

AGENDA ITEM NO.11	
CONDUCT COMMITTEE	
Date	7 MARCH 2013
Title	MEMBER CONDUCT COMPLAINT – COUNCILLOR OLIVER AND COUNCILLOR FARMER

1. PURPOSE/SUMMARY

To consider a complaint under the member code of Conduct against Councillor Oliver and Councillor Farmer of Wisbech Town Council.

- 2. KEY ISSUES**
- A complaint has been raised by Mr Erbie Murat, Clerk to Wisbech Town Council about the Conduct of Councillor Oliver and Councillor Farmer both of Wisbech Town Council.
 - Councillor Oliver and Councillor Farmer have been offered the opportunity to provide an initial written response to the complaint; these are attached.
 - The Conduct Committee is asked to consider the complaint and determine if it discloses a likely breach of the member code of conduct.

3. RECOMMENDATION(S)

Members consider the complaint and response and determine the initial consideration of the complaint.

Wards Affected	All
Forward Plan Reference No. (if applicable)	NA
Portfolio Holder(s)	
Report Originator	Ian Hunt, Chief Solicitor
Contact Officer(s)	Alan Pain, Corporate Director and Monitoring Officer Ian Hunt, Chief Solicitor and Deputy Monitoring Officer
Background Paper(s)	

1. BACKGROUND/INTRODUCTION

On the 22 January a complaint was received from Mr Erbie Murat, Clerk to Wisbech Town Council about the Conduct of Councillor Oliver and Councillor Farmer both of Wisbech Town Council. A copy of the complaint is attached.

Councillor Oliver and Councillor Farmer were offered the opportunity of responding to the complaint and their responses are also attached.

2. CONFIDENTIAL INFORMATION

As a preliminary matter members must give consideration to the exempt papers contained within this report. In the letter of complaint reference is made to an email sent by Mr Murat to Councillor Oliver on the 3 January. This email relates to internal staff management matters within Wisbech Town Council, and refers to a number of staff.

Before deciding whether to deal with this email as an exempt item and to exclude publication of this and where necessary the press and public, the Committee must first decide whether there is exempt information in the email and secondly whether the public interest should override the application of the exemptions referred to.

The information relates to specific staff who although referred to by job title can be readily identified. The information relates to specific elements of their employment relationship which would not usually be expected to be in the public domain. It must be noted that the members of staff involved would have a reasonable expectation of privacy. Accordingly it is considered that the provisions of sections 1 (information relating to an individual) and 2 (information which is likely to reveal the identity of an individual) of Schedule 12A of the Local Government Act 1972 could apply.

There is no formal definition of what the public interest is, it is, however, not a test of what the public may be interested in. The Conduct Committee should bear in mind the need to maintain public confidence in the Council's ethical standards. This requires that the committee's decisions should be seen as open, unprejudiced and unbiased. The meeting will be held in public and the majority of relevant papers will be available for public inspection.

Members will need to decide on balance where they think the public interest lies, however, in this context the main elements of the complaint and the Councillor responses are public with just the detail of one element of the papers withheld. It must be noted that this element relates to personal details of third parties to the complaint.

A further consideration is that this is the initial assessment of the complaint; if the matter is investigated further it may be that the question as to the release of this email requires further review to enable public understanding of the complaint, however, if members do not determine that this matter needs investigation they may chose to reconsider whether or not this element is appropriate to retain confidentiality.

3. CONSIDERATIONS

Members must consider the complaint against the member code of conduct.

Members must consider whether or not there is a reasonable prospect of the complaint being proven based on the information held. In considering this members are to be aware of the fact that should an investigation occur further evidence or detail can be sought.

Members are advised that where a complaint contains a number of elements they may choose to consider each element separately or take the whole complaint together.

Where members consider that there is a reasonable prospect that a breach of the code of conduct has occurred they should give consideration as to whether or not there should be an investigation of the complaint. Members should consider the following points in determining whether an investigation should occur:

- Has the Complaint already been investigated, or is it already the subject of investigation?
- Is the Complaint more appropriately dealt with through another regulatory channel?
- Is the complaint about something which happened so long ago that there would be little benefit in taking action now?
- Is the complaint too trivial to warrant further action?
- Does the complaint appear to be malicious or simply tit for tat?

Where members consider that an investigation is appropriate the Monitoring Officer will be asked to make suitable arrangements for such an investigation. Members are asked to give any particular comments on the scope or direction of the investigation.

If members do not consider that there is a potential breach of the code of conduct or that there is no reasonable prospect of any breach being disclosed or that the complaint does not merit further investigation then no further action is taken in respect of the complaint save for notifying the member and the complainant.

