

<b>SUBJECT:</b>	<b>Consideration of Investigator's Report - Councillor Naylor of Burnham Parish Council</b>
<b>REPORT OF:</b>	<b>Head of Legal and Democratic Services</b>

#### **1. Purpose of Report**

To inform the committee about the findings of an investigation into a complaint that Councillor Naylor failed to comply with Burnham Parish Council's code of conduct and to consider what action to take.

#### **2. Links to Council Policy Objectives**

There is no direct link to the Council's objectives but the Council has a statutory obligation to adopt a complaints procedure and the Audit Committee has responsibility at Stage 3 of the procedure to consider an investigators report.

#### **3. Background**

3.1 On 22 February 2013 the monitoring officer received a complaint from Cllr Davies of Burnham Parish Council (BPC) that a fellow parish councillor, Cllr Naylor, had failed to comply with the Parish Council's local code of conduct. Following clarification of the complaint and confirmation that it fell within the scope of the Council's Complaints Procedure, Cllr Naylor was invited to comment on these allegations. Cllr Naylor's response was sent to the complainant who remained dissatisfied and asked the monitoring officer to consider referring the complaint for investigation under Stage 2 of the Complaints Procedure. In consultation with the Chairman of this committee and one of the Council's Independent Persons, Mr Dobson, the monitoring officer decided on 8 July that the complaint should be investigated and a copy of that Decision Notice is attached at Appendix 1.

3.2 On 15 July 2013 the monitoring officer appointed a senior solicitor at Chiltern District Council, Mrs Nawaz, to undertake an investigation into alleged breaches of the code of conduct and prepare a report of her findings. In the course of the investigation Mrs Nawaz spoke to the complainant, Councillor Naylor, other members of BPC and the Parish Clerk, as well as reviewing relevant documents. The investigation took longer to complete than initially anticipated due to the summer holidays and the volume of documents involved. Mrs Nawaz's final report is attached as confidential Appendix 2. As this report contains personal information about individuals it is exempt from publication under paragraphs 1 and 2 of Schedule 12A but the findings are set out in full below together details of the allegations.

#### **4. Investigators Report**

4.1 In reaching her conclusions, the investigator took into account the provisions of the 2007 and 2012 Codes of Conduct adopted by BPC, the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and the Localism Act 2011. She also took into account all the information received from the BPC councillors she spoke to, the Parish Clerk and all other documents that she obtained during the course of her investigation.

#### 4.2 Summary of the Complaint

The complaint is that in breach of BPC's code of conduct Councillor Naylor failed to register the work being done by his wife in 2011 and 2012 and that having a pecuniary and/or personal interest in items on the agenda at the council meetings of 14 May 2012, 25 June 2012, 3 September 2012, 10 December 2012 and 21 January 2013 he failed to declare his interests. In order to establish whether Councillor Naylor breached the Codes of Conduct the investigator addressed the following questions:-

- A Does BPC's 2007 Code require:-
  - a. The registration of work being done by Councillor Naylor's wife through the contract between P@W and BPC
  - b. The declaration of an interest when items of business relating to or affecting this contract were on the agenda or discussed at council meetings on 14 May 2012 and 26 June 2012?
  
- B Does the BPC's 2012 Code require:-
  - a. The registration of work being done by Councillor Naylor's wife through the contract between P@W and BPC
  - b. The declaration of an interest when items of business relating to or affecting by this contract were on the agenda or discussed at council meetings on 3 September 2012, 10 December 2012 and 21 January 2013?
  
- C Do the DPI Regulations require:-
  - a. The registration of work being done by Councillor Naylor's wife through the contract between P@W and BPC
  - b. The declaration of an interest in respect of this contract at council meetings on 3 September 2012, 10 December 2012 and 21 January 2013?

#### 4.3 Conclusions

Paragraph 2 of the 2007 Code and paragraph 6 of the 2012 Code state that members must comply with this Code where conducting the business of their authority in an official capacity. The investigator is satisfied that at all material times in relation to this complaint, Councillor Naylor was acting in his official capacity and was therefore obliged to comply with BPC's codes of conduct.

