

Committee: Council

Date:

Title: Report of a Standards Complaint Conclusion

23rd May 2023

Report Author: Peter Holt, Chief Executive

Item for decision:

pholt@uttlesford.gov.uk

For Information

01799 510400

Summary

1. This report is for information only, and does not require a vote. It presents to full Council the Decision Notice [Appendix A] summarising the conclusions reached in April 2023 by a Standards Panel of three [then] Councillors having heard a complaint lodged by a [then] Councillor against another [then] Councillor. As can be seen in that Standards Panel's Decision Notice, they resolved that the Investigator's Report that they considered in reaching their conclusion should also be reported to full Council, and that too is therefore attached [Appendix B].
2. In terms of lessons learned, this report provides an interim update on a range of actions being put immediately in place to support Councillors in future in avoiding similar difficulties. It further updates on a more thorough process to look more carefully at other lessons that can be learned and applied, and how both Councillors and other interested parties can feed in their thoughts and suggestions to inform that lessons learned process.
3. This report goes on to address the outstanding process towards the approval of the 2019/20 Annual Accounts.

Recommendations

4. Nil – this report is for information only. Councillors are asked to carefully note the advice section below and to understand the extent and limitations of full Council's role in considering this matter, in line with the Council's Constitution, and also in line with the law.

Financial Implications

5. There are no direct financial implications to this Report.

Background Papers

6. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
 - Appendix A – Decision Notice
 - Appendix B – Redacted Report of the Independent Investigator into this Standards Complaint

- Appendix C – Terms of Reference for Internal Audit Review into Standards Complaints process
- [The Council's Constitution](#)

Impact

7.

| | |
|---------------------------------|--|
| Communication/Consultation | - |
| Community Safety | Councillors routinely face harassment and are at times physically at risk. Members are reminded that the tone of public discourse can contribute positively or negatively to those risks. |
| Equalities | - |
| Health and Safety | - |
| Human Rights/Legal Implications | Councillors' attention is drawn carefully to the advice section of this report and to understand the extent and limitations of full Council's role in considering this matter, in line with the Council's Constitution, and also in line with the law, and to their own potential personal liability for their actions and speeches. |
| Sustainability | - |
| Ward-specific impacts | - |
| Workforce/Workplace | Councillors are respectfully reminded that Officers do not have an equal right of reply to any criticisms they may lodge in the debate of this report, and that there are proper processes for complaints against Officers that should be followed. |

Advice to Councillors on handling this debate

8. It is not Constitutionally the role of full Council to re-hear the consideration of the complaint properly undertaken by the Standards Panel. That means that Councillors cannot question either the one remaining Councillor who sat on that Panel – the other two having lost their seats in the May elections – nor Officers about either the process, contents, or conclusions of the process, which are covered in the Decision Notice and in the Redacted Investigator's Report at Appendices A and B. Councillors may understandably reach their own conclusions, but should understand that the Standards Panel had the

advantage of hearing directly from participants and in asking and hearing the answers to questions. Members should therefore understand that even if they conclude that they might have reached a different conclusion had they been present and involved to that degree, they should trust and respect the judgment of the three [then] Councillors who were in the room and had access to the fuller picture which the rest of Council does not.

9. It is not Constitutionally the proper role of full Council to reverse or otherwise change the conclusion of the process in terms of either findings of fact or in sanctions applied. The Panel's conclusions are now a matter of historical fact, and there can be no motion accepted for vote that seeks to reach any different conclusion, as that is beyond full Council's Constitutional or legal powers.
10. It is not Constitutionally the proper role of full Council to introduce into the debate any other allegations, justifications or evidence either directly related to the [then] Councillor against whom the Standards Complaint was heard, or to any other participant or interested party, whether that is a current or former Member, or any Witness or Staff Member. Councillors are cautioned very carefully and explicitly: they are responsible for their actions and their words, and they should not expect to rely on Privilege in their speeches, and thus that they are potentially open to be sued for slander or libel (e.g. in any related social media posts), for which they cannot expect to rely on legal support from the Council in their subsequent defence.
11. The Standards Panel undertook to redact the Investigator's Report very slightly before publication to remove references identifying third parties. Councillors are cautioned explicitly not to do or say anything that seeks to undermine these minor redactions by directly or indirectly identifying any of those third parties – including by speculation.
12. Councillors may legitimately express opinions about the process of this Standards Complaint, but they should be aware both that there is an Internal Audit process in place into which they can feed their detailed considerations, and that the ensuing Internal Audit Report will routinely be presented to the cross-party Audit Committee for detailed consideration in due course. Members are reminded to carefully observe the Member/Officer protocol in any criticisms of Officers, for which there are proper processes of which debates in full Council are not a part.

Situation

Specifics of this case

13. The specifics in this case of the allegations, the investigation, the findings of fact and the conclusions, including the sanctions, are all presented in the Decision Notice and Redacted Investigator's Report provided as Appendices A and B, and stand in their own words, which do not require further interpretation or explanation.

Timing of the reporting and publication of the conclusion of this case

14. There has been understandable public interest and speculation since the Standards Panel met as to what its conclusion was, and when its Decision Notice etc. was to be published – particularly in relation to the subsequent all-out elections. Journalists have cried foul, and members of the public have complained directly to the Local Government Ombudsman and allegedly even a criminal complaint about Officers to the Police.
15. Now that the Decision Notice has been published, those interested parties can all see for themselves that it was the Standards Panel that decided to publish the Decision Notice, and also the Redacted Investigator's Report, only after the election was over. The subject member of the complaint, former Cllr Lodge, was not running in those elections, and so the publication or not before or after the election could not have affected the public's decision to vote for him, as he simply wasn't on any ballot papers. The complaint of course related to an individual not to a wider party or any other candidates running for office for that party.
16. This delay in publication was an entirely proper decision for the Panel to have reached, and therefore for Officers to have delivered. There is no specific timing requirement in any procedures stipulating how quickly a Decision Notice should be published, and so this discretion was entirely in line with relevant policies and procedures, and requires no further justification.

Immediate lessons learned and applied

17. The Council's Statutory Officers – the Head of Paid Service [Chief Executive], Section 151 Officer [Director of Finance and Corporate Services], Monitoring Officer [Assistant Director, Corporate Services] and Deputy Monitoring Officer [Interim Legal Services Manager] met soon after the Standards Panel had concluded to consider lessons learned. Until that point the Head of Paid Service and Section 151 Officer had not been privy to the specifics of the matter or to the detailed Investigator's Report, as they have no proper direct role in the detailed handling of specific Standards Complaints, which are handled in line with the Council's proper procedures and in line with the law by the Monitoring Officer (and Deputies) in coordination with the assigned Independent Persons, who are appointed by full Council.
18. These Statutory Officers have made immediate changes to support arrangements in place for incoming Councillors in regards to declarations of interests – both in filling in the forms on joining the Council, and in regularly reminding and supporting them in keeping them up to date – and in properly making declarations at relevant meetings. The specifics of those immediate changes will be presented to Councillors in their induction meetings during May. Officers concluded that, whilst the duty to properly declare interests remains with each Councillor, the complexity of the system requirements is such that Officers' experience and perception is that many Councillors from across different parties have fallen short in the last four years of various of the requirements that former Cllr Lodge was found to have breached.

19. For example, Officers have introduced new and more intuitive Declaration of Interest Forms for the 2023 intake of Councillors to complete that should avoid a future situation where they commit a breach by declaring the information required, but in the wrong form of words or simply on the wrong page of the form, as former Cllr Lodge was found to have done. This should in future support Councillors who have attempted to do the right thing in demonstrably trying to properly declare something which the public have a right to know do so in the fully compliant format technically required.
20. As a second example, Officers will now ask follow up questions to Councillors once they have filled in their form to check that when they make one specific declaration that there aren't also consequential matters they need to declare separately so as not to fall foul of the rules in another of the ways that former Cllr Lodge was found to have done (e.g. if they declare that they are a Director of a Company, to check with them that they need also to declare that they also hold a significant shareholding in that company, or if their spouse is also a Director and/or major shareholder – all of which information is in any event publicly available by a simple search of the Company's House website).
21. As a third example, Officers will now routinely provide a laminated sheet on the table for Councillors attending meetings alongside their name plate, with prompts on this sheet of illustrations of the types of the proper forms of words they should use so that when they declare an interest and leave the room when they have an interest in the next agenda item that means they should not take part, that before they leave the room, they properly declare the nature of that interest, e.g. a Disclosable Pecuniary Interests or Other Registerable Interests or other Non-registerable Interests. This should help Councillors in future avoid just imagining that saying 'I declare an interest' on their way out the door is sufficient when it is not, as was another finding against former Councillor Lodge.

