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STANDARDS COMMITTEE

Day: Tuesday
Date: 26 March 2024
Time: 4.00 pm
Place: Committee Room 1 - Tameside One

Item No.	AGENDA	Page No
1.	APOLOGIES FOR ABSENCE To receive any apologies for absence.	
2.	DECLARATIONS OF INTEREST To receive any declarations of interest.	
3.	MINUTES The Minutes of the Standards Committee meeting held on 7 November 2023 to be agreed as a correct record.	1 - 4
4.	PLANNING CODE OF CONDUCT To consider the attached report of the Assistant Director (Legal Services) (Monitoring Officer).	5 - 14
5.	WITHHOLDING DETAILS OF COUNCILLORS' SENSITIVE INTERESTS AND HOME ADDRESSES To consider the attached report of the Chief Executive.	15 - 18
6.	LOCAL GOVERNMENT OMBUDSMAN FINDS TEIGNBRIDGE DISTRICT COUNCIL (21/004/645) INVESTIGATION INTO MEMBER'S CONDUCT FLAWED To consider the attached report of the Chief Executive.	19 - 34
7.	REGISTER OF INTERESTS AND GIFTS AND HOSPITALITY The Register of Interests and Gifts and Hospitality are available for each Councillor via the Your Councillors page on the Council's website.	
8.	DISCUSSION PERIOD FOR MEMBERS TO RAISE ISSUES (IF ANY)	
9.	URGENT ITEMS To consider any items, which the Chair is of the opinion, shall be considered as a matter of urgency.	
10.	DATE OF NEXT MEETING To be confirmed.	

From: Democratic Services Unit – any further information may be obtained from the reporting officer or from Charlotte Forrest, Senior Democratic Services Officer, charlotte.forrest@tameside.gov.uk or 0161 342 2346, to whom any apologies for absence should be notified.

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STANDARDS COMMITTEE

7 November 2023

Commenced: 4.00 pm

Terminated: 4.20 pm

Present: Mirriam Lawton (Independent Person & Chair), Councillors Kitchen, Lane, McNally and Ricci

In Attendance: Sandra Stewart Chief Executive
Robert Landon Head of Democratic Services

Apologies for Absence: Councillors Costello, S Homer, and Parish Councillor Travis

8. DECLARATIONS OF INTEREST

There were no declarations of interest.

9. MINUTES

RESOLVED

The Minutes of the Standards Committee meeting held on the 5 September 2023 were approved as a correct record.

10. REVIEW OF COUNCIL CONSTITUTION

Consideration was given to a report of the Chief Executive that informed the Standards Committee of the overall review of the Council Constitution and sought the views of the Committee on the contents of Part 5: Standards of Conduct and Ethics.

The Committee was told that The Local Government Act 2000, as amended, required a local authority, which was operating executive arrangements, to prepare and keep up-to-date a Constitution. Although specific elements of the Constitution had been reviewed and amended, the Constitution as a whole had not been comprehensively reviewed for a number of years. The Committee was advised that an overall review of the Council Constitution would be considered by Council on 5 December 2023

It was reported that a significant part of the Constitution was Part 5: Standards of Conduct and Ethics, which fell within the remit of the Standards Committee. This Part of the Constitution contained a number of codes, protocols and policies, which set the framework within which both Members and Officers were expected to act. The following documents formed Part 5 of the Constitution:

5a	Members Code of Conduct
5b	Whistleblowing Policy
5c	Anti-Fraud, Bribery and Corruption Strategy
5d	Members Planning Code
5e	Monitoring Officer Protocol
5f	Section 151 Officer Protocol
5g	Member/Officer Protocol

In relation to 5a, Members Code of Conduct, the Committee were advised that this had been reviewed and amended by Council on 12 January 2021 following recommendations of the Standards Committee. The Whistleblowing Policy, 5b, applied to everyone with a concern about wrongdoing in the Council's activities, whether they were a Councillor, a council employee, a

contractor, an associated party or a concerned member of the public, and had been examined in recent years.

A summary was provided with regards to Anti-Fraud, Bribery and Corruption Strategy, Members Planning Code, which had recently been reviewed, Monitoring Officer Protocol, Section 151 Officer Protocol and Member/Officer Protocol.

The Committee were notified that the updated protocols and policies would be shared on a digital basis and Members requested that a printed version be made available in the Members Lounge at Tameside One and also at any relevant training sessions.

RESOLVED

That the Standards Committee endorsed the current contents of Part 5 a – g of the Council Constitution.