BY HAND 22/1/13

Erbie Murat
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Alan Pain
Corporate Director and
Monitoring Officer
Fenland District Council
Fenland Hall
County Road
March
Cambs
PE15 8NQ

22 January 2013

Dear Mr Pain

Further to your letter of 17 January 2013, I can confirm that I wish the following matters to be looked at by the Monitoring Officer, and that I have added remedies as requested, commensurate, I believe with the seriousness of their actions as detailed below and in the copy of the email attached.

Conduct of Councillors

This is a formal complaint about the behaviours of Cllr David Oliver and Cllr Jonathan Farmer. It is my contention that on Monday 7 January 2013, I was bullied, harassed, intimidated, threatened and victimised by Cllr Oliver in the presence of Cllr Farmer, I believe that this was a pre-meditated, co-ordinated attack on myself and the office of the Town Clerk for Wisbech Town Council, and in doing so they breached my employment contract.

It is also my contention that Cllr Oliver and/or other Cllrs of Wisbech Town Council then provided information to the media, following the meeting on Monday 7 January 2013, and subsequently, which again was in breach of my contract of employment – and that these behaviours breach the Code of Conduct of elected members.

- a) Please see attached email of my concerns addressed to Cllr Oliver dated 3 January 2013. Cllr Oliver has not responded to this email. None of the concerns or issues that I raised have been addressed. Cllr Oliver has, in fact, suspended me, I believe, as a direct result of the areas of concern that I raised in the email, which I believe to be the grounds for my victimisation allegation.
- b) Cllr Oliver proceeded to talk to me in a bullying, harassing, intimidating, and threatening manner.
- c) Cllr Oliver has failed to comply with the requirements of the Staff Handbook (which may be found on the council's website www.wisbechtowncouncil.org.uk), and the implied terms of my employment contract. He did this by breaching confidentiality as afforded to me by the Staff handbook in matters such as this. This was done by circulating the letter stating that I had been suspended from my employment, on Monday 7 January 2013, and the details of that letter appeared in the Eastern Daily Press on Tuesday 8 January 2013

before I received my copy my suspension letter.

e) The suspension letter (attached) only contains the category of the suspension i.e. misconduct. And to date I have not been apprised of what if any allegations have been made against me.

f) Cllr Oliver and other members then continued to breach confidentiality by speaking to the media, which has resulted in confidential staffing matters to be speculated about in the Wisbech Standard on Friday 11 January 2013.

g) Emma, a reporter from the Fenland Citizen, telephoned me on Wednesday morning 9 January 2013, and after I told her I could not discuss what is essentially a confidential staffing matter, she told me that that Cllr Oliver has planned a press briefing for her on Tuesday morning of the 15 January 2013, following a meeting on Monday 14 January 2013 – and that she wanted to give me an opportunity to give my side. I declined citing that this is a confidential staffing matter.

h) It seems likely, that my situation was discussed on Monday 14 January 2013, and on Monday 21 January 2013. I have heard nothing more about this except what I have read in the press.

i) This is an inappropriate and totally unacceptable way for Cllr Oliver to manage this and amounts to nothing less, in my opinion to trial by media. Without having been apprised of the allegations, and having been given no opportunity to defend myself, it does seem as though I am now on trial in the press.

f) I can demonstrate that in my dealing with all matters that I believe have caused this issue to arise; I have followed the policies and procedures of Wisbech Town Council and the express decisions of Wisbech Town Council.

These behaviours have sought to embarrass, intimidate, and humiliate me and had an extremely deleterious effect on me in a variety of ways including:

i) My health:

ii) Our son, on the first day of national exams, has been quizzed by his peer group at school with questions like 'what has your father done?' thereby distracting him the focus of his exams and possibly affecting his chances of going to university.

iii) I still have not been told what the allegations against me are.

The Remedies that I am seeking are that they:

- a) Are censured
- b) Asked to submit a public written apology as specified by the Conduct Committee
- c) Asked to undertake training as specified by the Conduct Committee
- d) Asked to participate in such conciliation as the Conduct Committee specifies
- e) Suspension of the Councillors for up to six months immediately after the Conduct Committee has made its decision

Terms of a Suspension

- a) The Councillors may not exercise any functions of a Member of the Council and should not participate in any meetings of the Council, Committees or Sub-committees.
- b) The Councillors are therefore not to undertake the role of a Member of the Council and should not have access to Council Facilities. This means that the Councillor will be prevented from having access to email and any IT resources. The Councillor will not be allowed to have access to any restricted areas within Council premises for the duration of the period of suspension.

c) In order to make the Councillor's suspended status clear, contact details will be removed from the Council's website for the period of suspension.

d) Councillors under suspension must make their suspended status clear and make appropriate arrangements.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Erbie Murat', written over a horizontal line.

Erbie Murat

Cllr David Oliver
Wisbech Town Council
1 North Brink
Wisbech
PE13 1JR

Mr E Murat

RE: Suspension Information

January 7th, 2013

This letter is to inform you that as a result of your actions on January 7th 2013, you have been issued a suspension not to exceed 30 days.