Further consideration of lessons to be learned and applied

22. Shortly before Cllr Lodge's case had been heard, and when he was still not sighted on the specifics of that case, the Chief Executive received an external complaint relating to a different and entirely unrelated Standards Complaint process. The Chief Executive considered his general duty in regards to the efficient running of the Council generally; value for money considerations; and the general duty of care to both those District or Parish Councillors complained about, to complainants, to witnesses and to staff, and concluded that he had sufficient concern about the operation of the Standards Process generally to warrant an objective review.
23. The Chief Executive duly commissioned an Internal Audit Review, the terms of reference of which are set out in full in Appendix C and its scope reproduced below:

This audit will:

- review how well complaints are triaged before being progressed as appropriate and proportionate e.g. considering prima facie evidence

presented by the complainant at an early stage to indicate that a breach has potentially occurred.

- review the established criteria for requesting a full independent investigation.
- review how well the principles of natural justice are applied at all stages.
- review how long complaints take and how much they cost, proportionate to their seriousness, and in light of any disproportionate unintended consequences arising from the process itself
- review the current Considering a Complainant under the Code of Conduct Procedure. (dated 2017)
- Use at least three current/recent complaints as recommended by the Chief Executive (alongside any others that the Internal Audit team selects for itself) as test cases to review the process from receipt to conclusion.

24. Members can be advised that one of those three specific complaints selected by the Chief Executive to be reviewed by the Internal Audit is this case against former Cllr Lodge.

25. Members or others who have perspectives on the operation of the Standards Complaints process that they wish to feed into and inform that Internal Audit review as previously advised.

External Audit Sign Off to the 2019/2020 Annual Accounts

26. In mid-2020, the Council's External Auditors did not sign off the 2019/20 Annual Governance Statement as they became aware of allegations that were then subject to external investigation. This began a protracted delay to the sign off of the 2019/20 Annual Accounts, which cannot be completed without a signed off Annual Governance Statement. That 2019/20 Annual Accounts Audit has been on hold ever since, and with them every subsequent set of Annual Accounts, which relies on the previous year's signed-off accounts as its starting point.

27. Officers were not fully aware of various of the allegations as they were made to and considered by external agencies which properly do not share their work with the Council. Officers were aware of the issues in general terms, and so as to help identify whether there were any control processes that needed tightening, discreetly commissioned an expert independent law firm to carry out a systems review in those areas parallel to these external considerations, in a way that did not risk interfering with them. That external review found no material system weaknesses for Officers to consider fixing.

28. Now that all formal processes are, to the best of the Council's knowledge, complete, Officers have advised our External Auditors and are in discussion with them as to their requirements to return to work on the 2019/20 Annual Governance Statement and Annual Accounts, and thereafter in turn to subsequent years' Accounts. The Council's External Auditors face considerable work pressures and capacity issues, and there is not currently a

date for that work, though Officers will continue to liaise closely to support this process at the earliest opportunity.

29. Members should be advised that whenever External Auditors return to delayed earlier years' accounts in this way, the process is not generally a quick and cursory final sign off, even if there were no other material outstanding issues from the time, as the Auditors will properly take their time to consider issues dating back to that time, but with the benefit of subsequent hindsight.

Behaviours

30. These Officer-led immediate actions and review set out in paragraphs 17-21 and 22-25 above should lead to both immediate and lasting process improvements.
31. The equally important flip side requiring just as urgent attention is around behaviours. It has been observed by both Officers and Members that the Standards Complaints process within Uttlesford District Council has been weaponised, giving rise to concerns that it is used as a tool to oppress and intimidate those against whom complaints are lodged, whether District Councillors or Parish Councillors.
32. Members are invited to consider this perception of behaviours, and to determine whether they are minded to lead the public by example through their own behaviours in either challenging and changing this impression for the better over the coming four years, or else risking reinforcing the perception.

Risk Analysis

33.

| Risk | Likelihood | Impact | Mitigating actions |
|---|----------------------|--|---|
| That lessons are not learned and applied from this case, leaving Councillors in future at risk from having demonstrably tried to do the right thing still falling short of full technical requirements. | 3 – significant risk | 4 – substantial /serious impact on workload, reputation /public confidence, and duty of care considerations to individuals | Immediate actions as set out in paras 17-21 above and the fuller Internal Audit Review commission set out in paras 22-25 above. |

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Decision Notice - Uttlesford District Council Standards Committee, Hearings Panel Meeting held on 13th April 2023.

Panel Members:

Councillor Asker (Chairman)

Councillor B Light

Councillor A Khan

Mrs Georgina Butcher-Doulton (Independent Person – Hearing)

Subject Councillor: Cllr John Lodge

Complainant: Cllr George Smith

Independent Investigating Officer: Gill Sinclair

Independent Monitoring Officer: Quentin Baker

Independent Person for Initial Assessment: David Pearl

Background

On the 13th April 2023 a Hearings Panel was convened to hear and determine an allegation that Cllr John Lodge, (Subject Councillor), had breached the Uttlesford District Council (UDC), Councillor Code of Conduct (CoC). The Complaint dated 04-08-2022 was made by fellow UDC Councillor Cllr George Smith, (Complainant), and following an Initial Assessment (IA) by the Independent Monitoring Officer (IMO) and Independent Person (IP) on 29-11-2022, was referred for investigation. An independent Investigation Officer (IO) was appointed and their final report was received by the IMO on 24-02-2023.

Summary of Complaint

The Complainant alleged that the Subject Member breached the UDC Members Code of Conduct by failing to register Disclosable Pecuniary Interests and by omitting to properly declare and disclose relevant Personal/Prejudicial Interests during meetings of the UDC Planning Committee held on the 20-02-2019 and 13-03-2019.

Decision

The Panel carefully considered the IO's report and heard from the Subject Councillor, Complainant and IO concerning their understanding of the CoC, the legislative requirements underpinning it and how it was implemented in UDC.

The Panel noted and acknowledged that the Subject Councillor had raised a number of valid points about the governance and operation within UDC of the CoC and these mitigated the breaches identified by the IO. The Panel reflected this in their conclusions regarding the appropriate sanction. The Panel were of the view that these matters gave rise to important lessons to be learned for UDC in its implementation of the CoC including the need for comprehensive training on the CoC for Councillors and for Officers to provide continued monitoring and support for

councillors in relation to ethical standards. Regarding these observations the Panel will provide comments/recommendations separately.

As regards the question of whether the CoC had been breached the Panel's conclusions were as follows:-

1. The Panel accepted in full, the independent Investigating Officer's findings that the Subject Councillor had breached the UDC CoC.
2. In relation to Disclosable Pecuniary Interests, (DPIs), as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (DPIs), the Panel found:-
 - i. That Councillor Lodge breached the UDC CoC due to his failure to properly disclose details of his employment/office in his 2015 Register of Interests and those of a Relevant Person. However, the Panel noted that Councillor Lodge did disclose of his employment/office details in Section 2 of his Register under the heading "Other Pecuniary Interests" and as such this was a 'technical' breach.
 - ii. That Councillor Lodge didn't breach the requirement to register details of the Loan Agreement /Legal Charge provided by Manchester and Edinburgh Investment Property Company Ltd, (MEIP), to Company Y because the Loan Agreement/Legal Charge does not amount to a 'beneficial interest in land' as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as such it was not a DPI albeit it would fall within the ambit of an 'other interest'.
 - iii. That Councillor Lodge breached the requirements to register details of his shareholdings in M&EIP which exceeded one hundredth of the total issued share capital and those of a 'Relevant Person'. The Panel concluded that MEIP had a 'Place of Business' within the UDC boundaries because its registered office was within the UDC district and it was involved in funding residential development situated within the district.
3. In relation to the declaration of interests made by Councillor Lodge at the Planning Committee meetings of 20th February and 13th March, the Panel found:-
 - i. That Councillor Lodge breached the requirements of the Code of Conduct by failing to disclose the existence and nature of a Personal and Prejudicial Interest in Planning Application UTT/18/3278/FUL. However, it was noted that Cllr Lodge removed himself from each meeting and did not participate in the debate or vote taken in respect of the relevant application.

Sanction

4. The Panel acknowledged that the Subject Councillor had highlighted a number of valid point regarding the governance of the Code of Conduct within UDC which amounted to mitigation and the Panel reflected that in its decision regarding sanction which it set towards the lower end of the potential options as follows:

- i. To report its findings and the IO report, (subject to agreed redactions), to Full Council to enable lessons to be learned and to inform future training and guidance for members. It is recommended that this be undertaken at a point when newly elected Councillors have taken up their seats and to be accompanied by a report explaining any proposed improvement measures.,.
- ii. To issue a reprimand to Councillor Lodge.

The Panel noted the proximity of the council elections due to take place on 4th May and concluded that the decision notice should be withheld from publication until the 5th May.

