

COUNCILLOR CONDUCT COMMITTEE

16 DECEMBER 2013

CODE OF MEMBERS' CONDUCT

LOCAL GOVERNMENT OMBUDSMAN'S FINAL DECISION COMPLAINT REFERENCE CCC/003/2013

Report from:

Perry Holmes, Monitoring Officer

Summary

This report details a recent complaint made to the Local Government Ombudsman about the Council's handling of a complaint against a Member under its Councillor Conduct Committee procedures.

1. Budget and Policy Framework

- 1.1 Full Council approved the Code of Members' Conduct on 26 July 2012 and terms of reference for the Councillor Conduct Committee. It is for this Committee to advise Members on how to comply with the Code of Conduct supported by advice from the Monitoring Officer.

2. Background

- 2.1 6 July 2012, the Council approved a light touch Code of Members' Conduct with a heavy emphasis on seeking a local informal resolution wherever possible to any complaints about the conduct of a councillor. This reflects the very limited sanctions that can be imposed under this new conduct regime.
- 2.2 Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 introduced Disclosable Pecuniary Interests and new rules on dispensations as part of the arrangements, which were included within the Council's Code of Members' Conduct.
- 2.3 Training on Disclosable Pecuniary Interests (DPIs) and the Code of Conduct has been provided to Members, based on the principle that elected members should play as full a role as possible in decision-making.
- 2.4 The training identified that as well as DPIs, Members needed to be mindful of bias and pre-determination but also whether they had a conflict of interest in a decision or might otherwise be in breach of the Code of conduct if they took part.
- 2.5 In addition to adopting a Code, in accordance with section 28(6) of the Localism Act 2011, the Council also adopted arrangements under which allegations made against Members can be investigated, and arrangements under which decisions on

such allegations can be made. These arrangements have been in place for over one year and it is intended that a review of these arrangements is carried out in due course.

3. Complaint to the Local Government Ombudsman

3.1 In November 2013, the Council received a letter from the Local Government Ombudsman ("LGO") enclosing the Investigator's Final decision in a complaint made about the Council's handling of a complaint about a Member's conduct. The Investigator determined that they would not complete the investigation into the complaint, as they found no evidence of fault.

3.1 The complainant alleged that:

The Council failed to properly consider the complaint about the Member's conduct and that the Councillor unduly influenced the Council to take enforcement proceedings against him about a backup generator and breached the Council's Code of Members' Conduct; and

Due to the Councillor's actions he has been put to unnecessary costs in making a planning application and satisfying the conditions of that planning permission.

3.3 As part of the consideration, the Investigator looked into the new standards regime as set out within the Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and the Council's adopted arrangements for dealing with complaints against Members. A copy of the Investigator's final decision is attached as Appendix 1.

3.4 The Investigator's Final decision includes comments that:

- the Council decided that there was no breach of the Code of Members' Conduct in relation to a DPI and provided its reasons for that decision, and does not consider that the Council's interpretation of the legislation amounts to fault;
- if the complainant considers that there is a breach of the Code of Members' Conduct with regard to a DPI then the complainant may refer the matter to the Police;
- the Council, as a Local Planning Authority, had a duty to consider the Planning matter and the complainant had a right of appeal against the enforcement notice and if he considered that any conditions attached to the planning permission was unreasonable.

4. Options

4.1 The Councillor Conduct Committee is asked to note the letter from the Local Government Ombudsman.

5. Advice and Analysis

5.1 On 26 July 2012, Council resolved to carry out a review of the Council's Code of Members' Conduct and Arrangements for dealing with complaints about Members' conduct one-year on from its adoption. Having now received the letter from the Ombudsman, Members may opt to consider this finding at the time of the review of the Council's arrangements for processing complaints made about Members' conduct. The decision taken by the Ombudsman tends to indicate that the Council

has designed a fair, balanced and transparent decision making process that does not need alteration at this stage.

