



## Meeting Agenda

**Standards Committee  
Reception Room, Town Hall  
13 September 2007, 1:30pm**

# **STANDARDS COMMITTEE**

## **MEMBERSHIP**

CHAIRMAN - Mr D Birchall

VICE-CHAIRMAN – Mrs J McCormick

Councillor Brenda Ackers

Mr A Marsh

Councillor Paul Hayhurst

Mr W E Twist

Councillor Howard Henshaw

Councillor Kevin Eastham

Contact: Peter Welsh, St. Annes (01253) 658502  
Email: [peterw@fylde.gov.uk](mailto:peterw@fylde.gov.uk)



## **CORPORATE OBJECTIVES**

The Council's investment and activities are focused on achieving our five key objectives which aim to :

- Conserve, protect and enhance the quality of the Fylde natural and built environment
- Work with partners to help maintain safe communities in which individuals and businesses can thrive
- Stimulate strong economic prosperity and regeneration within a diverse and vibrant economic environment
- Improve access to good quality local housing and promote the health and wellbeing and equality of opportunity of all people in the Borough
- Ensure we are an efficient and effective council.

## **CORE VALUES**

In striving to achieve these objectives we have adopted a number of key values which underpin everything we do :

- Provide equal access to services whether you live in town, village or countryside,
- Provide effective leadership for the community,
- Value our staff and create a 'can do' culture,
- Work effectively through partnerships,
- Strive to achieve 'more with less'.



## **A G E N D A**

### **PART I - MATTERS DELEGATED TO COMMITTEE**

<b>ITEM</b>	<b>PAGE</b>
<b>1. DECLARATIONS OF INTEREST:</b> <i>in accordance with the council's code of conduct, members are reminded that any personal/prejudicial interests should be declared as required by the council's code of conduct adopted in accordance with the local government act 2000.</i>	<b>4</b>
<b>2. SUBSTITUTE MEMBERS:</b> <i>details of any substitute members notified in accordance with council procedure rule 26.3</i>	<b>4</b>
<b>3. LOCAL AUTHORITY (CODE OF CONDUCT) (LOCAL DETERMINATION) REGULATIONS 2005: COMPLAINT AGAINST COUNCILLOR ALAN CLAYTON</b>	<b>7</b>

**Personal interests**

**8.—**(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

- (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
- (ii) any body—
  - (aa) exercising functions of a public nature;
  - (bb) directed to charitable purposes; or
  - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

- (i) any employment or business carried on by you;
  - (ii) any person or body who employs or has appointed you;
  - (iii) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
  - (iv) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
  - (v) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
  - (vi) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
  - (vii) any land in your authority's area in which you have a beneficial interest;
  - (viii) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
  - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward, as the case may be, affected by the decision;

(2) In sub-paragraph (1)(b), a relevant person is—

- (a) a member of your family or any person with whom you have a close association; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

**Disclosure of personal interests**

- 9.—**(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000(d).

#### **Prejudicial interest generally**

- 10.—**(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority 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.
- (2) You do not have a prejudicial interest in any business of the authority where that business—
- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
  - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
  - (c) relates to the functions of your authority in respect of—
    - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
    - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
    - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
    - (iv) an allowance, payment or indemnity given to members;
    - (v) any ceremonial honour given to members; and
    - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

#### **Prejudicial interests arising in relation to overview and scrutiny committees**

- 11.—** You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—
- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
  - (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

#### **Effect of prejudicial interests on participation**

- 12.—**(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held—
    - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
    - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;
 unless you have obtained a dispensation from your authority's standards committee;
  - (b) you must not exercise executive functions in relation to that business; and
  - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

# REPORT



REPORT OF	MEETING	DATE	ITEM NO
MONITORING OFFICER	STANDARDS COMMITTEE	13 SEP 2007	3

## LOCAL AUTHORITY (CODE OF CONDUCT) (LOCAL DETERMINATION) REGULATIONS 2005: COMPLAINT AGAINST COUNCILLOR ALAN CLAYTON

### Public/Exempt item

This item is for consideration in the public part of the meeting.

### Summary

The committee is to determine an allegation that Councillor Clayton of Medlar-with-Wesham Town Council has failed to comply with the code of conduct which applied to members of that council.

