	Reason/s for recommendation
4.1	To ensure that the Committee fulfils its terms of reference and determines the outcome of this complaint and the investigation which arose from it.

Appendices

Appendices:	
Appendix A	The Investigatory Report and Schedule of Evidence dated 20 April 2021
Appendix B	East Suffolk Council's arrangements for handling code of conduct complaints