5.2 The relevant sections of the Localism Act 2011 for background are:

Section 28(2):

- (2) *A relevant authority must secure that its code of conduct includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of:*
- (a) *Pecuniary interests, and*
- (b) *Interests other than pecuniary interests.*

Section 29(6):

A relevant authority other than a parish council must have in place:

- (a) *Arrangements under which allegations can be investigated, and*
- (b) *Arrangements under which decisions on allegations can be made.*

“Allegation”, in relation to a relevant authority, means a written allegation:

- (c) *That a member or co-opted member of the authority has failed to comply with the authority's code of conduct, or*
- (d) *That a member or co-opted member of a parish council for which the authority is the principal authority has failed to comply with the parish council's code of conduct.”*

6. Risk management

6.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk
Legislation	Section 28(2) Localism Act 2011 requires registration and disclosure of Disclosable Pecuniary Interests, and Section 28(1) states that a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with the following principles – the Nolan Principles, indicating that the Council has discretion in what it includes within the Code.	Since the adoption of the Council's new arrangements, the Monitoring Officer has provided Members with advice on disclosure of their interests, including conflicts of interests.

Risk	Description	Action to avoid or mitigate risk
Reputation	Failure to adopt robust arrangements about Councillor Conduct could result in reputational damage, particularly: (i) If Members partake in decision-making where they have a personal interest; and (ii) If the Council does not appropriately deal with or challenge unacceptable breaches of the Code of Members' Conduct.	The Monitoring Officer is to provide: Updated advice on registration and disclosure and interests to Members; and Consider revisions to the arrangements for dealing with complaints against Members one year on from adoption.

7. Financial and legal implications

7.1 There are no direct financial implications from this report.

7.2 The legal implications are set out throughout this report.

8. Decisions Required

9.1 The Committee is asked to note the contents of this report.

Lead officer contact

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Background papers

Medway Council's Code of Conduct;
Department for Communities Openness and transparency on personal interests: A guide for councillors: September 2013; and
LGO Investigator's Final decision on a complaint against a Member.

7 November 2013

Complaint reference:
13 008 275

Complaint against:
Medway Council

The Ombudsman's final decision

Summary: I have decided to complete my investigation in to Mr C's complaint about a councillor's conduct as I have found no evidence of fault.

The complaint

1. Mr C complains the Council has failed to properly consider his complaint about the conduct of a Councillor. Mr C says the Councillor unduly influenced the Council to take enforcement proceedings against him about a backup generator and breached the Council's Code of Conduct.
2. Mr C says due to the Councillor's actions he has been put to unnecessary costs in making a planning application and satisfying the conditions of that planning permission.

The Ombudsman's role and powers

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and, if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
4. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
5. The Ombudsman expects someone to appeal to a court, tribunal or government minister if they have a right to. However, she may decide to investigate a complaint if she considers it would be unreasonable for a person to have to do so. (*Local Government Act 1974, section 26(6)*)
6. The Ombudsman cannot investigate a complaint if someone has appealed to a government minister. The planning inspector acts on behalf of a government minister. (*Local Government Act 1974, section 26(6)b*)
7. The planning inspector considers appeals about:
 - delay – usually over eight weeks – by an authority in deciding an application for planning permission
 - a decision to refuse planning permission
 - conditions placed on planning permission
 - a planning enforcement notice.

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8. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30 (1B) and 34H(i)*)

How I considered this complaint

9. I have considered the information provided by Mr C in his complaint to the Ombudsman which included a copy of the Council's correspondence.

What I found

Key events

10. Mr C entered a property lease in March 2008. During the summer of 2008 Mr C entered an agreement to provide a backup generator and a catering service to a company licensed to occupy part of the building.
11. The Councillor was a trustee of the company holding the freehold of the property and a director of the catering company used.
12. The freeholder raised issues about the generator with Mr C during January 2012. This was after the catering company was told its contract would not be renewed.
13. Mr C applied to the Council for planning permission for the generator during February. The Council served an enforcement notice about the generator on Mr C in March. Mr C appealed the enforcement notice but was unsuccessful.
14. Mr C made an amended planning application to the Council on 1 May which the Council did not accept. The Council subsequently refused the original planning application.
15. Mr C made a further planning application to the Council on 1 June. The Council considered this application at its planning committee meeting on 1 August. The Councillor declared an interest as he was a trustee of the freeholder. The Council deferred a decision until the outcome of a site visit on 20 August.
16. The planning committee approved the application subject to conditions on 22 August. The Councillor declared the same interest at this meeting and abstained from voting.
17. Mr C reached an agreement with the Council in March 2013 about locating the generator and screening works to satisfy the conditions attached to the planning permission.
18. Mr C wrote to the Councillor on 11 April alleging a breach of the Council's Code of Conduct and a criminal offence. The Councillor responded to Mr C on 18 April to deny the allegations and provided the contact details of the Council's Monitoring Officer.
19. Mr C made a complaint about the Councillor to the Council's Monitoring Officer on 17 May.
20. Mr C says it was the Councillor who objected to the generator location prompting the Council's enforcement action against him and the Councillor did not declare his interest in the catering company which had lost the contract. Mr C says the Councillor acted in breach of the Code as he acted improperly to confer a disadvantage on another person and did not disclose a 'prejudicial' interest or leave the room during the vote.