### Report

1. The committee is required to determine an allegation against Councillor Alan Clayton of Medlar-with-Wesham Town Council. The allegation has been referred to the committee by an ethical standards officer of the Standards Board for England and investigated by Fylde Borough Council's Deputy Monitoring Officer
2. The Deputy Monitoring Officer's report, together with Councillor Clayton's response, is attached.
3. Also attached are the procedural rules that apply to the hearing, which were previously adopted by the committee.
4. Any further documentation that may be produced by Councillor Clayton will be sent to committee members as soon as possible.

IMPLICATIONS	
Finance	None
Legal	The committee must conduct itself as a quasi-judicial body in determining the allegation and (if upheld) what, if any, sanction to apply.
Community Safety	None
Human Rights and Equalities	The statutes, regulations and rules governing the hearing procedure comply with the relevant European Convention rights.
Sustainability	None
Health & Safety and Risk Management	None

REPORT AUTHOR	TEL	DATE	DOC ID
Ian Curtis	(01253) 658506	31 August 2007	

LIST OF BACKGROUND PAPERS		
NAME OF DOCUMENT	DATE	WHERE AVAILABLE FOR INSPECTION
Report of the Deputy Monitoring Officer	18 July 2007	Town Hall, St Annes
Responses to a Report by Clare Holmes into the Alleged Failing of Cllr Alan Clayton to comply with the Code of Conduct	20 August 2007	Town Hall, St Annes
Local determination rules	26 April 2005	Town Hall, St Annes

### Attached documents

Report of the Deputy Monitoring Officer

Responses to a Report by Clare Holmes into the Alleged Failing of Cllr Alan Clayton to comply with the Code of Conduct

Local determination rules





**CONFIDENTIAL**

**REPORT OF AN INVESTIGATION UNDER SECTION 60(2) OF THE LOCAL GOVERNMENT ACT 2000 BY CLARE HOLMES, DEPUTY MONITORING OFFICER, INTO AN ALLEGATION CONCERNING COUNCILLOR ALAN CLAYTON A MEMBER OF MEDLAR WITH WESHAM TOWN COUNCIL**

**18 July 2007**

## **Contents**

1. Summary
2. Relevant Legislation
3. Councillor's Official Details
4. Evidence and Deputy Monitoring Officer's Considerations on the Facts
5. Reasoning
6. Finding

## **1 Summary**

- 1.1 Mr Ian Mowbray of Hill-Crest, Weeton Road, Wesham alleged that Councillor Alan Clayton by confirming accounts Medlar with Wesham Town Council (the Town Council) meetings and issuing cheques for payment to the trust failed to reveal a personal interest in Wesham Community Pride Trust/Wesham in Bloom (the Trust).
- 1.2 I have investigated whether Councillor Clayton did in fact have a personal interest arising from his dealings with the Town Council and WCPT and whether he failed to disclose that interest and thereby failed to comply with paragraph 8 of the Members' Code of Conduct (the Code).
- 1.3 Having investigated this matter, I am of the opinion that Councillor Clayton did fail to comply with paragraph 8 of the Code.

### Finding

- 1.4 My finding pursuant to regulation 5 (3) (b) of The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended is that the matters which were the subject of the investigation should be considered at a hearing of the standards committee of Fylde Borough Council conducted under the provisions of the above mentioned regulations.

## **2 Relevant Legislation**

- 2.1 The Town Council adopted the Members' the Code on 16 April 2002. The Town Council's Code is based on the Model Code without amendment.

## **3 Councillor's Official Details**

- 3.1 Councillor Alan Clayton was co-opted onto the Town Council on 16 November 2004.
- 3.2 At that time he had signed an undertaking to observe the Code.
- 3.3 Councillor Alan Clayton is also Chairman of the Trust.

## **4 Evidence and Deputy Monitoring Officer's Consideration on the Facts**

### Evidence

- 4.1 I have taken into account oral evidence from Councillor Alan Clayton. I have also relied on written information obtained from Allan Sharples, the Town Council's Town Clerk. I have also relied on information on the Charity Commission website.

### Background

- 4.2 Councillor Clayton was a member of the Town Council for a period of 20 years up until 2003.
- 4.3 In 2003 he decided not to stand for election due to work constraints.
- 4.4 His circumstances then changed and he found himself with spare time and decided to help the local community by offering to help in what was then called "Wesham in Bloom". The purpose of Wesham in Bloom was to make the local area a nicer place to live.
- 4.5 Councillor Clayton attended a Town Council meeting to take part in a discussion about Wesham in Bloom and volunteered to be on the committee. He was nominated as Chairman and the group subsequently changed its name to Wesham Community Pride Trust.
- 4.6 He remained chairman of the Trust and was then co-opted back onto the Town Council.
- 4.7 Following Councillor Clayton's appointment onto the Town Council, matters relating to the Trust were considered on many occasions at Town Council meetings.
- 4.8 The Town Council meetings are open to the public and minutes are also made public.