Signed: Cllr Heather Asker

Chairman of the Hearings Panel

**Investigation Report
into the Alleged Conduct of Councillor John Lodge
Uttlesford District Council**

- 1 **Executive Summary**
- 2 **Appointment Details**
- 3 **Investigator's background**
- 4 **Arrangements for the investigation**
- 5 **The relevant legislation and protocols**
- 6 **Details of the complaints made**
- 7 **The evidence gathered**
- 8 **Summary of the evidence gathered**
- 9 **Disclosable Pecuniary Interest - Assessment of the evidence and reasoning as to whether there have been failures to comply with the Code of Conduct**
- 10 **Declaration of Interests at Meetings of the Planning Committee - Assessment of the evidence and reasoning as to whether there have been failures to comply with the Code of Conduct**
- 11 **Comments on draft report**
- 12 **Findings**

Draft Investigation Report into the conduct of Councillor John Lodge Uttlesford District Council

Introduction

1. Executive Summary

1.1 Cllr John Lodge is a member of Uttlesford District Council (UDC). He was initially elected as an independent Councillor to Essex County Council in May 2013. He was then elected to UDC in May 2015. He was the Leader of the Residents for Uttlesford (R4U) Group and as such was the Leader of the Opposition UDC from May 2015 until May 2019. Following the May 2019 local elections R4U had overall control of the Council and Councillor Lodge served as Leader of the Council from May 2019 to December 2021. Councillor Lodge now sits on the following bodies at UDC:

- Council
- Investment Board
- Licensing and Environmental Health Committee
- Local Plan Leadership Group

1.2 At the time the matters complained arose, Councillor Lodge was the Opposition Group Leader and at that time, i.e., between May 2015 and May 2019, he was a member of the Planning Committee of UDC.

1.3 I have carried out an investigation into the complaint about Councillor Lodge's conduct in his capacity as an elected member of UDC made by Councillor George Smith, who is also an elected member of UDC. Councillor Smith was not a member of UDC at the time the complaints arose, he was elected to the Council in May 2021 following a by-election. He informed me that he had been provided with details of the complaints by a member of the public who he understood had undertaken a private investigation. The complaint was submitted to the Monitoring Officer in August 2022.

1.4 The complaint made by Councillor Smith is summarised as follows:

- i) That Councillor Lodge failed to declare his directorship of Manchester & Edinburgh Property Investment Co Ltd in his 2015 Register of Interest as required. Councillor Smith alleges that Councillor Lodge's register of interests referred to "Various Property Companies Directorships"
- ii) That Councillor Lodge failed to declare a financial and personal interest in several planning applications relating to 22 Thaxted Road Saffron Waldron,

namely planning applications UTT/18/3278/FUL, UTT/18/2476/HHF, UTT/19/0842/FUL and UTT/19/1389/FUL. The complaint alleges that the interests arise by virtue of the fact that:

- The planning applications were made in the name of Company Y.
- That at the time of the applications one of the directors of Company Y was a Mrs A, [REDACTED]

- iii) That Councillor Lodge made no declaration in his Register of Interest relating to the fact that the development which was the subject of the planning applications was to be financed by a Loan made by a Manchester and Edinburgh Property Investments Company Ltd (M&EPI) (of which Councillor Lodge was a director) to Company Y.
- iv) That Councillor Lodge's declaration of interest at the Planning Committee meetings 20th February 2019 and 13th March 2019 was incorrect, in that at one meeting of the Planning Committee he declared that the applicant, Mrs B, (also a director of Company Y) was known to him. He did not declare that [REDACTED] Mrs A was also a director of Company Y nor did he declare any other interest.

1.5 Provisions of the Code considered

The complaints relate to meetings that engage the version of the UDC Code of Conduct, which was in force in 2019, in respect of which the following provisions are relevant:

- Disclosable Pecuniary Interests, (DPI)

These are as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. There are three aspects to consider in relation to DPIs.

- i) Employment /office
Did Councillor Lodge disclose his directorship of M&EIP (and other directorships) in his 2015 Register,
- ii) Interests in land
Did the Loan Agreement/Legal Charge made by M&EIP amount to a DPI which required registration,
- iii) Securities
Did the nominal value of Councillor Lodge's shareholding on M&EIP exceed £25,000 or one hundredth of the total issued share capital.

- Personal Interest, (PI)

Appendix B of the UDC Code defines personal interests as:

“interests you have in business considered by the council that do not fall within the definition of disclosable pecuniary interests, but which should be declared in the interests of transparency.”

- Personal and Prejudicial Interest, (PPI)

The UDC Code defines personal and prejudicial interests as follows:

“To decide whether a personal interest is prejudicial, members should apply the following test:

“would a member of the public with knowledge of the relevant facts reasonably regard my interest as so significant but it is likely to prejudice my judgement of the public interest?”

1.6 Conclusions as to whether there has been a breach/breaches

1.6.1 In relation to Disclosable Pecuniary Interests, as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, I have made the following findings:

- i) That Councillor Lodge **DID BREACH** the requirement of the Code of Conduct to disclose details of his Employment /office in his 2015 Register of Interest and those [REDACTED] as a relevant person. However, Councillor Lodge did disclose his employment/office details in Section 2 of his Register under the heading “Other Pecuniary Interests”.
- ii) That Councillor Lodge **DID NOT BREACH** the requirement to register details of the Loan Agreement /Legal Charge provided by Manchester and Edinburgh Investment Property Company Ltd to Company Y as the Loan Agreement /Legal Charge does not amount to a beneficial interest in land as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as such it was not a disclosable pecuniary interest that required to be registered.
- iii) That Councillor Lodge **DID BREACH** the requirements to register details of his shareholdings in M&EIP which exceeded one hundredth of the total issued share capital and those [REDACTED] as a relevant person.

1.6.2 In relation to the declaration of interests made by Councillor Lodge at the Planning Committee meetings of 20th February and 13th March, I have made the following findings:

- i) That Councillor Lodge **DID BREACH** the Code of Conduct by failing to declare a Personal and Prejudicial Interest in Planning Application UTT/18/3278/FUL.

However, Councillor Lodge removed himself from each meeting and did not participate in the debate or vote taken in respect of the application.

2 Appointment details

2.1 This report concerns a complaint made by Councillor George Smith a member of UDC in relation to the alleged conduct of Cllr John Lodge, also a member of UDC

2.2 The complaint was assessed on 29th November 2022 by Quentin Baker (QB), Monitoring Officer for Hertfordshire County Council on behalf of the Monitoring Officer of UDC, in QB's capacity as acting Deputy Monitoring Officer of UDC. The Initial Assessment was undertaken by QB in consultation with the Independent Person for UDC.

2.3 The outcome of the Initial Assessment states as follows:

The circumstances which form the basis for this complaint occurred in 2019 and concern the arrangements between two private companies with the shared objective of developing land within the UDC administrative area. The issues aren't straight forward and there are some gaps in the evidence available, but it is clear from the available information that the complaint has some basis in fact and if established would constitute a significant breach of the UDC Code of Conduct. In the circumstances an investigation is considered to be warranted and in the public interest. In reaching this conclusion consideration was given to the Nolan Principles and in particular the requirements of Integrity, Openness and Leadership.

2.4 QB appointed Bethan Evans Governance Training and Consultancy Ltd to undertake the formal investigation into the complaints on 20th December 2022.

2.5 QB notified the parties of the outcome of the Initial Assessment and on 29th November 2022. On 21st December 2022 he advised them of the appointment of an investigator.

2.6 Prior to undertaking this investigation neither Bethan Evans nor Gill Sinclair had any knowledge of or contact with the officers or members of UDC.

3 Investigator's background

3.1 The investigation has been undertaken by Gill Sinclair, an associate working with Bethan Evans Governance Training and Consultancy Ltd. I have over 20 years of experience of working for local authorities providing advice to Councils on decision-making, probity, standards, and the Member Code of Conduct. I have undertaken all aspects of work relating allegations of breaches of the Code of Conduct, including assessments and investigations of complaints, reporting to, and advising the Standards Committee and providing training to Councillors on the Code Conduct. I regularly provided advice to Councillors on conduct, interests and conflicts of interests and probity.

4 Arrangements for investigation

4.1 Following appointment, I have been provided copies of:

- i) Initial Assessment of Complaint and complaint- dated 29 November 2022
- ii) Undated, unauthored & unsigned Introduction and Summary document
- iii) Councillor Lodges' Register of Interest dated 27th May 2015
- iv) Councillor Lodges' Register of Interest dated 21st May 2019.
- iv) Electronic links to meetings of the Planning Committee 20th February 2019, and 13th March 2019
- v) UDC Complaints & Assessment Procedure,
- vi) UDC Members' Handbook including its Code of Conduct
- vii) Various documents from Companies House relating to M&EIP and Company Y

4.2 The complainant refers to allegations of breaches of the Code of Conduct by Cllr Lodge at the following meetings:

- Planning Committee 20th February 2019,
- Planning Committee meeting 13th March 2019

5 The relevant legislation and protocols

5.1 The Relevant Code of Conduct is the UDC Code that was in force prior to May 2019. The Council adopted the LGA Model Code on 11th October 2022. As the complaint was received prior to this date, the complaint falls to be considered in accordance with the provisions of the Code in force at the date of its submission.

5.2 The requirements to register and declare DPLs are contained in the Localism Act 2012 s30(1) and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The UDC Code replicates these requirements at Appendix A and provides guidance at para's 8 and 18 of the document titled "The Councillors' Code of Conduct Part 1".

5.3 Guidance and the requirements to declare personal and personal and prejudicial interest are set out in the Code at para's 9, 10, 19 and Appendix B of "The Councillors' Code of Conduct Part 1" which is contained in the Members Handbook.

