

**ODIHAM PARISH COUNCIL
BANK RECONCILIATIONS
YEAR ENDED 31 MARCH 2019**

MARCH 19

	£	£
Opening balance	237,918.25	
Income	1,693.01	
Expenditure		35,779.89
Closing balance		203,831.37
	<u>239,611.26</u>	<u>239,611.26</u>

	£
Unity Trust Account	100,677.14
Treasurer's Account	39,060.80
Deposit Account	61,662.52
30 Day Notice Account	3,520.91
	<u>204,921.37</u>
Outstanding lodgements	(1,090.00)
	<u>203,831.37</u>

Unpresented	
Ref 332	1,090.00
	<u>1,090.00</u>



Submitted by Cllr Hale

26th April 2019

As requested at our March Full Council meeting, for transparency I was requested to provide the letter received from the Monitoring Officer and a summary report, with regards the code of conduct complaints raised against Cllr Fellows. My apologies this has not been professionally scanned, however the letter is attached overleaf.

While focused on the actions of one Cllr, the letter provides some clear advice and training requirements to avoid Cllrs making the same mistakes. This advice is now more relevant to the future Council, to avoid future issues.

I would highlight the following areas:

While I don't believe other Cllrs had followed the same practice of switching between private and OPC accounts when acting in their Cllr capacity, the MO's criticism and advice on this is clear.

He also provides important input on regarding declaring interests, which his investigations found had been consciously breached. While this is contained to one Cllrs actions, his proposal of mandatory training will hopefully avoid this happening again.

I would also point Cllrs to his advice and concern with regards to making serious allegations. While this was focused on one Cllrs behaviour, it is important for Cllrs to substantiate any allegations, especially when asked.

I hope that helps

Jon



Date: 1 April 2019
Our ref : DP/saw
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Councillor Jon Hale - Chairman
Odiham Parish Council
Parish Office
The Bridewell, The Bury
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Hants RG27 1NB

Dear Councillor Hale

I am writing to confirm that I have discontinued the investigation into two complaints relating to allegations that one of your Councillors had breached the Code of Conduct. Whilst no final report is to be issued, I do feel however, the need to write to the Parish to highlight a number of points.

One allegation related to the conduct of the Parish Council's Executive Officer in her nomination of you for NALCs 2018 Star Councillor Award. I confirm that I found nothing whatsoever inappropriate in the actions of the Executive Officer. Had my investigations been concluded I would have found that there was a breach of the Code of Conduct in that the allegation made against your Executive Officer had no substance and had been pursued in an improper manner. There is nothing unreasonable in seeking to make genuine enquiries about what lay behind the Award nomination but the manner in which the allegations against the Executive Officer were pursued and the slant given to the allegation was in my view unreasonable. I would have found therefore that there was a Breach of the Article 9 and 11 of the Odiham Parish Councillor Code of Conduct.

My investigations also revealed a concern about the practice of switching email between private and Parish Council email accounts. That is not good practice. It is clear that Councillors do have a private life but the rules of good conduct apply to Councillors wherever they conduct business of the Council or act, claim to act, or give the impression or reasonable perception that they are acting in their official capacity as representative of the Council. It therefore does not matter which email account is used because it is the substance of the email that is important. Since the judgment of whether a Councillor is perceived to be acting as a Councillor will be taken by someone else, it's safest to assume that any correspondence signed off with the signature title including reference to being a Councillor will be perceived as being linked to the respective Councillor's role. My recommendation to the Parish Council is that you may wish to review your current Code of Conduct and perhaps adjust Article 2 along the following lines:

"The rules of good conduct apply to you whenever you act in your official capacity. This includes whenever you conduct business of the Council or act, claim to act, or give the impression or reasonable perception that you are acting in your official capacity as representative of the Council which includes when using social media".



INVESTORS
IN PEOPLE



Secondly, I was greatly disturbed to find that in reviewing the respective complaints it would appear that there is a practice of seeking to put one's own interpretation onto the specifics of the Code of Conduct. Article 21 of the Code of Conduct is quite specific: If a Councillor attends a meeting at which any item of business is to be considered and they are aware that they have a "non-disclosable pecuniary interest or [my emphasis] non-pecuniary interest" in that item, they must make verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent. In the case I was investigating this did not happen.

Article 23 of the Code then goes on to say:

If you have a pecuniary, personal or prejudicial interest in the matter under discussion, you should not:-

- a) *Participate or participate further in any discussion of the matter at the meeting.*
- b) *Participate in any vote, or further vote, taken on the matter at the meeting (unless the member has requested and been granted a relevant dispensation); or*
- c) *Remain in the room during the discussion or vote on the matter.*

In my investigation I found that this important part of the Code had consciously been breached with none of the required procedures followed. It may be in other circumstances an oversight so my recommendation to the Parish Council is that all the Councillors of the Parish (including any new Councillors who may be elected in the future), should undertake mandatory training (and everyone should have regular refresher training) on all aspects the Code of Conduct to avoid any misunderstandings.