### Allegation

- 4.9 It has been alleged by Mr Mowbray that Councillor Clayton has confirmed accounts and issued cheques for payment to the trust whilst failing to declare a personal interest.
- 4.10 Councillor Clayton believes that his membership of the Town Council together with his Chairmanship of the Trust puts him in a stronger position to report on matters that impact on the Trust.
- 4.11 He stated that his input at Town Council meetings in relation to the Trust was simply to report on the quality of work being provided by Barton Grange Landscapes, the contractors who undertake the work on behalf of the Trust.
- 4.12 He stated that at no time had he nor would he ask the Town Council for money for the Trust. He also said that he has never nor would he look to gain anything personally from his dealings with both the Trust and the Town Council.
- 4.13 Councillor Clayton stated that the Trust is simply an "arm" of the Town Council and that the work undertaken by the Trust would be carried out by the Town Council had the Trust not been formed.
- 4.14 Councillor Clayton confirmed that he was not appointed onto the board of the Trust by the Town Council.

- 4.15 Councillor Clayton stated that on each and every occasion that he spoke about the Trust at the Town Council meetings, it was simply to report on progress and not to make or take part in any decision making.
- 4.16 Councillor Clayton confirmed that he did consider whether he had a Personal Interest that should be declared and had made a decision that no such interest existed.
- 4.17 Councillor Clayton also confirmed that should he consider himself to have a Personal Interest he would declare it at the Town Council meetings.
- 4.18 Based on the evidence from Councillor Clayton and the information from Allan Sharples and the Charity Commission website I have formed a view that Councillor Clayton did have a Personal interest that he failed to declare at the Town Council meetings.

## 5 Reasoning

### Personal Interest

- 5.1 Paragraph 7 of the Code sets out the circumstances in which a member must regard himself as having a personal interest. Sub paragraph (d) of paragraph 7 refer to a list of bodies in sub paragraphs (a) to (e) of paragraph 13 of the Code where such person holds a position of general control or management.
- 5.2 Sub paragraph (c) of paragraph 13 refers to, inter alia "...body directed to charitable purposes;"
- 5.3 The definition of "charitable purposes" is contained in the Charities Act 2006 at section 2 which states the following at subsection (1) "For the purposes of the law of England and Wales, a charitable purpose is a purpose which (a) falls within subsection (2), and (b) is for the public benefit (see section 3)". Subsection (2) goes on to say that "A purpose falls within this subsection if it falls within any of the following descriptions of purposes". At paragraph (i) of subsection (2) it states the following "the advancement of environmental protection or improvement".
- 5.4 I consider that that Trust falls within paragraph (i) of subsection 2.
- 5.5 There is no statutory definition of "public benefit". In Publication RR8 – The Public Character of Charity issued by the Charity Commission it explains the meaning of benefit as thus "A charity must provide a recognisable advantage for people at a level which reflects their needs." The meaning of public is explained further as "Having a public character means that benefits must be provided to the public at large or at least a sufficient section of the community."

- 5.6 I also consider that the Trust complies with the requirement that it is for the public benefit.
- 5.7 I consider that Councillor Clayton did have a personal interest due to his appointment as Chairman of the Trust.

Disclosure of Personal Interests

- 5.8 Paragraph 8 of the Code states that “A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.”
- 5.9 Notwithstanding the fact that Councillor Clayton contends that he took no part in decision making in relation to the Trust I have adopted the meaning of “considered” as contained in Collins English Dictionary and that states the following definition “**1** presented or thought out with care: *considered opinion* **2** thought of in a specified way; *highly considered*.”
- 5.10 I find that matters relating to the Trust were “considered” at the Town Council meetings. I consider that Councillor Clayton should have disclosed to the meeting the nature of his personal interest.
- 5.11 Information provided by Allan Sharples confirms that no personal interest was declared by Councillor Clayton at the Town Council meetings.
- 5.12 Accordingly I consider that Councillor Clayton did fail to comply with paragraph 8 of the Code.