#### 4.4 2007 Code

Paragraph 7 (b) of the 2007 Code states that a member has a personal interest if a decision in relation to that business might reasonably be regarded as affecting the members' well-being or financial position or the wellbeing or financial position of a relevant person and the definition of relevant person includes the members' family and close associates. Here the issue was work being done by Mrs Naylor through Passion@work Limited (who were close associates of the Naylor's), for remuneration for BPC. The investigator was therefore satisfied that Councillor Naylor had a personal interest in the contract between BPC and Passion@Work Limited.

- 4.5 Paragraph 9 of the 2007 Code states that "where you have a personal interest in any business of the Council you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest." The investigator was satisfied that as the contract was for remuneration and affected the financial interests of a family member and close associate, Councillor Naylor also had a prejudicial interest in the contract between BPC and Passion@Work Limited.

- 4.6 Under the 2007 Code paragraph 11 requires registration of members interests within 28 days of becoming aware of any new personal interests which fall under paragraph 7(1)(a) of the Code. As neither Councillor Naylor nor his wife were partners or remunerated directors of Passion@work Limited at the time of the contract with the BPC, and the interest is not otherwise caught by paragraph 7(1)(a), the investigator was satisfied that Councillor Naylor was not required to register the contract as a personal interest under the 2007 Code. Accordingly the investigator found that there had been no breach of the 2007 Code in this respect.
- 4.7 The investigator was satisfied that Councillor Naylor was aware of the need to declare an interest in respect of the contract between BPC and Passion@Work Limited at Council meetings, having raised this at a meeting of BPC's Project Board in 2011.
- 4.8 Having checked the relevant meeting agendas and minutes, the investigator found that:-
- At the Full Council meeting of 14 May 2012, Councillor Naylor was present but there were no payments to Passion@work listed in the schedules of payments attached to the agenda of that meeting. She was satisfied that Councillor Naylor did not have a personal or prejudicial interest in that item on the agenda which he needed to declare. Therefore, the investigator concluded that there was no breach of the 2007 code by Councillor Naylor on 14 May 2012.
  - At the Full Council meeting of 25 June 2012, Councillor Naylor was present but there was no schedule of payments attached to the Agenda and no reference to a Schedules of Payments in the Minutes of that meeting. She was therefore satisfied that Councillor Naylor did not have a personal or prejudicial interest which he needed to declare at that meeting and conclude that there was no breach of the 2007 code by Councillor Naylor at the meeting on 25 June 2012.
- 4.9 The investigator therefore concluded that Councillor Naylor did not breach BPC's 2007 Code of Conduct in relation to the work carried out by Mrs Naylor through the contract between BPC and Passion@Work Limited.

#### 4.10 2012 Code

Under the 2012 Code paragraph 10 requires registration of Personal Interests falling within paragraph 5 (1) (a) within 28 days of Code being adopted, the Code was adopted on 3 September 2012. The investigator was satisfied that the contract between BPC and Passion@Work Limited was not within the categories of personal interests listed in that paragraph that Councillor Naylor was required to declare in Part B of his Register of Interest Form. Therefore she concluded that Councillor Naylor did not breach the 2012 in this respect.

- 4.11 A personal interest is defined in paragraph 5 (1) (b) of the Code and the investigator was satisfied that the contract between BPC and Passion@Work Limited is an interest which falls under paragraph 5 (b) being an interest that affects the wellbeing or financial position of a relevant person namely his wife Mrs Naylor and or close associates, namely Passion@Work Limited.
- 4.12 Paragraph 6 of the 2012 Code states that "where you have a personal interest in any business of the Council you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest." The investigator was satisfied that as the contract was for remuneration and affected the financial interests of a family member and close associate, Councillor Naylor also had a prejudicial interest in the contract between BPC and Passion@Work Limited.