5.4 Officers confirmed that the Members Handbook was refreshed in 2022, but that the provisions relating to Disclosable Pecuniary Interests and Personal and Prejudicial Interests were not revised at that time. In this regard the provisions in the Handbook were applicable in 2019. For information, when Councillor Lodge refers to the Red Book, this is a reference to the Members Handbook.

5.5 The complaints relate to meetings that engage the UDC Code, in respect of which the following provisions are relevant:

- Disclosable Pecuniary Interests, (DPI)

These are as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. There are three aspects to consider in relation to DPIs.

- i) Employment /office
Did Councillor Lodge disclose his directorship of M&EIP (and other directorships) in his 2015 Register,
- ii) Interests in land
Did the Loan/legal charge made by M&EIP amount to a DPI which required registration,
- iii) Securities
Did the nominal value of Councillor Lodge's shareholding on M&EIP exceed £25,000 or one hundredth of the total issued share capital.

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"interests you have in business considered by the council that do not fall within the definition of disclosable pecuniary interests, but which should be declared in the interests of transparency."

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The UDC Code defines personal and prejudicial interests as follows:

"To decide whether a personal interest is prejudicial, members should apply the following test:

"would a member of the public with knowledge of the relevant facts reasonably regard my interest as so significant but it is likely to prejudice my judgement of the public interest?"

6 Complaint

6.1 The complaint made by Councillor Smith is summarised as follows:

- i) That Councillor Lodge failed to declare his directorship of Manchester & Edinburgh Property Investment Co Ltd in his 2015 Register of Interest as required. Councillor Smith alleges that Councillor Lodge's register of interests referred to "Various Property Companies Directorships"

- ii) That Councillor Lodge failed to declare a financial and personal interest in several planning applications relating to 22 Thaxted Road Saffron Waldron, namely planning applications UTT/18/3278/FUL, UTT/18/2476/HHF, UTT/19/0842/FUL and UTT/19/1389/FUL. The complaint alleges that the interests arise by virtue of the fact that:
- The planning applications were made in the name of Company Y
 - That at the time of the applications one of the directors of Company Y Ltd was a Mrs A, [REDACTED]
- iii) That Councillor Lodge made no declaration in his Register of Interest relating to the fact that the development which was the subject of the planning applications was to be financed by a Loan made by a M&EIP of which Councillor Lodge was a director, to Company Y.
- iv) That Councillor Lodge's declaration of interest at the Planning Committee meetings on 20th February 2019 and 13th March 2019 was incorrect, in that at one meeting of the Planning Committee he declared that the applicant, Mrs B (also a director of Company Y) was known to him. He did not declare that [REDACTED] Mrs B was also a director of Company Y.

6.2 A copy of the redacted Initial Assessment and the details of the complaint are attached at Appendix 1

7 Evidence Gathered

7.1 In addition to the documents referred to at 4.1 above, I have also reviewed documentation relating to the two companies referred to and filed at Companies House. I have summarised the information I have reviewed in respect of each company below. All this information is accessible in the public domain.

7.2 In relation to M&EIP I have noted the following:

| | |
|--|--|
| Manchester & Edinburgh Property Investment Co Ltd | |
| Company Number | 08302407 |
| Date of Incorporation | 21 st November 2012 |
| Registered office address | Market House, 10 Market Walk, Saffron Walden, Essex, England, CB10 1JZ |
| Directors on incorporation | [REDACTED] John Stuart Lodge |
| Persons with Significant Control | John Stuart Lodge |
| Shareholders on incorporation | John Stuart Lodge, [REDACTED] Mrs A plus 1 other |
| Change in shareholders | Statement of Confirmation 2021 – [REDACTED] [REDACTED] ceased to be a shareholder |

7.3 In relation to Company Y I have noted the following:

| Company Y | |
|---------------------------------|--|
| Date of Incorporation | 30 th January 2018, |
| Registered office address | In UDC area |
| Directors on incorporation | Mrs A and Mrs B |
| Person with Significant Control | Mrs A & Mrs B |
| Resignation of Director | 27 th May 2020 Mrs B resigned |
| Registration of Charge | Created 19 th September 2019 Property 22 Thaxted Road & Land at 22 Thaxted Road Securing the payment of sums detailed in the Loan agreement made between the Borrower (Company Y) and the Lender (MEIP) dated 13 th April 2018 |
| Shareholders on incorporation | Mrs A & Mrs B |
| Changes in Shareholding | 27 th April 2020, Mrs B ceased to be a shareholder, all shares were transferred to Mrs A |

7.4 I also took statements from Councillor Smith and Councillor Lodge. The summary of the evidence they gave is set out in Section 8 below. Councillor Smith's signed statement is Appendix 2 and Councillor Lodge's signed statement with attachment is Appendix 3.

7.5 There is a disagreement between them as to what was disclosed on Councillor Lodge's 2015 Register of Interests, the application of the Code of Conduct in relation to registration and disclosure of DPis, and the nature of the interest required to be disclosed in relation to the planning applications referred to in the complaint.

7.6 The facts that are not in dispute are that:

- Councillor Lodge is a director of M&EIP,
- That M&EIP provided a loan to Company Y to acquire property
- That Mrs A [REDACTED] Councillor Lodge
- That Councillor Lodge did not participate in the debate or vote at either Committee meeting

8 Summary of Material Facts

8.1 I will deal with each aspect of the complaint separately. I will set out the summaries the material facts relevant to each aspect of the complaint.

Councillor Lodge's 2015 Register of Interest (RoI)

8.2 Employment/office

- 8.2.1 Councillor Smith alleged that Councillor Lodge failed to disclose details of his directorship of M&EIP in his 2015 RoI. He indicates that the relevant entry in Councillor Lodge's 2015 RoI reads:

"Various Property Companies Directorships".

He also alleges that the disclosure of M&EIP was only specifically provided in Councillor Lodge's RoI in May 2019. Councillor Smith did not produce the 2015 RoI or any other documentary evidence to support these allegations.

- 8.2.2 Councillor Lodge vehemently disputed this allegation. He was adamant that he disclosed his directorships when completing his 2015 RoI, and he was willing to make a sworn statement to that effect. He said that following notification of the complaint he had asked Officers of UDD for a copy of his 2015 RoI, but he had not received a copy. As noted at paragraph 4.1 above, I was provided with a copy of Councillor Lodge's 2015 RoI as part of this investigation and I required to refer to it during my interview with Councillor Lodge, I therefore provided a copy of the Register to Councillor Lodge during our interview.
- 8.2.3 Councillor Lodge drew my attention to Section 2 of his RoI headed "**Other Pecuniary Interests**" and he highlighted the fact that his directorship of M&EIP (along with other directorships) is referred to in this section. Councillor Lodge considers the disclosure of the directorship at Section 2 of his RoI demonstrates that he has complied with the requirement to disclose his interest in the Company. He accepts that the information is not in the correct part of the RoI, but it is nonetheless on the RoI, and that whilst he may have failed to comply with the letter of the law, it is in his view "an incredibly minor infringement".
- 8.2.4 By way of explanation as to why the company details were listed in Section 2, Councillor Lodge explained that at the time he completed his RoI in 2015, M&EIP was not operating in UDC. He also commented that the format of the form was poor. He accepted that putting the information in the wrong box was technically incorrect, but he considered that it was a minor infringement in the circumstances.

8.3 Interest in Land

- 8.3.1 Councillor Smith alleged in his complaint that M&EIP had provided funding in the form of a Loan for the purposes of the purchase and development of 22 Thaxted Road to Company Y. In his statement, he says that he understands one of the directors of Company Y, Ms A, [REDACTED] Councillor Lodge. Councillor Smith alleges that Councillor Lodge would have been aware of the planning application for 22 Thaxted Road and that by virtue of M&EIP providing a Loan to Company Y for the purchase/redevelopment of 22-26 Thaxted Road. He also alleges that Councillor Lodge had an interest that should have been declared by virtue of his financial interest in M&EIP. Councillor Smith considered his declaration of a non-pecuniary

interest at the Committee meetings was insufficient. He considers that Councillor Lodge had a DPI by virtue of the Loan.

- 8.3.2 Councillor Lodge confirmed Mrs A [REDACTED] and that she, along with Mrs B, set up Company Y as their project. He also confirmed that it is factually correct that M&EIP provided a Loan to Company Y.
- 8.3.3 In response to the suggestion that the Loan amounted to a DPI. In his statement Councillor Lodge explained that in around 2017 he considered whether he needed to disclose details of [REDACTED] company in his RoI. He said that on his reading of the Red Book, he concluded that he was not under an obligation to record details of Company Y. His reasoning for this conclusion is as follows:

"18 In 2017 I had considered whether I needed to register details of [Company Y] in my Register of Interest and I had concluded having reviewed the Red Book, that I did not need to include it on my Register of Interest.