11. FLAG FLYING PROTOCOL

Consideration was given to a report of the Chief Executive that set out the current arrangements for flag flying on civic occasions and the arrangements for flying flags at half-mast. The current Flag Flying Protocol was appended to the report, and included details of when flags on Council buildings should be flown at half-mast.

The Committee were informed that it had been suggested that the current protocol, which had been in place since 2009, be amended to reflect changed circumstances and changing practices and that the requirement to fly flags on Council buildings in the event of the death of a former Chief Officer of the Council should be removed. An assessment of other local authority flag flying protocols showed that the inclusion of this requirement was rare and in practice difficult to apply.

RESOLVED

That the Standards Committee:

- (i) Agree that the protocol be amended to remove the requirement to fly flags on Council buildings at half-mast in the event of the death of a former Chief Officer of the Council; and**
- (ii) Note that the protocol would also be amended to reflect that the only Town Hall with a working flagpole was Dukinfield Town Hall in light of recent requirements to working at heights.**

12. REGISTER OF INTERESTS AND GIFTS AND HOSPITALITY

Members were advised that the Register of Interests and Register of Gifts and Hospitality were available online for inspection and that there had been no recent declarations of gifts and hospitality received by Members.

13. DISCUSSION PERIOD FOR MEMBERS TO RAISE ISSUES (IF ANY)

No issues were raised.

14. URGENT ITEMS

The Chair advised the Standards Committee that the Monitoring Officer was a statutory appointment under Section 5 of the Local Government and Housing Act 1989 and the current responsibilities of the Monitoring Officer role under the constitution rested with the role of Borough Solicitor (otherwise known as or referred to as the Assistant Director of Legal Services). The

Committee were informed that the Interim Assistant Director of Legal had left the authority and the Deputy Monitoring Officer was currently unavailable for a prolonged period. An appointment to the role of Assistant Director of Legal Services would be made at the next full Council meeting, scheduled for 5 December 2023, and any issues for consideration by the Monitoring Officer, would be held in abeyance up until this point.

15. DATE OF NEXT MEETING



RESOLVED

That the date of the next meeting of the Standards Committee was scheduled to take place on 26 March 2024.

CHAIR

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Agenda Item 4.

Report To:	STANDARDS COMMITTEE
Date:	26 March 2024
Reporting Officer:	Linda Comstive – Assistant Director (Legal Services) (Monitoring Officer)
Subject:	PLANNING MEMBERS CODE OF CONDUCT
Report Summary:	To consider a revised draft planning code setting out how the Council will maintain high standards of probity in its planning function, in the light of changes to the local government standards regime.
Recommendations:	<ul style="list-style-type: none">(i) That the Committee supports the proposal to revise the Planning Members Code of Conduct so that it reflects the recently re-published Lawyers in Local Government (LLG) model code.(ii) That the Committee consider the draft 'Planning Code for Members' appended to this report and recommends the document as amended for adoption by Full Council.
Financial Implications: (Authorised by the statutory Section 151 Officer & Chief Finance Officer)	There are no significant financial issues arising from this report.
Legal Implications: (Authorised By Borough Solicitor)	The promotion and maintenance of high standards of conduct by councillors and officers is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications.
Risk Management:	Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.
Links To Community Plan:	The policy supports the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.
Access To Information:	NON-CONFIDENTIAL This report does not contain information which warrants its consideration in the absence of the Press or members of the public.
Background Information:	The background papers relating to this report can be inspected by contacting the report writer, Esther Young, Legal Services:  Telephone: 0161 342 3243  e-mail: esther.young@tameside.gov.uk