- 4.13 After the adoption of the 2012 Code by the Parish Council on 3rd September 2012, Mrs Naylor was continuing to carry out the work on the website. The investigator was satisfied that Councillor Naylor was aware of the need to declare an interest in respect of the contract between BPC and Passion@Work Limited at Council meetings, having raised this at a meeting of the BPC's Project Board in 2011.
- 4.14 At the Full Council meeting of 3 September 2012, the Council adopted the 2012 Code. A Schedule of Payments between June to July 2012 was on the agenda and included payment to Passion@work Limited. However, Councillor Naylor was not present at the meeting and his apologies are recorded in the minutes. Therefore, the investigator was am satisfied that there was no breach of the 2012 code by Councillor Naylor at the meeting on 3 September 2012.
- 4.15 At the meeting of the full Council on 10 December 2012 agenda Item 13 was a Schedule of Payments for ratification which included payments made on 9<sup>th</sup> October, 5<sup>th</sup> November and 4 December 2012 to Passion@work. Councillor Naylor was present at this meeting and did not declare an interest in this item of business. Whilst the papers for that meeting were circulated late, the investigator was satisfied that did not impact on Councillor Naylor's decision not to declare an interest. She also noted that there was no discussion on this item. Councillor Naylor submits that he had discussed the interest with the Parish Council's Responsible Financial Officer and had been advised there was no need to change his position on interests and because no discussion took place, he did not consider that he was required to declare an interest. However, the investigator was satisfied that Councillor Naylor had a personal and prejudicial interest in this item of business which he should have declared. I therefore she concluded that there was a breach of the 2012 Code in this respect.
- 4.16 With regard to the Full Council meeting on 21 January 2013, Councillor Naylor did not attend the meeting and his apologies are recorded in the minutes. Therefore, the investigator was satisfied that there was no breach of the 2012 code by Councillor Naylor at the meeting on 21 January 2013.
- 4.17 The investigator therefore concluded that there was a breach of the 2012 Code in the failure by Councillor Naylor to declare a personal and prejudicial interest at the meeting on 10 December 2012.

## **5. Councillor Naylor's Response**

Councillor Naylor's response to the allegations are summarised in the bullet points on pages 1 and 2 of the Decision Notice at Appendix 1. In respect of the investigator's report Councillor Naylor notes and accepts the findings, though he maintains that he was completely unaware of the need to declare an interest at the meeting of 10 December 2012. He acknowledges that this comment is included in the report. He also confirms that he understands how the investigator reached her conclusion and is grateful for the clarification.

## **6 Matters for Consideration by the Committee**

- 6.1 Under Stage 3 of the Complaint Procedure the investigator's report is referred to the Hearing Sub-Committee of the Audit Committee or in some cases the full Committee, for consideration. The Sub-committee or Committee, as appropriate, need to decide whether to accept the investigators findings. If the finding is that there has been a breach of the Code the Sub-Committee or Committee must then decide whether or not any further action is necessary. The remedies available if a breach is found to have occurred are limited to: a report to Council; formal letter to the subject councillor; formal censure by

motion; recommendation to Leader/Group Leader or Parish as applicable that the member is removed from special responsibilities such as cabinet/committees or outside bodies; press release or other publicity. Where the councillor concerned is a parish councillor the Sub-Committee or Committee can only make recommendations to the relevant Parish Council because (apart from a press release or publicity) the decision to take action must be taken by the Parish Council.

- 6.2 Noting that Councillor Naylor accepts the investigators findings and having regard to the type of breach involved, the monitoring officer does not consider that it is necessary or proportionate to hold a hearing in this case. It is therefore recommended that the Committee consider whether to accept the investigators findings that Councillor Naylor breached BPC's code of conduct by failing to declare a personal and prejudicial interest at the Parish Council meeting on 10 December 2012 and whether any further action is necessary. In deciding on any action the Committee must have regard to the views of the Independent Person, Mr Dobson who has been invited to comment and to attend the meeting.
- 6.3 If the Committee decides that further action is necessary, it can consider whether one or more of the following actions may be appropriate remedies for the breach concerned:
- Report the findings in respect of Councillor Naylor's conduct to Burnham Parish Council
  - To recommend to Burnham Parish Council that Councillor Naylor is issued with a formal censure or reprimand
  - To recommend to Burnham Parish Council that Councillor Naylor is removed from any or all Committees or Sub-Committees or appointments to outside bodies
  - To recommend that Burnham Parish Council arrange for training for Councillor Naylor on the code of conduct
  - To issue a press release or other publicity

## 7. Resources, Risk and Other Implications

Financial - None

Legal - As set out in the report

Risks issues - None

Equalities - None

## 8. Recommendation

The Committee is asked to consider and decide upon the matters set out in paragraphs 6.2 and 6.3 above.

<b>Portfolio Holder</b>	N/A
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<b>Background Papers:</b>	SBDC Code of Conduct, Complaints procedure, SBDC Registers of DPI's and non-pecuniary interests and dispensations, Town and Parish Council's registers of DPI's and non-pecuniary interests