



AUDIT & GOVERNANCE COMMITTEE

Thursday 7 March 2019

REPORT ON THE OUTCOME OF AN INVESTIGATION OF A COMPLAINT (B) (AG 02/19)

	<p>EXECUTIVE SUMMARY</p> <p>1. Between July and October 2018, the Monitoring Officer of Suffolk Coastal District Council received a number of complaints regarding the conduct of 5 members of Woodbridge Town Council. The Monitoring Officer in consultation with one of the Council's Independent Persons, pursuant to the arrangements (the Arrangements) which the Council has for dealing with complaints against Councillors, decided on the initial assessment of these complaints that all of the complaints should be investigated. The Monitoring Officer instructed Wilkin Chapman LLP Solicitors to carry out a full and independent investigation of the complaints which had been made.</p> <p>2. 4 of the complaints were against Councillor O'Nolan. These 4 complaints can be summarised as his alleged conduct towards the Town Council's staff, being disrespectful towards other Town Councillors, disclosing confidential information, misuse of his position in the conduct of an election and failing to have regard to advice and bringing the Council into disrepute.</p> <p>3. The investigation found that Councillor O'Nolan did breach the Suffolk Local Code of Conduct (the Code) in disclosing confidential information to the press. The investigation has not upheld any of the other purported breaches of the Code by Councillor O'Nolan which were alleged by the complainants.</p> <p>4. In accordance with the Arrangements, the Monitoring Officer consulted one of the Council's Independent Persons on the outcome of the investigation on 21 February 2019. Mr Urey considered that there was a breach of the Code by Councillor O'Nolan, and recommended that the investigation report be considered by this Committee.</p> <p>5. The purpose of this report is for the Committee to receive the investigator's report and to determine the matter.</p>
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Is the report Open or Exempt?	Exempt
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	<p>This report 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 Part 1 of Schedule 12A of the Local Government Act 1972 (the 1972 Act). It is recommended at this stage that under section 100(A) (4) of the 1972 Act, the public be excluded from the meeting on the grounds that to have the meeting in public may involve the likely disclosure of exempt information. The complaint which is the subject of this report and the investigation arising from it have been treated as confidential matters by the Council, and details of them have not been hitherto released by the Council. It would not be the Council's practice to disclose information relating to complaints of this nature, or any investigation arising, whilst dealing with such matters. 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 treated thus far on a confidential basis, pending the outcome of the investigation and (3) which if released, prior to the meeting, may affect the Committee's consideration of this information.</p> <p>However, the Audit and Governance Committee will need to determine at the meeting whether or not to hold its deliberations in private or in public. Therefore, whilst the consideration of this matter is provisionally listed to be held in private, the Committee may decide at its meeting that its deliberations will be held in public instead.</p>
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Wards Affected:	None directly
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Cabinet Member:	Not applicable - Report of the Monitoring Officer
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Leading Officer:	Hilary Slater , Monitoring Officer, 01394 444336 Hilary.slater@eastsoffolk.gov.uk
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1 BACKGROUND

- 1.1 Section 27 of the Localism Act 2011 (the Act) provides that this authority is under a statutory duty to promote and maintain high standards of conduct by Members and co-opted Members of the Council. In discharging this duty, authorities must adopt a code dealing with the conduct that is expected of Members and Co-opted Members of the authority when they are acting in that capacity. On 24 May 2012 (Paper CL16/12 refers), Suffolk Coastal District Council (SCDC) adopted the Suffolk Code of Conduct (the Code) on an interim basis. Following a further report on 26 July 2012, the Code was adopted on a permanent basis (Paper CL22/12 refers). Woodbridge Town Council most recently adopted the Code at their Annual General Meeting on 15 May 2018. The Code can be found at Appendix A to this report within the Schedule of Evidence.
- 1.2 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. On 24 May 2012, SCDC agreed certain arrangements by which allegations that the Code has not been complied with can be made (Paper CL16/12 refers). A copy of these arrangements can be found at Appendix A to this report within the Schedule of Evidence (the Arrangements).
- 1.3 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 taken into account, before any decision is made to investigate an allegation of breach of the Code. SCDC’s current independent persons are Dr Peck and Mr Urey. Mr Urey is the Independent Person who has been consulted on the Woodbridge Town Council complaints.
- 1.4 It was also agreed by Council on 24 May 2012 (Paper CL16/12 refers) that this Committee should be responsible for the discharge of the statutory duty set out in s27 of the Act. Therefore, the 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”.
- 1.5 Between July and October 2018, the Monitoring Officer of SCDC received a number of complaints regarding the conduct of 5 members of Woodbridge Town Council. All of the complaints were investigated. Alleged conduct in breach of the Code by 3 of the Woodbridge Town Councillors has not been upheld by the investigation. The investigation has found 2 Woodbridge Town Councillors to have each breached the Code of Conduct in relation to 1 matter.
- 1.6 Between 2 and 10 July 2018, 4 Woodbridge Town Councillors (Councillors Mortimer, Blois, Perkins and Rawlings) individually made a written complaint to the Monitoring Officer of SCDC that Councillor O’Nolan had failed to comply with the Code. In summary, the alleged breaches comprised:
- i. Breach of confidentiality by going to the press with information relating to the deletion of information from the Town Council’s computer and matters relating to a contract for the supply of signs to the Council;
 - ii. Bullying of the former and current Town Clerk
 - iii. Not treating the Town Council’s employees with respect
 - iv. Misuse of position;
 - v. Bringing the Council in to disrepute; and
 - vi. Not having regard to advice of officers.
- 1.7 Receipt of the complaints was acknowledged in writing, and all the Councillors were advised as to the process for handling such complaints. Councillor O’Nolan was invited to comment on the complaint.
- 1.8 In accordance with the Arrangements, the complaints, together with Councillor O’Nolan’s comments

on it, were considered by the Monitoring Officer and Mr Urey, when it was agreed that they ought to be referred for investigation. The complainants and Councillor O’Nolan were advised in writing, by way of an initial assessment decision letter dated 2 October 2018, that the complaints were going to be independently investigated by Wilkin Chapman LLP Solicitors, and the reasons for this.