**6 Finding**

- 6.1 I find that Councillor Clayton did fail to comply with the Code and that under regulation 5 (3) (b) of The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended this failure should be considered at a hearing of the standards committee of Fylde Borough Council conducted under the provisions of the above mentioned regulations.

RESPONSES TO A REPORT BY CLARE HOLMES INTO THE ALLEGED FAILING OF Cllr ALAN CLAYTON  
TO COMPLY WITH THE CODE OF CONDUCT

August 20<sup>th</sup> 2007

I have read the report completed by Clare Holmes, Deputy Monitoring Officer, Fylde Borough Council concerning my alleged failure to comply with the code of conduct.

I am very unhappy that the report contains incorrect and misleading information and draws implications that are both unfair and untrue.

The contextual information that members of the Standards Board will need to judge my actions and those of my fellow Councillors is too shallow, and I believe that a much fuller report will be necessary to allow them to make a proper judgement.

Whilst the principles of the Code of Practice can be readily understood, the interpretation of the particular requirements which are set in a very legalistic way, in a practical manner in a Parish Council setting, needs to be considered very carefully. This will have serious implications not only for me, but also for my fellow Councillors, their colleagues in other Parishes and even the Borough Council.

In line with the pre-hearing procedures, I have made comments at the relevant paragraphs of my understanding of the situation. All comments are contained within 'boxes' added below the specific paragraph on the included appended report.

In an attempt to provide the Standards Board Committee with an overview of the circumstances I list below a

SUMMARY

1. The original complaint made by Mr. Ian Mowbray was initially focussed upon the comments made by the Mayor and the Town Clerk at an Annual Meeting held on 18<sup>th</sup> April 2006 where Mr Mowbray claimed he had been 'lied to'.
2. The dispute was based on the funding of Wesham Community Pride Trust. (Wesham in Bloom)
3. I was not actually present at the meeting (18<sup>th</sup> April) in question, however, I subsequently wrote to Mr Mowbray to confirm that the comments made by the Clerk and Mayor at the meeting were indeed correct.
4. Correspondence with Fylde Borough Council from Mr Mowbray enquiring if FBC fund Wesham Community Pride Trust (Wesham in Bloom) was replied to on 5<sup>th</sup> June 2006 by the Head of Legal Services which stated that no payments were made to WCPT. Whilst technically correct, this was misleading because FBC DID make payments to Wesham in Bloom (The bank account name for WCPT) on an annual basis since its formation. (This year's payment was made on 12/7/07 on voucher number CR027438.)
5. The bank account name (Wesham in Bloom) and the 'Operation name' (Wesham Community Pride Trust) may have caused some unintentional confusion that has not helped the situation.
6. Whilst the original complaint was against the Town Clerk and the Mayor at a meeting at which I was not present, I have been drawn into the proceedings on an unrelated matter.
7. I totally dispute the allegation of "motivating a campaign of intimidation" against Mr Mowbray as alleged by him. Indeed my correspondence to Mr Mowbray was intended to help to clear up any misunderstandings.
8. The Decision notice SBE16766.06 of the Standards Board dismissed the original allegation against the Town Clerk and the Mayor but made the decision to investigate my alleged failure to declare an interest at meetings.

9. In support of my belief that I have not breached the code, I have sought comparative meeting minutes of Fylde Borough Council (as an example; 1<sup>st</sup> March 2007) where the Revenue Budget was discussed including issues connected with 'In Bloom' Groups across the Fylde. Many committee members who attended the meeting, to my knowledge, have direct connections with their respective 'In Bloom' groups at Parish and Town level. Many other Councillors sit on bodies such as CAB, Age Concern, LSP Groups and other bodies which have a financial relationship with the Council, but at paragraph 91 of these minutes NO 'Declarations of Interest' were given by any Councillor. This meeting was presided over by the Head of Legal services who is the Monitoring Officer for the Borough and the parishes of Fylde..
10. At all times at Wesham Town Council meetings, all Councillors and the Clerk were fully aware of my membership and Chairmanship of WCPT. Indeed, it should be borne in mind that in total seven of the nine Town Councillors were also members of the WCPT themselves.
11. As recorded in the minutes, during my time on Wesham Town Council no decisions were made about the activities of WCPT, no additional resources were allocated nor other benefits conferred. In fact no 'business' concerning the Trust was considered. The nature of any discussion was simply to provide 'Information' to the Council with a summary of activities.
12. The report made by Clare Holmes has been appended with comments I would wish the Standards Board Committee to take into consideration in addition to these general comments, before making a decision.
13. I intend to be present at any hearing and I am considering whether or not to be represented. In any event I want the opportunity to explain the full context of the way in which our Town Council conducts its affairs, its relationship with at least 4 bodies which work in association with the Town Council and on which many and sometimes all Councillors sit and the practical way in which information is given and sometimes business is conducted. In this way, I will attempt to show the members who will judge my case, a reasonable and practicable interpretation of the Code of Conduct.