Finally, I was concerned about the apparent break down in respect shown between individual Councillors. Whilst it is not for me to comment upon whether an action is "illegal" (that is a matter for the courts) it is certainly not appropriate for a Councillor to make such comments without being prepared to do something directly around it – it cannot simply be left as an apparently serious allegation against a Councillor when there are proper process already in place to address the point. This amounts to a breach of Article 9 of the Code of Conduct.

It is for your Council to decide how it conducts its business and you are best placed to make local decisions but I do hope that you will find my comments helpful.

Yours sincerely



Daryl Phillips
Joint Chief Executive

cc Ms Sarah Weir, Clerk, Odiham Parish Council, Parish Office, The Bridewell, The Bury, Odiham, Hants RG27 1NB

REPORT ON: Complaint regarding the closure of the amenity committee meeting to the public and press on 4 February 2019

WRITTEN BY: Sarah Weir

MEETING DATE: 30 April 2019

AGENDA ITEM: 307/18

The following complaint has been received from a member of the public on 12/4/19:-

Thank you for your email. I note you rely upon NALC and its guidance sheet. NALC is an organisation of course retained by OPC to protect its interest and is not independent, but I am happy to consider its guidance if you want to send it. Having considered the legislation and consulted with The Ministry of Housing, Communities & Local Government I am not satisfied that the Executive Officer and Amenity Committee chairman (and therefore OPC) have complied with the applicable legislation. Both the decision to exclude the public and the formal minutes are non-compliant with the legislation. This is therefore a formal complaint against Executive Officer and Amenity Committee chairman (and therefore OPC). As NALC have provided advice you will be aware of the requirements, I see no necessity to quote specifically from the legislaion, save in general terms: The parish council is required by the legislation and make public a written record of all major decisions made by officers of the council, including background documents and reasons for the decision. That is indisputable. The Executive Officer and the chairman of the Amenity Committee have not provided me with the reason why the public were excluded from the agenda item 118/18 and the minutes are flawed for non compliance. The Executive Officer and AC chairman and OPC have breached the legislation.

The legislation was passed to promote "openness of council meetings and decision making" and specifically to counter the type of misuse practised by OPC and particularly its Amenity Committee - in the form of 118/18 and King Street toilet refurbishment contact.

The matter is further compounded by the absence of objectivity by certain individuals within the council in their dealings with Mildmay matters.

This complaint follows numerous emails from the resident to myself and Cllr Worboys regarding the closure of the meeting to public and press. The advice from HALC (not NALC) was sent to him on 19 March after sending them the resident's correspondence. HALC also advised that if a member of the public becomes a vexatious complainant then we should follow the complaints policy in dealing with the matter which may include the council's right to refuse to provide (further) information.

The resident was advised:-

Having taken advice from HALC regarding your obvious dissatisfaction with the resolution regarding the closure of the meeting on 4 February 2019 to the public and press and having provided them with a copy of the now approved minutes for item 117/18 and 118/18, they have advised that OPC has published sufficient information.

If you are still unhappy with this response please do see OPC's Complaints Procedure which can be found on our website.

As per the complaints procedure, this complaint has been classed as being in the category of other. The complainant has been advised that this complaint will be considered at this meeting and has corresponded to all Cllrs directly as follows:-

Thank you for advising my complaint regarding the failure by you and the AC chairman to give a reason for excluding the public from agenda item 118/18 relating to the boundary at Mildmay Court will be considered at the next EGM.

Please ensure this email is circulated to councillors today and forms part of the 'Meeting papers' published for that purpose.

I would like to make a few comments, if I may, on the "Complaints Procedure" and its operation:

The "Complaints Procedure" in my view is a badly drafted and fundamentally flawed document. I certainly have no faith that its procedures are fit for purpose. It does not comply with the fundamentals of natural justice and is unworthy of a competent public body. Not least and most obviously because no procedure is set for determining if a 'meeting' is required and because there is no provision which could operate to exclude those complained about sitting in judgement on the complainer. Simply put, it's the equivalent of children marking their own homework, and that is how it operates.

Two points:

1. The AC chairman has not replied to 2 emails asking that he provide the reason for excluding the public. The inference one reasonably draws is that Mr Worboys does not have a reason or if he does he does not want to disclose it. Either way the conduct breaches the legislation and fails to comply with The Openness of Local Government Bodies Regulations 2014, and OPC's own policy, for what that's worth.

*2. Addressing the same question to the Executive Officer progresses the matter no further. No reason is given and somewhat bizarrely quoted to me is some wording from a NALC 'advice sheet' on how to record the minutes **after** the event, that is after the decision has been made to exclude the public. It is clearly obvious NALC do know the reason for the exclusion, nor would it be expected to know, nor is there any sense in quoting NALC's guidance on how to formulate minutes pursuant to a Public Bodies Act exclusion claim after the event. As I have pointed out the minutes are in my view flawed in any event for non compliance.*

The fact that a chairman of a committee and the administrative staff of a parish council appear unable to grasp that is worrying in itself but unsurprising given the circumstances.