19 It is my view that the Red Book made it very clear that [Company Y] did not amount to a DPI. I am not involved with the company; I am not a director or shareholder. [REDACTED] was and is a director. Appendix A of the Red Book describes whose interests need to be disclosed as DPIs. It defines who a "relevant person" is. [REDACTED] is not a person who is listed as a "relevant person"; she is neither my spouse nor civil partner, nor a person with whom I was living as a husband or wife, nor a person with whom I was living as if they were my civil partner. As such [REDACTED] is not a relevant person and I do not have to disclose the details of her company.

20 Neither did I need to disclose the Loan given by Manchester and Edinburgh Investment Property Company Limited to [Company Y]. The Legal Charge is not a DPI because I do not have a beneficial interest in the land owned by [Company Y] as defined in Appendix A of the Red Book. Appendix A5 defined "land" as "excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy or to receive income". There were no such rights for Manchester and Edinburgh Investment Property Company Limited"

8.4. Securities

- 8.4.1 Whilst Councillor Smith did not raise any allegation of any failure by Councillor Lodge to properly disclose the value of the securities he held in a relevant body; this issue was referred to in the Deputy Monitoring Officer's Initial Assessment. As such Councillor Lodge was asked in interview whether his holdings in M&EIP were such

that they required to be disclosed as a DPI and whether at the relevant time he held any securities in Company Y that would have required disclosure as a DPI.

- 8.4.2 In response to these questions, Councillor Lodge responded that the nominal share value of his holding in M&EIP is £26.00.

He stated that he had never held shares in Company Y.

8.5 Declaration of Interest – Planning Application

- 8.5.1 Councillor Smith alleges that:

“Councillor Lodge failed to declare a financial and pecuniary interest in a number of planning applications”..... UTT/18/3278/FUL, UTT/18/2476/HHF, UTT/18/3278/FUL, UTT/19/0842/FUL and UTT/19/1389/FUL

- 8.5.2 In his statement he says that at the times the applications were made, they did not indicate that the applicant, Mrs B, was related to a serving member of the Council, (Councillor C) and as such the applications were dealt with under delegated authority by officers. He goes on to say that Councillor Lodge made no declarations in relation to the delegated applications.

- 8.5.3 In relation to the application that was reported to the Planning Committee, Councillor Smith alleges that at one of the Committees, Councillor Lodge declared a non-pecuniary interest because the applicant was a personal friend. Councillor Smith considers this declaration was insufficient. He does accept that the minutes record that on the two occasions this application came before the Planning Committee, Councillor Lodge did leave the room.

- 8.5.4 Councillor Lodge confirmed that in respect of the one application that came to the Planning Committee he took no part in the decision making. In his statement, he explains how he concluded that he should not participate, he states that he had previously taken advice from the Monitoring Officer of UDC (on an unrelated application) and he applied that advice to the application in respect of 22 Thaxted Road. He explained the advice he had taken as follows:

“....The advice I had taken related to a planning application that had been made by a member of the R4U Group. The application was for a change of use of his shop. I was advised by the Monitoring Officer that as a member of the Group I should declare a non-pecuniary interest and not participate at the committee meeting.

Subsequently a planning application was made by a Conservative councillor for the development of two private homes in her garden. By this time there was a new Monitoring Officer, I pointed out to the then Monitoring Officer (SP) that based on the advice I had been given by the previous Monitoring Officer, the Conservative members on the Committee should stand down and not participate. I was told by

the Monitoring Officer that the previous Monitoring Officer had got it wrong and that they could participate.

I made a further complaint to the Monitoring Officer (SP) about an application for a completely new town. [REDACTED] of the then Leader of the Council was a member of the family seeking a multimillion pound development of the land. I was told by the Monitoring Officer that that was not relevant.

In relation to the Thaxted Road application I reached the conclusion not to participate and to declare a non-pecuniary interest after I considered the advice from the previous Monitoring Officer in relation to the matters I had raised, and despite the advice I had been given by the then current Monitoring Officer (SP). I applied the same reasoning as I had to the application for the change of use made by a councillor of R4U and I decide based on that advice that I should not participate at Committee and that I should declare a non-pecuniary interest at the Committee because of my knowledge of the applicant."

- 8.5.5 Councillor Lodge was asked whether he had considered the interest amounted to a Personal and Prejudicial interest. He responded by saying:

"I did not consider it to be a personal and prejudicial interest, the Red Book refers to these interests in Appendix B. The only item which may be said to constitute an interest in B4 mentions "family", but it does not define "family". It is reasonable to assume the same definition as in A3, "a relevant person" and therefore it did not include [REDACTED].

I understand the test to be applied to determine whether the interest is a personal and prejudicial interest. And in the circumstances any member of the public knowing the full facts would think that I should not participate in any business relating to the planning application that came before the committee. And I did not participate at either committee. A member of the public would say that I have acted legally and technically correctly as I did not participate.

I can't recall what I said at the meetings, but I withdrew from the meetings along with two other councillors, one of them might have said something and we all then left the meetings. I understand the meetings were recorded. It is important to note that the I did not participate at any of the committee meetings and in fact the only meeting which granted planning permission to [Company Y] I was totally absent from.

I consider that I have complied with the requirements to register my directorship of Manchester and Edinburgh Investment Property Company Limited, and that in accordance with the Red Book neither [REDACTED] interest in [Company Y] nor the loan/legal charge amount to a DPI.

In relation to the committee, I withdrew from the meeting and did not participate in the item. A member of the public would conclude that as I had no

influence whatsoever in the discussion or outcome of the planning application, they would see that I had always acted properly and morally....”



Disclosable Pecuniary Interests - Assessment of the Material Evidence and reasoning as to whether there has been a failure to comply with the Code of Conduct

- 9.1 Disclosable Pecuniary Interests are defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (the 2012 Regulations). The Schedule to the 2012 Regulations set out the DPs that every Councillor is required to disclose. Failure to disclose could result in criminal proceedings. The Schedule includes the following disclosure requirement:

| Subject | Prescribed Description |
|---|---|
| Employment, office, trade or profession or vocation | Employment, office, trade or profession or vocation carried on for profit or gain |
| Land and Property | Any beneficial interest in land which is in the Council's area |
| Securities | Any beneficial interest in securities of a body where: a. That body (to the Councillors knowledge) has a place of business or land in the Council's area; and b. either i) the total nominal value of the securities exceeds £25000 or one hundredth of the total issued share capital of that body; or ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class. |

- 9.2 I will consider each of the elements of the RoI referred to above separately and I will give reasons as to whether I consider the conduct complained about constitutes a breach of the UDC Code of Conduct

Employment/Office

- 9.3 Regulation 2 of the 2012 Regulations contains the definitions relevant to the DPs described above. There is a Schedule included in the 2012 Regulations which provides the meaning of individual DPs. They however do not include a definition or meaning of Employment, office, trade or profession or vocation.

9.4 Dealing with the allegations that Councillor Lodge failed to include details of his directorship of M&EIP on his 2015 Rol. A copy of the 2015 Rol held by UDC was provided to me and is attached as Appendix 4. The Rol is made up of four parts:

- General Notice of Registerable Interests
- Section 1 - Disclosable Pecuniary Interests
- Section 2 - Other Pecuniary Interests
- Section 3 – Registerable Non – Pecuniary Interests

9.5 In relation to Section 1 the form provides the following guidance in relation to DPIs

“(Members are required to register not only their own interests under this heading but all those of their husband or wife or civil partner or any person with whom they are living with as if husband, wife or civil partner when such interests are known to them)”

9.6 Councillor Lodge is a director of M&EIP, a director is an “office holder”. Councillor Lodge confirmed this at interview and a search of the M&EIP at Companies House confirms he has been a director since incorporation (see para 7.2 above). As an office holder, he should have provided details of his directorship of the specific company, along with other companies in which he was an office holder/employed in box 1 on his Rol. He did not provide those details. His entry reads:

“Director Various Prop Cos (not operating in UDC)”

9.7 As noted at para 7.2 above the search at Companies House also reveals that [REDACTED] was appointed a director of M&EIP at incorporation and she remained as director throughout the relevant period. No details of her directorship are disclosed in Section 1 of the 2015 Rol. Although it is noted that Councillor Lodge did include the following details relating to [REDACTED] as a “relevant person” in box 1 of his 2015 Rol.