#### CALLING OF WITNESSES

My understanding of the report is that I am 'charged' with failing to declare an interest and issuing cheques to WCPT. Prior to preparing my detailed 'defence' and calling upon witnesses, I wish to be advised on which specific meeting (s) did these alleged failings occur?

Upon receipt of such information I will be better placed to determine which witnesses I will call upon and be able to outline the areas of evidence that they can help the members with.

In the meantime and subject to the above, the witnesses will be:

Cllr Ann Whitby Mayor at the time of the complaint.  
Mr Allan Sharples Clerk to Wesham Town Council  
Cllr Geoff Dixon  
Cllr Mrs Linda Nulty  
Cllr David Ogden  
Cllr Michael Devaney  
Cllr Simon Renwick  
Ex Cllr Paul Stevens (Treasurer to WCPT)  
Ex Cllr Mrs Sheila Vann



FORM D

1. Proposed Date for Hearing (13<sup>th</sup> September 2007).....I intend to attend
2. Presentation of case..... Subject to the outcome of the pre hearing I may ask a representative to present my case.
3. As 2 above
4. As 2 above
5. As 2 above
6. As detailed above under 'Calling of witnesses'
7. No access difficulties
8. No special needs
9. No privacy requirement
10. No withholding of any documents.

contd/

**CONFIDENTIAL**

**REPORT OF AN INVESTIGATION UNDER SECTION 60(2) OF THE LOCAL GOVERNMENT  
ACT 2000 BY CLARE HOLMES, DEPUTY MONITORING OFFICER, INTO AN ALLEGATION  
CONCERNING COUNCILLOR ALAN CLAYTON A MEMBER OF MEDLAR WITH WESHAM  
TOWN COUNCIL**

**18 July 2007**

Appended by Cllr Alan Clayton Wesham Town Council to indicate comments to specific paragraphs.
---

## Contents

1. Summary
2. Relevant Legislation
3. Councillor's Official Details
4. Evidence and Deputy Monitoring Officer's Considerations on the Facts
5. Reasoning
6. Finding

Please note that additional comments have been added to this report by Alan Clayton in the following format on a paragraph by paragraph basis:

# X Response by Alan Clayton:- Example response
--

## 1 Summary

- 1.1 Mr Ian Mowbray of Hill-Crest, Weeton Road, Wesham alleged that Councillor Alan Clayton by confirming accounts Medlar with Wesham Town Council (the Town Council) meetings and issuing cheques for payment to the trust failed to reveal a personal interest in Wesham Community Pride Trust/Wesham in Bloom (the Trust).

<p>1.1 Response by Alan Clayton:- To give me the opportunity to respond to the allegation I wish to be provided with information of which cheques Mr Mowbray is referring to and at which meeting(s).</p>
---

- 1.2 I have investigated whether Councillor Clayton did in fact have a personal interest arising from his dealings with the Town Council and WCPT and whether he failed to disclose that interest and thereby failed to comply with paragraph 8 of the Members' Code of Conduct (the Code).
- 1.3 Having investigated this matter, I am of the opinion that Councillor Clayton did fail to comply with paragraph 8 of the Code.

### Finding

- 1.4 My finding pursuant to regulation 5 (3) (b) of The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended is that the matters which were the subject of the investigation should be considered at a hearing of the standards committee of Fylde Borough Council conducted under the provisions of the above mentioned regulations.

## 2 Relevant Legislation

- 2.1 The Town Council adopted the Members' the Code on 16 April 2002. The Town Council's Code is based on the Model Code without amendment.

## 3 Councillor's Official Details

- 3.1 Councillor Alan Clayton was co-opted onto the Town Council on 16 November 2004.
- 3.2 At that time he had signed an undertaking to observe the Code.
- 3.3 Councillor Alan Clayton is also Chairman of the Trust.

#### 4 Evidence and Deputy Monitoring Officer's Consideration on the Facts

##### Evidence

- 4.1 I have taken into account oral evidence from Councillor Alan Clayton. I have also relied on written information obtained from Allan Sharples, the Town Council's Town Clerk. I have also relied on information on the Charity Commission website.