Those circumstances include the element of bias I have referred to. The existence of bias is evidenced by, amongst other factors, the fact whilst no reason has been given to me as the representative of Mildmay residents when I have asked 5 times for it, it has come to my notice that it has been given by the council elsewhere on the first time of asking. That lack of objectivity in dealing with Mildmay residents has been apparent throughout in relation to both this matter and the permissive footpath.

It follows, and without wishing to be overly critical, on the present the way of operating, it's not unreasonable if I view the "Complaints Procedure" as a perfunctory facade for the real thing. No doubt you will inform me of the full council decision in due course, thank you.

The council needs to decide if a meeting is necessary or not.

HALC have been made aware of the complaint and have advised that they have nothing to add their previous advice based on the information provided to them at the time. They said that OPC may like to check with the ICO on their views about the reason for excluding the public and press and that the council should follow its complaints procedure.

Note.

The amenity committee closed the meeting on 4 February to the public and press by resolution to receive an update on the situation regarding the boundary between Mildmay Court and the cemetery and to agree on the next steps. The resolution was proposed at the meeting and passed by a majority vote. The minutes have also been approved.

HALC provide guidance on the closing of meetings to the public and press which is attached.

The Private and confidential report circulated to the committee has been circulated to all Cllrs to allow them to read this.



Hampshire ALC Advice (August 2018)

Meetings Procedure – Confidential (Exempt) Business

A meeting of a council must be open to the public and press. They can be excluded from a meeting only by a resolution (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings; and where such a resolution is passed, this Act shall not require the meeting to be open to the public during proceedings to which the resolution applies.

It is desirable to treat the discussion of the following types of business as confidential:-

- (a) engagement, terms of service, conduct and dismissal of employees
- (b) terms of tenders, and proposals and counter-proposals in negotiations for contracts
- (c) preparation of cases in legal proceedings
- (d) the early stages of any dispute

These rules apply equally to committees of the council.

*Sources of reference:- [Public Bodies (Admission to Meetings) Act 1960]
[Local Government Act 1972, ss 100 and 102]
[Paul Clayden on Arnold-Baker on Local Council Administration]*

The Agenda

When confidential (exempt) business is to be discussed there should be an item on the agenda giving details; before that item can be discussed the chairman must close the meeting to the public.

Example wording for agenda item:

To pass a resolution in accordance with the Public Bodies (Admission to Meetings) Act 1960 to exclude the public and press for discussion re* where publicity might be prejudicial to the special nature of the business.

** include outline details of the subject to be discussed so that the council is transparent about the business to be transacted without breaching confidentiality.*

Supplementary (restricted) papers can be provided to the members so that they have sufficient information prior to the meeting.

The Minutes

The resolution regarding the confidential (exempt) business should be properly recorded in the Minutes, eg:

It was resolved that in accordance with the Public Bodies (Admission to Meetings) Act 1960 to exclude the public and press for discussions regarding* where publicity might be prejudicial to the special nature of the business.

**(same as the agenda) include outline details of the subject matter discussed so that the council is transparent about the business that has been transacted without breaching confidentiality*

When Minutes are produced they should include as much relevant detail as possible, without compromising the confidentiality eg *From the bids received (quote the number), it was resolved that the parish council would instruct (give name of builders) to carry out the work associated with the..... (give brief details of the job). It was agreed that the clerk would contact the council's solicitors to find out the cost of drawing up a contract with..... Remember, although the Public and Press are excluded from hearing the discussion the clerk is still legally required to record any decisions that the council makes.*

Full regard should be given to the GDPR, in particular when the subject matter of the business being transacted involves personal or sensitive personal data.

When does information cease to be exempt?

Information ceases to be exempt when it can no longer be considered confidential and it is then moved onto the general agenda. It does not need a formal resolution to move it on to the general agenda, but there is normally some indication that it is to be moved into non exempt business.

When the meeting is moving from exempt to non exempt business (or vice versa) a resolution should be passed and it is considered advisable that there should also be a short break between the two; in other words there should not be a continuation of discussion carried on under exempt business in the general part of the meeting (or vice versa).

Papers in exempt business are not automatically free from disclosure under the Freedom of Information Act, unless they remain commercially sensitive or come under one of the exemptions**. Once it ceases to be sensitive a request can be made for information which relates to the period when it was discussed under exempt business. Each case has to be looked at on its own facts.

Housing is an example of commercially sensitive business and one of the questions that can be difficult and a fine judgement as to when it is to be made public. Generally, it is considered that when the project has reached a stage where no definite decision has been made but there is a general intention as to the location of the site and the type of development (eg flats, houses, bungalows and general

numbers). It is at that stage that the public feel that they have an input, and are not confronted with plans cast in stone.

** The Freedom of Information Act contains exemptions to the right of access in order to protect legitimate interests and sensitivities. Some of these exemptions are absolute. Others are subject to a public interest test and are known as 'qualified'. Exemptions are often referred to by the section of The Freedom of Information Act which contains them.

A useful website is: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

Revised August 2018