9.8 Section 2 of the Rol – Other Pecuniary Interests, contains interests that are not DPIs as defined by the 2012 Regulations, these are best described as “local” requirements of the UDC Code of Conduct. A failure to comply with these requirements is not a criminal offence. The form provides members with the following guidance:

“(Members are only obliged to register their own interests under this heading and not the interests of husbands/wives/civil partners or others)”

9.9 The form requires Members to disclose the following:

“The name of the person who employs or has appointed you, the name of any firm in which you are a partner, and the name of any company in which you are a remunerated director”

- 9.10 Alongside this box, Councillor Lodge has provided the names of several companies, including M&EIP.
- 9.11 As noted at paragraph 9.2, the 2012 Regulations do not include a definition of "Employment, office, trade or profession or vocation". However, the Guidance on Local Government Association Model Code of Conduct issued by the LGA in 2022 is helpful on this point. Whilst it was not in force at the time of the alleged breach, it provides the most relevant guidance on this point. It states that sufficient details should be given to identify your company or employer. This aids transparency and allows people to see where potential conflicts of interest may arise. It also worth noting that the UDC Code does not provide any guidance on the requirements of disclosure of a councillor's employment or office.
- 9.12 Councillor Lodge did not provide these specific details in the correct section of the RoI in relation to M&EIP and other companies of which he was a director. Neither did he include the directorship in M&EIP [REDACTED] as a "relevant person" for the purposes of the 2012 Regulations.
- 9.13 He did however provide details of his directorship of M&EIP and other companies in Section 2 of the RoI. It is noted that the form provides no guidance to councillors when completing the requirements of their DPI's and neither does the Councillors Code of Conduct provide any guidance as to what is required to be included on the RoI in respect of Employment/Office.
- 9.14 This is in contrast with Section 2 Other Pecuniary Interests. The requirement replicates the requirements of the DPI, and in addition it clearly states that the name of the employer/firm or company is required.
- 9.15 The failure by Councillor Lodge to complete the RoI correctly is technically a breach of the requirement to disclose /declare a DPI in relation to his employment/office. However, when taken as a whole, the RoI does in my opinion disclose the relevant information in relation to Councillor Lodge himself (though not in relation to [REDACTED] – see comments below). A person viewing the RoI as a whole would not be prejudiced in relation to the information relating to Councillor Lodge himself by virtue of the fact that the details of Councillor Lodge's employment/office were referred to in Section 2 of the form as opposed to Section 1. The relevant information is in the form, albeit in the wrong place.
- 9.16 There is an allegation contained in the document titled Introduction and Summary that Councillor Lodge added details of his directorship of M&EIP at about the time the planning application relating to 22 Thaxted Road was considered at the planning committee. Having viewed the RoI, there is no evidence to suggest or support this allegation.
- 9.17 There are no relevant disclosures relating to the directorship of [REDACTED] in relation to M&EIP in his 2015 RoI.

9.18 Evidence of the appointments of Councillor Lodge and [REDACTED] as directors are contained in Appendix 6.

9.19 For the sake of completeness I have considered whether Councillor Lodge had an interest in Company Y that amounted to an Other Pecuniary interest in Company Y. As noted above the 2015 RoI included the requirement for councillors to disclose any non-pecuniary interest that fell within the following definition:

"The name of the person who employs or has appointed you, the name of any firm in which you are a partner, and the name of any company in which you are a remunerated director"

9.20 Companies House records do not show that Councillor Lodge has held an office in this company, the records do not show the company has any employees. Councillor Lodge stated in his interview that he is not involved in the company. I have concluded that he did not have an interest that required to be registered as an Other Pecuniary Interest on his 2015 RoI.

Conclusion

9.21 My conclusion in relation to this matter is that in relation to disclosure of details of the employment/office of Councillor Lodge, technically he has breached the Code of Conduct in that he has failed to comply with the strict requirements to disclose details in the correct part of his RoI. But this failure does not create any prejudice as full compliant details are included in Section 2. However, in relation to [REDACTED] as a "relevant person", he has breached the Code of Conduct in that he has failed to disclose the directorship in M&EIP of a relevant person.

Interest in Land

9.22 The 2012 Regulations include the following meaning of Land for the purposes of the Regulations:

"Land" excludes an easement, servitude, interest or right in or over and which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income"

9.23 The question that needs to be addressed is whether the Loan Agreement/Legal Charge (provided by M&EIP to Company Y in relation to 22 Thaxted Road) amounted to an interest in Land which required disclosure. To determine this, it is necessary to consider the definition of "Land" as contained in the 2012 Regulations, this is set out in full above.

9.24 It is worth noting that the definition excludes certain interests in land, which do not carry with them a right for the relevant person (alone or jointly with another) to occupy the land or to receive income. Councillor Lodge has stated that the Loan/Legal Charge made by M&EIP does not contain any such rights. I have been provided with a draft loan agreement between M&EIP as Lender and Company Y as

borrower. The draft agreement is made between two companies, not individuals, it is an agreement to provide funds to secure option agreement/purchase 22 Thaxted Road, and it requires the loan, when made, is to be registered as a first legal charge against the property purchased, to secure the repayment of the loan. The draft does not disclose any rights granted to M&EIP to occupy the property nor does it disclose any rights for M&EIP to receive an income from the property. Councillor Lodge was asked to provide evidence of the completed Loan Agreement, this would confirm the final form of the document. He was unable to provide this, he did provide an email exchange between the COMPANY Y directors, and copied to John Lodge, indicated that he had raised two points (blanks) on the draft agreement and the response from Mrs B was that these blanks had been removed as they were redundant and a clean copy would be sent. Councillor Lodge states that he does not believe that the loan agreement was ever formally completed. However, the Legal Charge registered at Companies House does record a Loan Agreement dated 13th April 2018. In the circumstances I can only draw my conclusion on this point based on the terms of the draft loan agreement.

- 9.25 I have also considered whether a Loan provided by a company, as distinct from Councillor Lodge as an individual, would fall to be disclosed. On the evidence of searches of Companies House, the Loan/ Legal Charge relating to 22 Thaxted Road was provide by M&EIP to Company Y. The 2012 Regulations require a councillor to register any beneficial interest in land within the area. This regulation relates only to the beneficial interest in land of the councillor or relevant person.
- 9.26 The definition of what interest must be declared in relation to land differs from other DPIs as defined in the Regulations, for example the requirements relating to the registration of DPIs relating to Corporate tenancies includes:

“a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners is a partner of or a director of or has a beneficial interest in the securities* of.*

- 9.27 The definition of Securities includes reference to

Any beneficial interest in securities of a body where.....

- 9.28 The definition of Land does not extend to require a councillor to register a beneficial interest in land held by “a body”. Again, the LGA Guidance is helpful on this point. In relation to Land, the guidance states that:

“In general, there is no requirement to list the land holdings of companies or corporate bodies included in the register. The only requirement is to register any tenancy between such bodies and the authority.”

The guidance goes on to say:

“You do need to be mindful of your level of control in the company and the effect this may have on your benefit from the land. For example, if you and your spouse jointly owned a farming business, you would be the sole beneficiaries of any land owned by that farm and as such it is strongly advised to register land held by companies in which you have a controlling interest”

- 9.29 In this case, the Loan/Legal Charge was not provided by either Councillor Lodge nor a relevant person, it was provided by a company of which Councillor Lodge was (and is) a director. The company has a separate legal identity and based on the above guidance there is no requirement in law (although it is advisable) to register the land ownership of a company. A Legal Charge does not equate to ownership, it creates rights over the secured property without any transfer of title. The Chargee, in this case M&EIP has a right to have the property appropriated to meet the debt in the event of default on payment.

Conclusions

- 9.30 My conclusions in relation to whether Councillor Lodge failed to register the Loan Agreement/Legal Charge provided by M&EIP to Company Y in respect of 22 Thaxted Road and land at 22 Thaxted Road, is that the Loan Agreement/Legal Charge for the reasons set out above, was not a DPI, as such Councillor Lodge was under no obligation to register it. And as such I find that there is no breach of the Code of Conduct.

Securities

- 9.31 The meaning of Securities reads as follows:

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000(2) and other securities of any description, other than money deposited with a building society”

- 9.32 The relevant provision of the 2012 Regulations is:

Any beneficial interest in securities of a body where –

That body (to the Councillors knowledge) has a place of business or land in the Council’s area; and

b. either

i) the total nominal value of the securities exceeds £25000 or one hundredth of the total issued share capital of that body; or

- 9.33 A search of the company records at Companies House confirms that M&EIP, had at the relevant time, a registered office in UDC. It also reveals that on 21st November 2018, it had an Ordinary Share Capital of 100 issued and fully paid up shares. The nominal value of each share being £1.00. It appears that the issued share capital was of one class of shares.

- 9.34 Councillor Lodge confirmed in his statement that the nominal value of the shares he holds is £26.00. This is confirmed in the documents of incorporation and in subsequent annual accounts.
- 9.35 Based on the above, Councillor Lodge's holding exceeded one hundredth of the total issued share capital of M&EIP, i.e., he held 26% of the shares in the Company.
- 9.36 In addition, Councillor Lodge's [REDACTED] held an equivalent share holding on incorporation. Companies House records show that there was a change in the shareholders during 2021 when [REDACTED] ceased to be a shareholder of M&EIP. It appears therefore that at the relevant time, [REDACTED] as a relevant person had a shareholding that exceeded one hundredth of the total issued share capital. The relevant company documents are included as Appendix 6.