4.1 Response by Alan Clayton:- I wish to query what relevance the Charity Commission Website has to do with the investigation. Wesham Community Pride Trust is not a registered charity.

##### Background

- 4.2 Councillor Clayton was a member of the Town Council for a period of 20 years up until 2003.
- 4.3 In 2003 he decided not to stand for election due to work constraints.
- 4.4 His circumstances then changed and he found himself with spare time and decided to help the local community by offering to help in what was then called "Wesham in Bloom". The purpose of Wesham in Bloom was to make the local area a nicer place to live.

4.4 Response by Alan Clayton:-  
I wish to make it clear that the 'In Bloom' initiative was and still is fully supported by Fylde Borough Council. All objectives of WCPT are in line with the 'In Bloom Principles' in exactly the same way as all other Parish and Town Councils within Fylde.

- 4.5 Councillor Clayton attended a Town Council meeting to take part in a discussion about Wesham in Bloom and volunteered to be on the committee. He was nominated as Chairman and the group subsequently changed its name to Wesham Community Pride Trust.

4.5 Response by Alan Clayton:-  
The Town Council meeting referred to was in fact a 'PUBLIC MEETING' called by WTC.  
The purpose was to re-establish an 'In Bloom' group on behalf for the Town, upon the separation from Kirkham.  
Myself and several members of the public, together with some Town Councillors, volunteered to form the new Wesham group.  
It was the newly formed group that proposed me as 'Chairman'.

- 4.6 He remained chairman of the Trust and was then co-opted back onto the Town Council.

- 4.7 Following Councillor Clayton's appointment onto the Town Council, matters relating to the Trust were considered on many occasions at Town Council meetings.

4.7 Response by Alan Clayton:-

**I should make it clear that the contract/contractor referred throughout is in fact the major open spaces contract with between Wesham Town Council and Barton Grange Landscapes and NO contract exists between the Wesham Community Pride Trust and Barton Grange Landscapes.**

The purpose of WCPT monitoring the activities of the contractor **ON BEHALF OF WTC** was to ensure that conditions of the contract were being met and to achieve good value for money.

Prior to my reappointment I attended a WTC meeting on 25.5.04 to ensure that the Town Council were in favour of the WCPT acting on their behalf to carry out liaison with the contractor on behalf of the Town Council. Minute 04/014 refers .....*"it was resolved that the WCPT be given authority to deal directly with Barton Grange Landscapes and to monitor the contract with feed back to the Council if necessary."*

- 4.8 The Town Council meetings are open to the public and minutes are also made public.

#### Allegation

- 4.9 It has been alleged by Mr Mowbray that Councillor Clayton has confirmed accounts and issued cheques for payment to the trust whilst failing to declare a personal interest.

4.9 Response by Alan Clayton:-

To give me the opportunity to respond to the allegation I wish to be provided with information of which cheques Mr Mowbray is referring to, what accounts were confirmed and at which meeting(s).

- 4.10 Councillor Clayton believes that his membership of the Town Council together with his Chairmanship of the Trust puts him in a stronger position to report on matters that impact on the Trust.

4.10 Response by Alan Clayton:-

The reporting of the quality of work undertaken for WTC by then Barton Grange Landscapes, is the basis of the reporting to Wesham Town Council. Therefore the paragraph 4.10 should read :-

*Councillor Clayton believes that his membership of the Town Council together with his Chairmanship of the Trust puts him in a stronger position to report on matters that impact on **Wesham Town Council**.*

- 4.11 He stated that his input at Town Council meetings in relation to the Trust was simply to report on the quality of work being provided by Barton Grange Landscapes, the contractors who undertake the work on behalf of the Trust.

4.11 Response by Alan Clayton:-

This paragraph is misleading. The work conducted by Barton Grange is primarily for Wesham Town Council under the contract arrangements. Any additional work carried out for WCPT by Barton Grange was paid for through the WCPT.

The paragraph should read:

"He stated that his input at Town Council meetings in relation to the Trust was simply to report on the quality of work being provided by Barton Grange Landscapes, the contractors who undertake the work on behalf of the **Town Council** and in some cases the Trust."