- 1.9 The investigation was undertaken by Mr Goolden, a Solicitor and partner of Wilkin Chapman and Mr Tasker, a consultant engaged by Wilkin Chapman who was formerly a local authority Monitoring Officer. Both Mr Goolden and Mr Tasker have significant experience of the investigation of local authority code of conduct cases.
- 1.10 The complainants and Councillor O’Nolan were interviewed by Mr Tasker as part of the investigation. Councillor O’Nolan also exercised his right, under paragraph 2.5 of the Arrangements, to speak with the Independent Person.
- 1.11 The investigation found that Councillor O’Nolan did breach the Suffolk Local Code of Conduct (the Code) in disclosing confidential information to the press. The investigation has not upheld any of the other purported breaches of the Code by Councillor O’Nolan which were alleged by the complainants. A copy of the Investigation Report and the Schedule of Evidence can be found at Appendix A to this report.
- 1.12 The complainants and Councillor O’Nolan were given an opportunity to comment on the draft investigatory report before the report was finalised. No comments were received from Councillor O’Nolan.
- 1.13 On 15 February 2019, the final investigation report was issued to the Monitoring Officer of SCDC. Councillor O’Nolan was sent a copy of the report on the same day.
- 1.14 On 21 February 2019, in accordance with the Arrangements, the Monitoring Officer consulted Mr Urey (one of the Council’s Independent Persons). Mr Urey considered that there was a breach of the Code by Councillor O’Nolan, and recommended that the investigation report be considered by this Committee.
- 1.15 The purpose of this report is for the Committee to receive the Investigatory Report 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 complainants nor Councillor O’Nolan have a right to address the Committee.

2. GOVERNANCE IMPLICATIONS AND SANCTIONS

2.1 The Act says that an authority can take action against a Member when it has concluded that the Member has breached its Code. In particular, section 28(11) of the Act provides that:-
“If a relevant authority finds that a member or co-opted member of the authority has failed to comply with its code of conduct....it may have regard to the failure in deciding

- a) whether to take action in relation to the member or co-opted member; and
- b) what action to take”.

However, the Act does not provide an express statutory basis for imposing sanctions on Members. This is unlike the previous standards regime which did provide a statutory basis (via Regulations made in 2008 (SI2008/1085)) for the imposition of sanctions which could be imposed on Members, ranging from censure to suspension. There is no equivalent provision in the Act.

2.2 The result is that it is not possible to disqualify or suspend a Member from office, who has breached the Code. Permissible sanctions 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

2.3 In arriving at it’s 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 impose on Councillor O’Nolan.

3 OTHER KEY ISSUES

3.1 This report does not require an Equality Impact Assessment, a Sustainability Impact Assessment or a Partnership Impact Assessment.

4 CONSULTATION

4.1 The complainants, Councillor O’Nolan and Mr Urey (Independent Person) have been consulted as per the Arrangements.

4.2 Councillor O’Nolan and the complainants were interviewed as part of the investigation and given the opportunity to make submissions on the draft investigation report. No comments were received from Councillor O’Nolan on the draft report. The submissions which were received from the complainants on the draft report are detailed at Section 6 of the Investigation Report which is at Appendix A of this report.

4.3 Mr Urey met with Councillor O’Nolan when Councillor O’Nolan asked to exercise his statutory right to speak with the Council’s Independent Person.

4.4 Mr Urey was consulted by the Monitoring Officer at the initial assessment stage when it was decided to investigate the complaints.

4.5 Mr Urey was further consulted by the Monitoring Officer on the final investigation report. When the Monitoring Officer met Mr Urey on 21 February 2019, Mr Urey advised the Monitoring Officer that he agreed with the outcome of the investigation; that Councillor O’Nolan had breached

the Code by disclosing confidential information to the press and recommended that the investigation report be considered by this Committee.

4.6 Mr Urey commented generally that the investigations into all the complaints against the 5 Town Councillors had highlighted a toxic atmosphere at Woodbridge Town Council which must be addressed. Mr Urey said the Council needed to recognise there was a problem and consider what changes to implement to address it. Mr Urey expressed his desire that councillors seek to focus their energy and efforts in working together, across political boundaries, for the good of the people of Woodbridge with courteous conduct and constructive challenge between councillors and between councillors and staff. Mr Urey noted as a positive step that the Town Council has recently adopted a new harassment and bullying policy which covers both staff and councillors. Mr Urey also hopes the Council now has, after its data loss, a secure IT data back up system with data held and processed in accordance with GDPR and Data Protection Act 2018 requirements.

5 OTHER OPTIONS CONSIDERED

5.1 No further options have been considered.

6 REASON FOR RECOMMENDATION

6.1 To ensure that the Committee fulfils its terms of reference and determines the outcome of this complaint and the investigation which arose from it.

RECOMMENDATIONS

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

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 impose any sanction on Councillor O’Nolan.

APPENDIX A The Investigatory Report and Schedule of Evidence dated 15 February 2019