Conclusion

- 9.37 The Regulations require the disclosure on a members' RoI of shareholdings where the nominal value exceeds £25,000, or one hundredth of the issued share capital. Based on records filed at Companies House, Councillor Lodge, and [REDACTED] each held a shareholding that exceeded one hundredth of the total issued share capital in M&EIP in 2015, as noted above the shareholding of [REDACTED] ceased in 2021. These shareholdings were required to be disclosed as a DPI in respect of both Councillor Lodge and [REDACTED] as a relevant person on the 2015 RoI. They were not, the entry reads "None". The failure to record the shareholding in M&EIP amounts to a breach of the Code of Conduct. Details of the shareholdings at the relevant time are evidenced in Appendix 6.
- 10 Declaration of Interest at Meetings of the Planning Committee and Reasoning as to whether there have been failures to comply with the Code of Conduct**
- 10.1 Councillor Smith alleges that Councillor Lodge failed to declare an interest in several planning applications made to UDC. He considers that Councillor Lodge had an interest in the planning applications by virtue of the fact that they were made by or on behalf of Company Y, a company with which he was connected by virtue [REDACTED] [REDACTED] being a director. Councillor Smith also alleges that at the Committee meetings that Councillor Lodge, declared a non-pecuniary interest, and that interest was insufficient. I have concluded above that Councillor Lodge did not have a DPI in relation to either Company Y, or the land held by Company Y by virtue of the Loan/Legal Charge
- 10.2 Set out below is a summary of the planning applications that are referred to in the complaint.

| Planning Ref | Date Submitted | Delegated Decision | Committee Decision | Decision Date |
|-----------------|----------------|--------------------|--------------------------------------|---------------|
| UTT/18/1824/FUL | 29/06/18 | Refused | | 04/06/2019 |
| UTT/18/2476/HHF | 03/09/18 | Approved | | 01/11/2018 |
| UTT/18/3278/FUL | 27/11/18 | | Withdrawn after 2 Committee meetings | |
| UTT/18/0842/FUL | 08/04/19 | Refused | | 04/06/2019 |
| UTT/19/1389/FUL | 10/06/19 | | Approved | 23/08/2019 |

10.3 Councillor Lodge was a member of the Planning Committee until May 2019. As can be seen from the table above the first planning application that was referred to Planning Committee was UTT/18/3278/FUL. The previous two planning applications had been submitted and determined in accordance with the Officer Delegation procedure. As to whether this was the correct procedure, is not a matter for this investigation.

10.3 For completeness, applications UTT/18/0842/FUL and UTT/19/1389/FUL were considered by the Planning Committee after May 2019, by which time Councillor Lodge was no longer a member of the Planning Committee.

10.4 Paragraph 11 of the UDC Code sets out the requirements in relation to the declaration of members' interests. These provisions apply to all types of disclosable interests, i.e., disclosable pecuniary interests, personal interests, and personal and prejudicial interests. The requirements of the UDC Code are as follows:

"If you are present at a council meeting that is considering business in which you have an interest, you must disclose the existence and nature of the interest to the meeting. Council meetings for this purpose also include:

- *Meetings of committees, sub-committees, working groups and panels*
- *Meetings of the Cabinet and of committees and sub-committees of the Cabinet."*

10.5 This requirement has three limbs:

- i) Be present at the meeting,
- ii) Disclose that you have an interest and
- iii) Declare the specific nature of the interest.

10.6 Paragraph 14 of the Code sets out the requirements in relation to participation in relation to DPIs, (unless a councillor has a dispensation), it requires councillors to:

- *Withdraw from the room or chamber where the meeting considering the business is being held*
- *Not participate or participate further in any discussion of the matter at the meeting*
- *Not participate in any vote or further vote taken on the matter at the meeting*

10.7 Paragraph 15 deals with personal and prejudicial interest, it states (unless a councillor has a dispensation):

- *You may attend a meeting for the purposes of making representations only*
- *You must not participate or participate further in any discussion of the matter at the meeting*
- *You must not participate in any vote or further vote taken on the matter at the meeting*

10.8 The Code goes on to say at paragraph 16 that:

If you have a personal interest that is neither a disclosable pecuniary interest nor a prejudicial interest, you may participate in discussion of the matter and may vote"

10.9 As noted above two of the applications referred to in the complaint were determined pursuant to the Officer Delegation procedures. They were not, therefore considered at a meeting of the Council defined by the Code. Councillor Lodge was therefore not required to make a declaration in respect of these specific applications.

10.10 In addition, two applications, were considered and determined by Committee after May 2019, by which time Councillor Lodge was not a member of the Planning Committee, he was therefore not required to make a declaration in respect of these applications.

10.11 I have reviewed the approved minutes of the Committee meetings of 20th February 2019 and 13th March 2019. I have also listened to the recordings of these meetings. The recordings are attached as a link as part of the Committee agenda and minutes.

10.12 In relation to the approved minutes of the meeting on 20th February, they do not record any declaration made by Councillor Lodge under the item "Apologies for Absence and Declarations of Interest". They do however record that after the vote was taken in relation to application UTT/18/28899/FUL, agenda item 5, Councillors Freeman, Lodge and Fairhurst left the room. This was immediately prior to the commencement of agenda item 6, UTT/18/3287/FUL R/O 22 Thaxted Road. They

also show that Councillors Freeman, Lodge and Fairhurst returned to the room after the vote was taken on this item.

- 10.14 It is concerning to note that the recording of this meeting actually records that Councillor Lodge did make a verbal declaration at this meeting (though this does not feature on the minutes). The declaration was acknowledged and noted by the Chair, and he appeared to bring it to the attention of officers. The declaration made by Councillor Lodge was as follows:

'item 6 I will recuse myself as the application is by [REDACTED] a fellow councillor'.

- 10.15 In relation to the approved minutes of the meeting of 13th March, the minutes record that Councillors Freeman, Fairhurst and Lodge declared a non-pecuniary interest in item 3 as the applicant is a personal friend. They also show that the Councillors left the room for the duration of this item.
- 10.16 Listening to the recording of the meeting, it is not possible to decipher whether Councillor Lodge, Freeman or Fairhurst made such a declaration. It is clear none of the councillors made any declaration when the Chair called for apologies and declarations at the beginning of the meeting. The Chair took all declarations and then moved to agenda item 3, UTT/18/3287/FUL R/O 22 Thaxted Road. It is however clear that as the officer commenced his introduction to the item, some councillors did speak and at that point the Chair interrupted and stopped the officer continuing. It is possible to hear a councillor, who I believe to be Cllr Lodge say something. It is my view having listened to the recording that Councillor Lodge said that he had an interest. The Chair clearly noted what was said, as he said: *"so you are recusing yourself OK..."*
- 10.17 From my analysis of the minutes and the recordings of the meetings, it is evident that Councillor Lodge withdrew from each meeting. He did not participate in the debate or vote on the planning application relating to 22 Thaxted Road on either occasion. In essence, he complied with the requirements relevant to a DPI (see paragraph 10.7 and 10.8 above).
- 10.18 He did not however, in common with the majority of other councillors at these meetings, including the Chair, comply with the specific requirement to disclose the nature and extent of the interest he was declaring.
- 10.19 As noted at paragraphs 8.5.4- 8.5.5 above, Councillor Lodge has explained his reasoning behind the declaration of a non-pecuniary interest in the planning application. In summary, he says that he applied the same logic to this application as he had to an application made by a member of the R4U group, and in accordance with the advice that he had previously been given by a Monitoring Officer of UDC he withdrew and did not participate in the item. He also explained how he concluded that the interest did not amount to a personal and prejudicial interest. In summary when considering whether he had an personal and prejudicial interest by virtue of [REDACTED] involvement in Company Y, he says in his statement that he considered

whether she was a related person, he referred to the definition of a related person at Appendix B.4 of the Code, and noted that a related person was a member of your family, but as there was no definition of “family”, he applied the definition of a “relevant person” and [REDACTED] did not fall within the definition of a relevant person.

- 10.20 In relation to personal interests, the Code set out very clearly what a councillor is required to consider. At Appendix B2 it defines a personal interest as

“....you will have a personal interest in an item of council business in these circumstances:

B.2 A decision in relation to that business might reasonably be regarded as affecting your financial position or well-being or that of a related person to a greater extent than the majority of other council taxpayers, ratepayers or inhabitants of the ward affected on the decision”

- 10.21 At B.4 of Appendix B a definition of “related persons” is given that is applicable to determining whether a councillor has a personal interest. It includes the following:

“a member of your family or any person with whom you have a close business or personal association”.

- 10.22 It is worth noting at this point that the UDC Code does not refer to, or include a definition of a non-pecuniary interests. It refers to personal, and personal and prejudicial interests. Personal interests are defined as:

“Personal interests or interests you have in business considered by the council that do not fall within the definition of a disclosable pecuniary interest but which should be declared in the interests of transparency.”

- 10.23 To all intents and purposes, Councillor Lodge declared a personal interest. As a starting point this is correct. However, it is my conclusion that the personal interest arose not only because of the applicant being [REDACTED] of a fellow councillor, but by virtue of [REDACTED] involvement in the company which was to benefit from the planning application.

- 10.24 Councillor Lodge’s explanation of why he concluded the interest was not a personal and prejudicial interest in the application is at odds with the requirements of the Code. Paragraph 10 advises members to consider whether a personal interest is a prejudicial interest and informs members that they should apply the following test:

“Would a member of the public with knowledge of the relevant facts reasonably regard my interest so significant that it is likely to prejudice my judgement of the public interest?”