- 4.12 He stated that at no time had he nor would he ask the Town Council for money for the Trust. He also said that he has never nor would he look to gain anything personally from his dealings with both the Trust and the Town Council.
- 4.13 Councillor Clayton stated that the Trust is simply an "arm" of the Town Council and that the work undertaken by the Trust would be carried out by the Town Council had the Trust not been formed.
- 4.14 Councillor Clayton confirmed that he was not appointed onto the board of the Trust by the Town Council.

4.14 Response by Alan Clayton:-

I refer back to para 4.5 where members of the Town Council were in agreement to the formation of a 'Wesham in Bloom' group. Myself and several members of the public together with some Town Councillors formed the new Wesham group.

It was the newly formed group that proposed myself as 'Chairman'.

I have continued as a named representative of the Town Council as indeed have other members of Wesham Town Council ( In total 7 of the 9 Town Councillors have a relationship with the Trust). Reporting of activities is covered under 'Reports from Representatives to other bodies' an example of which is given in minute 06/077

*"Cllr Clayton reported that judging for Britain in Bloom Competition had taken place today"*

- 4.15 Councillor Clayton stated that on each and every occasion that he spoke about the Trust at the Town Council meetings, it was simply to report on progress and not to make or take part in any decision making.
- 4.16 Councillor Clayton confirmed that he did consider whether he had a Personal Interest that should be declared and had made a decision that no such interest existed.

4.16 Response by Alan Clayton:

In my view the interest would only arise if the Council were 'considering any business' not merely receiving a report concerning the activities of the Trust, or more frequently, learning of the quality standards of their own grounds maintenance contractor.

- 4.17 Councillor Clayton also confirmed that should he consider himself to have a Personal Interest he would declare it at the Town Council meetings.
- 4.18 Based on the evidence from Councillor Clayton and the information from Allan Sharples and the Charity Commission website I have formed a view that Councillor Clayton did have a Personal interest that he failed to declare at the Town Council meetings.

4.18 Response by Alan Clayton:-

I wish to query the relevance to the Charity Commission Website?  
Also, if this is the case, should not the other 6 councillors also have made such a declaration

## 5 Reasoning

### Personal Interest

- 5.1 Paragraph 7 of the Code sets out the circumstances in which a member must regard himself as having a personal interest. Sub paragraph (d) of paragraph 7 refer to a list of bodies in sub paragraphs (a) to (e) of paragraph 13 of the Code where such person holds a position of general control or management.
- 5.2 Sub paragraph (c) of paragraph 13 refers to, inter alia "...body directed to charitable purposes;"
- 5.3 The definition of "charitable purposes" is contained in the Charities Act 2006 at section 2 which states the following at subsection (1) "For the purposes of the law of England and Wales, a charitable purpose is a purpose which (a) falls within subsection (2), and (b) is for the public benefit (see section 3)". Subsection (2) goes on to say that "A purpose falls within this subsection if it falls within any of the following descriptions of purposes". At paragraph (i) of



subsection (2) it states the following “the advancement of environmental protection or improvement”.

5.4 I consider that that Trust falls within paragraph (i) of subsection 2.

5.5 There is no statutory definition of “public benefit”. In Publication RR8 – The Public Character of Charity issued by the Charity Commission it explains the meaning of benefit as thus “A charity must provide a recognisable advantage for people at a level which reflects their needs.” The meaning of public is explained further as “Having a public character means that benefits must be provided to the public at large or at least a sufficient section of the community.”

5.6 I also consider that the Trust complies with the requirement that it is for the public benefit.

5.6 Response by Alan Clayton:-

The activities of Wesham Town Council and in turn the ‘In Bloom’ group are indeed for public benefit. Therefore my activities to work on behalf of the TC and the WCPT in a voluntary capacity were of no benefit to me personally or in fact anyone else within WTC.

5.7 I consider that Councillor Clayton did have a personal interest due to his appointment as Chairman of the Trust.

5.7 Response by Alan Clayton:-

At one time or another nearly all Wesham Town Councillors have been members of either the previous Kirkham and Wesham In Bloom Group or more recently the Wesham in Bloom Group and all have an interest in the success of quality of the open spaces contract. Being Chairman of the group places me in no different position than the other Town Councillor who are part of the Trust and its activities..

Indeed the ‘In Bloom’ initiative operated throughout the Fylde Borough by all other parishes is ‘at risk’ of being similarly targeted for non declaration of interest if this decision is upheld.