On January 7th, 2013, you committed acts of misconduct listed in the Staff Handbook that every employee is expected to follow. This has not been the first time you have done this either.

Also during this time a complaint and grievance against you will be investigated.

You will receive pay while you are on suspension.

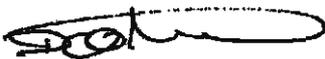
You are expected to return to work on February 6th, 2013 or sooner if resolved.

You are expected to attend any meetings requested by Wisbech Town Council in connection with this matter, you are entitled to have a representative attend with you.

During this period of suspension, you shall not attend your place of work other than for the purpose of attending any agreed meetings. Nor shall you contact any other employees, suppliers or customers of Wisbech Town Council, without the council's consent.

I will be writing to you in the next few days to arrange suitable dates and information relating to the above matters.

Yours sincerely,



David Oliver
Leader of Wisbech Town Council

39 West Parade
Wisbech
Cams.
PE13 1QB
13th February 2013

Dear Alan

I am writing to you with regard to the complaint letter from Mr Murat which you forwarded to myself and Councillor Farmer on 7th Feb.

As you understand all matters concerning staff are confidential, however as Mr Murat has sent this to you I will respond to each of these points.

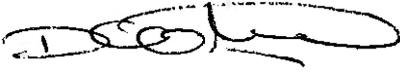
With regard to the meeting on Mon 7th Jan 2013 after normal business was concluded, we started to discuss items that the clerk refused to answer questions about and he got up, showed a hand gesture and went to leave the meeting.

- a) with respect of his email of 3rd Jan which was sent some hours after a telephone conversation between myself and Mr Murat, during which I informed him we would have a discussion on Monday morning (7th), I saw no reason to reply as these concerns would be discussed at the Monday meeting.
- b) the conversation that I had with Mr Murat in my opinion was carried out in a non confrontational way, questions were asked in a normal manner (no raised voice).
- c) at no point did I breach Mr Murat's confidentiality with regard to a staffing matter. The only correspondence that I put out was an email to all council members to inform them of a staffing issue and that was the suspension of the town clerk for a period of 30 days. The email was forward to both the Wisbech Standard and the Citizen by an unknown member shortly after it had been sent. The Eastern Daily Press is part of the Citizen group or they may have picked the item off of the Wisbech Standard's website.
- d) there is no item d.
- e) a full council meeting was convened on Monday 14th January and on the advise of Ian Dewar (CAPALC) who was present at the meeting advised both Councillor Farmer and myself to inform the council of the incident on 7th January and withdraw from any further discussions that may be had. This was then taken out of my hands and was the responsibility of the HR group, formed that evening, who were then given delegated powers to proceed with any investigations and correspond with the clerk.
- f) at no point up to and since have I spoken to the Wisbech Standard about staffing matters.
- g) I was contacted by Sarah Cliss report for the Fenland Citizen as to whether I could make comment on the article on the Wisbech Standard website. I informed Sarah that it was a confidential staffing matter and that an Extra-ordinary meeting had been called of the Wisbech Town Council on the 14th January and she would be advised on the Tuesday morning if there was any matters to report. The mayor issued a short statement on the Tuesday with advice from CAPALC. I declined saying that is was a confidential matter and now out of my hands.
- h) an extra-ordinary meeting was called for 14th January and as previously mentioned an HR group was set up to take the matter forward, of which I was not a member and any correspondence should then have gone out from the HR group. With respect of a meeting on Monday the 21st January I was not aware of any meeting.
- i) as stated before I have not informed the media about the clerk's suspension and as stated before the HR group have taken over and have been dealing with this matter ever since.
- f) (I believe should be j) This point does solely relate to the suspension and to discuss this further would be in breach of confidentiality at present.

With regard to Mr Murat's final comments regarding health, son and allegations; Mr Murat is aware that over the years I have condemned anybody using the media to facilitate, solve or air problems of confidential matters and I would not subject anybody to that, especially when it concerns staff and confidential matters and could bring the town council into disrepute. With regard to not being told of the allegations, this was taken out of my hands by the HR group.

Finally with regard to this matter I have at all times taken advice and have made sure that my part in all of this has been professional.

Regards

A handwritten signature in black ink, appearing to read 'D. Oliver', written in a cursive style.

Cllr David Oliver

From: Councillor Farmer
Sent: 25 February 2013 14:20
To: Alan Pain
Subject: RE: Conduct complaint

Dear Alan,

I have read the correspondence you forwarded to me and have to say that this complaint appears to be both irrelevant and vexatious. I therefore do not intend to respond in detail as I believe that any standards committee would be inclined to agree with me. I would clearly reserve my right to respond in more detail should the committee choose to take this matter any further.

Yours Aye

Jonathan

Cllr Jonathan R Farmer
18 South Brink
Wisbech
Cambridgeshire
PE13 1JQ