- 10.25 The explanation as to why Councillor Lodge did not consider the interest was personal and prejudicial, is not, in my view, a rational or reasonable explanation. To suggest that [REDACTED] is not a member of your family is illogical. Applying the test to the facts in this case, it is my opinion that a member of the public knowing the facts, could indeed reach the conclusion that Councillor Lodge's judgement could be prejudiced because of his personal interest. Councillor Lodge accepted this in his interview. As such I have concluded that he had a personal and prejudicial interest in the application UTT/18/3278/FUL. The reasoning for this conclusion is that Councillor Lodge was aware that 22 Thaxted Road and land to the rear was being acquired by Company Y for development and he was fully aware of [REDACTED] involvement with the company, and a company of which he was a director had entered into an agreement to loan funds to Company Y to enable it to purchase the property. In his statement Councillor Lodge said:

"In relation to the committee, I withdrew from the meeting and did not participate in the item A member of the public would conclude that as I had no influence whatsoever in the discussion or outcome of the planning application, they would see that I had always acted properly and morally"

Conclusions

- 10.26 It is my conclusion based on the facts that Councillor Lodge had a personal and prejudicial interest in the application UTT/18/3278/FUL when it was reported to the Planning Committee meetings in February and March 2019.
- 10.27 He declared a non-pecuniary interest. The term, although undefined in the UDC Code, is commonly used by councillors of UDC when making declarations.
- 10.28 Councillor Lodge did not participate in the debate or votes relating to the planning application on either occasion. As noted above his actions were compliant with the requirements for the declaration of a personal and prejudicial interests.
- 10.29 In accordance with the UDC Code, had Councillor Lodge declared a personal and prejudicial interest, the UDC Code would have permitted Councillor Lodge to attend the meeting for the purpose of making a representation, after which he would have had to withdraw from the meeting for the remainder of the item. He did not do that; he withdrew prior to the commencement of the item.
- 10.30 Having reached the conclusion that Councillor Lodge had a personal and prejudicial interest in the applications, it is necessary to consider whether, in the light of his actions, this failure amounts to a breach of the UDC Code of Conduct.
- 10.31 On a strict reading of the Code, the failure to specify the nature of the interest does amount to a breach of the Code. However, the actions he took were consistent with the requirements of the Code.

10.32 My overall conclusion in relation to the declaration of interests at meetings is that Councillor Lodge's declarations at the meetings amount to a failure to comply with the UDC Code because he did not declare the correct nature of the interest in the matter. Had he declared a personal and prejudicial interest the ultimate outcome of that declaration would have been the same as the actions he took; that is, he would have been required to leave the room and not participate in the debate or vote relating to the application at either Committee meeting. The end result was therefore the same, Councillor Lodge left the room and did not influence the debate or voting. But it is clear that he did not comply with the requirements of the code as relating to the declaration of the nature of any interests in the matter.

11 Comments on Draft Report

- 11.1 In accordance with the UDC Procedure, the complainant and the Subject Member (Councillor Smith and Councillor Lodge respectively, were given an opportunity to comment on the draft report.
- 11.2 Councillor Smith noted an incorrect date in para 1.1, this has been corrected.
- 11.3 Councillor Lodge replied that he was seeking legal advice. A short extension of time was given, Councillor Lodge responded by stating that he would await legal advice but gave no indication as to when he would respond.
- 11.4 Councillor Lodge was made aware of the revised deadline for the submission of comments. None had been received by the deadline. UDC was advised that the extended deadline for the submission of comments had expired without the receipt of comments from Councillor Lodge, they requested that the report be finalised and submitted to the Deputy Monitoring Officer.
- 11.4 The final report has been anonymised, named individuals/company names are limited to the complainant, member complained about, or who are, by virtue of the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 a relevant person.

12 Findings

- 12.1 In relation to Disclosable Pecuniary Interests, as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. (DPIs) I have made the following findings.
- i) That Councillor Lodge **DID BREACH** the requirement of the Code of Conduct to disclose details of his Employment /office in his 2015 Register of Interest and those of [REDACTED] as a relevant person. However, Councillor Lodge did disclose of his employment/office details in Section 2 of his Register under the heading "Other Pecuniary Interests"
 - ii) That Councillor Lodge **DID NOT BREACH** the requirement to register details of the Loan Agreement /Legal Charge provided by Manchester and Edinburgh

Investment Property Company Ltd to Company Y as the Loan Agreement /Legal Charge does not amount to a beneficial interest in land as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as such it was not a disclosable pecuniary interest that required to be registered.

- ii) That Councillor Lodge **DID BREACH** the requirements to register details of his shareholdings in M&EIP which exceeded one hundredth of the total issued share capital and those [REDACTED] as a relevant person.

12.2 In relation to the declaration of interests made by Councillor Lodge at the Planning Committee meetings of 20th February and 13th March, I have made the following findings:

- i) That Councillor Lodge **DID BREACH** the requirements of the Code of Conduct by failing to declare a Personal and Prejudicial Interest in Planning Application UTT/18/3278/FUL. However, Councillor Lodge removed himself from each meeting and did not participate in the debate or vote on taken in respect of the application.

Date 24th February 2023

Gill Sinclair

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Internal Audit

Terms of Reference

Internal Audit Plan 2023-24 (Ref XC23_8)

Standards Complaints

April 2023

Introduction and Ownership

The purpose of this Terms of Reference is to set out a risk evaluation and work programme for the review of Standards and Compliant Policy which is an addition to the Audit Plan 2023/24. The plan was developed following an assessment of the main risks facing the Council as documented in our Internal Audit risk assessment.

Chief Executive Officer – Peter Holt will take ownership of this review and will be responsible for agreeing the Terms of Reference. Norman Coombe will also be consulted.

Background

The Council is required to appoint a Monitoring Officer under section 5 of the Local Governance and Housing Act 1989 who is responsible for reporting matters they believe to be illegal or amount to maladministration, to be responsible for matter relating to the conduct of Councillors and Officers and, to be responsible for the operation of the councils Constitution.

The Chief Executive does not have a specified role in the handling of any individual Standards complaint, though he does properly keep a loose oversight on the progress of complaints generally, so that he can understand any broader implications for relations with Parish and District Councillors, and around any knock-on impacts from the issues being considered in relation to organisational effectiveness and efficiency, particularly any lessons that need to be learned and applied more broadly outside of the specifics of any individual complaint. The Chief Executive has commissioned an independent Audit based on both his personal observations in this general oversight role, and as a result of a particular complaint made directly to him regarding the handling of a Code of Conduct investigation.

Audit objective

- To ensure that complaints are processed effectively and within timescale and are assessed appropriately taking into consideration the seriousness of the complaint. (Refer to Code of Conduct Procedure).
- To ensure that complaints are processed objectively and follow the principles of natural justice; the duty to give someone a fair hearing; the duty to ensure that the matter is decided by someone who is impartial; and the duty to allow an appeal against a decision.
- To ensure systems are in place to strike an appropriate balance between the proper objectivity of a tightly focused specific investigation and the broader interests of the organisation in promptly learning and applying broader lessons to general practice.
- To ensure that a full Audit trail is in place for all complaints from receipt to conclusion.

Audit scope

This audit will review:

- To review how well complaints are triaged before being progressed as appropriate and proportionate e.g. considering prima facie evidence presented by the complainant at an early stage to indicate that a breach has potentially occurred.
- To review the established criteria for requesting a full independent investigation.
- To review how well the principles of natural justice are applied at all stages.
- To review how long complaints take and how much they cost, proportionate to their seriousness, and in light of any disproportionate unintended consequences arising from the process itself
- To review the current Considering a Compliant under the Code of Conduct Procedure. (dated 2017)
- Use at least three current/recent complaints as recommended by the Chief Executive (alongside any others that the Internal Audit team selects for itself) as test cases to review the process from receipt to conclusion.

The audit will focus on key controls in place to mitigate the following potential risks:

| Risk ref | Risk | Risk identified and recorded in the relevant risk register |
|----------|---|--|
| | Governance If the council does not have a clear and robust governance framework, then this could lead to ineffective and potentially unlawful decision-making, resulting in financial and reputational loss, maladministration and potential legal challenge. | CR_07 |

Audit Approach

The review will be carried out using a risk-based approach. Internal Audit will:

- Obtain an understanding of the existing process through discussions with key personnel, review of systems documentation and by undertaking walkthrough tests;
- Evaluate the design of the controls in place to address the key risks;
- Test the operating effectiveness of the key controls by review and sample testing of documentation.

| Action | Date |
|---------------------------------|-----------|
| Agreement of terms of reference | 25/4/2023 |
| Fieldwork start | 25/4/2023 |
| Fieldwork complete | |
| Draft report to client | |
| Response by client | |
| Final report | |

Contacts

Internal Audit

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Council Contacts

Peter Holt - Chief Executive

Norman Coombe – Interim Assistant Director, Deputy Monitoring Officer

Richard Auty – Assistant Director, Monitoring Officer