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21. The Council's Councillor Conduct Committee met on 11 June to consider Mr C's complaint. The Council wrote to Mr C with its decision on his complaint on 17 June.
 22. The Council decided a complaint about 'prejudicial interest' was out of time as the events happened before 1 July 2012 and there were no relevant legislative transitional arrangements and so no legal basis to consider the complaint. The Council decided there had not been a breach of the Code of Conduct in relation to a 'disclosable pecuniary interest' (DPI). The Council confirmed the contractual interest had stopped in February 2012 and the trustee interest did not constitute a DPI. The Council considered the Councillor's trustee interest was a conflict of interest but noted he had declared this interest and taken no part in the debate or voting. The Council decided to take no further action. The Council agreed to provide a briefing note to all councillors about when they should leave the meeting room as there was some general confusion about this.
 23. Mr C considered the Council was wrong to say it could not look at the first element of his complaint and it should have done so under the new regime and found the Councillor had a 'prejudicial interest' and had acted inappropriately. Mr C also considered the Council's decision on the second part of his complaint was wrong. Mr C considered the Councillor had a continuing interest and acted improperly under the wider code.

My consideration

24. The standards regime changed on 1 July 2012 with the commencement of the relevant sections of the Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. This disapplied the old standards regime from 1 July 2012 other than for resolving outstanding complaints.
25. The transitional arrangements allow for two circumstances where complaints about matters before 1 July 2012 can be dealt with under the old regime. Two categories of outstanding complaints under the old Code survived – complaints which had been investigated by Standards for England and had already been referred to the First Tier Tribunal for determination and complaints which by 1 July 2012 had been investigated by or on behalf of the Monitoring Officer and referred to the Council's Standards Committee. Neither set of circumstances apply here and I do not consider the old code applies.
26. The freeholder reported the breach to the Council in January 2012. The Council served an Enforcement Notice on Mr C in March. However, Mr C did not make a formal complaint to the Council about the Councillor's actions until 17 May 2013. The complaint was the Councillor had allegedly exerted undue influence about a planning enforcement matter and allegedly committed a criminal offence at the Council's Planning Meetings of 1 and 27 August 2012 in not declaring a DPI.
27. Nothing in the legislation or regulations refers to the relevant date as being the day something occurred as opposed to the date the complaint was lodged. I consider the intention, in prescribing the transitional arrangements as they did, was for complaints made post 1 July 2012 to be dealt with under the new regime with the new definition of DPI rather than the old definitions of Personal and Prejudicial Interests. I do not consider the Council's interpretation amounts to fault.

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28. The Council has decided there was no breach of the Code of Conduct in relation to a DPI and has provided its reasons for this decision. I have considered Schedule 2 of the Regulations and do not consider the Council's interpretation amounts to fault. But, in any event, a breach of Section 34 of the Localism Act 2011 is a criminal offence. Mr C may refer the matter to the Police if he remains dissatisfied with the Council's actions.
29. Mr C has his own view of the Councillor's motives in reporting a possible breach of planning control to the Council. However, the Council as Local Planning Authority had a duty to consider the matter and it decided the generator was unregulated development and required visual improvement and screening before it was acceptable. Mr C had a right of appeal against the enforcement notice which he used and about any conditions attached to the planning permission he considered were unreasonable.

Final decision

30. I have decided to complete my investigation as I have found no evidence of fault in the way the Council considered Mr C's complaint about the Councillor's conduct.

Investigator's decision on behalf of the Ombudsman