#### Disclosure of Personal Interests

5.8 Paragraph 8 of the Code states that “A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.”

5.9 Notwithstanding the fact that Councillor Clayton contends that he took no part in decision making in relation to the Trust I have adopted the meaning of “considered” as contained in Collins English Dictionary and that states the following definition “1 presented or thought out with care: *considered opinion* 2 thought of in a specified way; *highly considered*.”

5.10 I find that matters relating to the Trust were “considered” at the Town Council meetings. I consider that Councillor Clayton should have disclosed to the

5.10 Response by Alan Clayton:-

With particular reference to p25 4.7 at all times Wesham Town Councillors were fully aware of my work and their own within WCPT.

Any ‘Consideration’ never resulted in any action other than to keep members informed of the activities of WCPT.

meeting the nature of his personal interest.

- 5.11 Information provided by Allan Sharples confirms that no personal interest was declared by Councillor Clayton at the Town Council meetings.
- 5.12 Accordingly I consider that Councillor Clayton did fail to comply with paragraph 8 of the Code.

## **6 Finding**

- 6.1 I find that Councillor Clayton did fail to comply with the Code and that under regulation 5 (3) (b) of The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended this failure should be considered at a hearing of the standards committee of Fylde Borough Council conducted under the provisions of the above mentioned regulations.



## **HEARING PROCEDURES FOR STANDARDS COMMITTEE**

Adopted by the committee on 26 April 2005

### **Interpretation**

1 'Member' means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.

2 'Investigator' means the Ethical Standards Officer who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the investigator mean the Monitoring Officer or other investigating officer, and his or her nominated representative.

3 'Committee' also refers to 'a standards sub-committee'.

4 'Legal advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

### **Representation**

5 The member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

### **Legal advice**

6 The committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee should be shared with the member and the investigator if they are present.

### **Setting the scene**

7 After all the members and everyone involved have been formally introduced, the chairman should explain how the committee is going to run the hearing.

### **Preliminary procedural issues**

8 The committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

### **Making findings of fact**

9 After dealing with any preliminary issues, the committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.

**10** If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.

**11** If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator may call witnesses to give evidence. The committee should give the member an opportunity to challenge any evidence put forward by any witness called by the investigator.

**12** The member should then have the opportunity to make representations to support his or her version of the facts and, with the committee's permission, to call witnesses to give evidence.

**13** The committee may then allow the investigator to challenge any evidence put forward by witnesses called by the member

**14** At any time, the committee may question any of the people involved or any of the witnesses.

**15** If the member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

**16** If the member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the committee may then:

**a** continue with the hearing, relying on the information in the investigator's report;

**b** allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or

**c** postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is not already.

**17** The committee will usually move to another room to consider the representations and evidence in private.

**18** On their return, the chairman will announce the committee's findings of fact.

#### **Did the member fail to follow the Code?**

**19** The committee then needs to consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct.

**20** The member should be invited to give relevant reasons why the committee should not decide that he or she has failed to follow the Code.

**21** The committee should then consider any verbal or written representations from the investigator.

**22** The committee may, at any time, question anyone involved on any point they raise in their representations.

**23** The member should be invited to make any final relevant points.

**24** The committee will then move to another room to consider the representations.

**25** On their return, the chairman will announce the committee's decision as to whether or not the member has failed to follow the Code of Conduct.

**If the member has not failed to follow the Code of Conduct**

**26** If the committee decides that the member has not failed to follow the Code of Conduct, the committee can move on to consider whether it should make any recommendations to the authority.

**If the member has failed to follow the Code**

**27** If the committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the member as to:

**a** whether or not the committee should set a penalty; and

**b** what form any penalty should take.

**28** The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

**29** The committee will then move to another room to consider whether or not to impose a penalty on the member and, if so, what the penalty should be.

**30** On their return, the chairman will announce the committee's decision.

**Recommendations to the authority**

**31** After considering any verbal or written representations from the investigator, the committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

**The written decision**

**32** The committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

**© Fylde Borough Council copyright [2006]**

You may re-use this document/publication (not including logos) free of charge in any format or medium. You must re-use it accurately and not in a misleading context. The material must be acknowledged as Fylde Borough Council copyright and you must give the title of the source document/publication. Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

This document/publication is also available on our website at [www.fylde.gov.uk](http://www.fylde.gov.uk)

Any enquiries regarding this document/publication should be sent to us at the Town Hall, St Annes Road West, St Annes FY8 1LW, or to [listening@fylde.gov.uk](mailto:listening@fylde.gov.uk).