1. INTRODUCTION AND BACKGROUND

- 1.1 The Members' Planning Code of Good Practice was originally prepared in response to a series of successful court challenges concerning local planning authorities and the members' conduct or conflicts of interests. It replaced what was a number of individual and sometimes haphazard approaches in individual councils at the time. The drafting of the Model Code was subject to consultation and comment from a number of local authorities through the machinery of LLG as well as with the Local Government Ombudsman and from firms of solicitors or counsel. LLG then worked with the Local Government Association to publish the Code as part of a suite of guidance.
- 1.2 The Model Planning Code and Protocol was first published in 2003, was refreshed in 2007. Following the Localism Act 2011's introduction of the new law on members' conduct, the clarification in the law on bias and predetermination in that Act and in the courts and commentary from the Committee on Standards in Public Life in better defining the Nolan Principles, it was reviewed and updated in 2014.
- 1.3 The aim of this Code is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. This code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision-making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.
- 1.4 The Council is the local planning authority for the Metropolitan Borough of Tameside, responsible for taking decisions about a wide range of planning issues – from setting the planning policies for Tameside in the local development framework to deciding planning applications large and small, to taking enforcement action against unauthorised development.
- 1.5 Planning can be a contentious area for the Council. It always involves balancing competing factors in the public interest. Planning issues can have a great impact on people's lives and businesses and can have a large financial impact on landowners and the public alike.
- 1.6 Most planning applications are decided by Council staff under delegated powers, but major or controversial applications are decided by the Councillors who are members of the Speaker's Panel (Planning).
- 1.7 The Lawyers in Local Government Group (LLG) has re-published a draft model code/protocol on the subject of probity in planning. The drafting of this model code/protocol was subject to consultation and comment from a number of local authorities, the LGA, the Local Government Ombudsman, the Audit Commission and from firms of solicitors or counsel acting on their behalf.
- 1.8 Attached at **Appendix 1** is the Planning Code for Members with proposed changes highlighted. Agreeing the changes in the appendix would not require any change in practice on the part of Members, Officers or the Speakers Panel (Planning) but would mean that the wording of the Tameside Code of Conduct would be in line with the LLG document.

2. RECOMMENDATIONS

- 2.1 As set out at the front of the report.

APPENDIX 1

TAMESIDE METROPOLITAN BOROUGH COUNCIL

PLANNING CODE FOR MEMBERS

Tameside Council's Planning Code for Members should be read alongside 'Tameside Council's Code of Conduct', adopted by the Council in January 2021, together with 'Probity in Planning for councillors and officers', produced in April 2013 and updated in December 2019 by the Local Government Association and the Planning Advisory Service.

If you have any doubts about the application of the Codes to your own circumstances, or have concerns about how any publications, case law, legislation or guidance affects you, you should seek advice early from the Borough Solicitor or one of her staff, and preferably well before any meeting takes place.

INTRODUCTION

- 1.1 **The aim of this Code:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. One of the key purposes of the planning system is to regulate the development and use of land in the public interest. **Your role as a Member of the Planning Authority is** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. You are also a democratically accountable decision-taker who has been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that you have considered all material considerations and have given fair consideration to relevant points raised.
- 1.2 **When the Code applies:** this code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT

- 2.1 **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with. This is both the rules on all interests, Disclosable Pecuniary Interests, Personal Interests and Personal and Prejudicial Interests, and the general rules giving effect to the seven principles of public life: **selflessness, integrity, objectivity, accountability, openness, honesty and leadership.**
- 2.2 **Do** then apply the rules in this Planning Code for Members, which seeks to explain and supplement the Members' Code of Conduct and the law on decision making for the purposes of planning control. If you do not abide by this Members' Planning Code, you may put:
 - The Council at risk of proceedings on the legality of the related decision or maladministration; and

- Yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

2.3 **Do** be aware that, like Members' Code of Conduct, this Members' Planning Code is a reflection and summary of the law on decision making and not a direct replication of it. If in doubt, seek the advice of the Borough Solicitor or one of her staff.

DEVELOPMENT PROPOSALS AND PERSONAL INTERESTS

3.1 **Do** disclose the existence and nature of your interest as required by Tameside Council's Member Code of Conduct.

3.2 **Do take into account when approaching a decision** that the Principle of Integrity is defined in terms that "*Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, of their friends. They must declare and resolve any interests and relationships*".

It is therefore advisable that you:

- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.
- **Do** note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that your role as a councillor may place additional limitations on you in representing the proposal in which you have a personal interest.
- **Do** notify the Monitoring Officer in writing where it is clear to you that you have a disclosable pecuniary interest or other personal conflict of interest in a planning application and note that:
 - * you should send the notification no later than submission of that application where you can;
 - * the application will always be reported to the Speakers Panel and not dealt with by officers under delegated powers;
 - * you must not get involved in the processing of the application; and
 - * it is advisable that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

FETTERING, DISCRETION IN THE PLANNING PROCESS

(natural justice, predisposition and predetermination)

4.1 **Don't** fetter your discretion and therefore your ability to participate in planning decision making by approaching the decision with a closed mind. Fettering your discretion in this way and taking part in the decision will put the Council at risk of a finding of maladministration and of

legal proceedings on the grounds of bias, pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- 4.2 **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011. Your prior observations, apparent favouring or objections in respect of a particular outcome will not normally suffice to make a decision unlawful and have it quashed, but you must never come to make a decision with a closed mind.
- 4.3 **Do** keep at the front of your mind that, when you come to make the decision, that you
- Must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides;
 - Are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
 - Are only entitled to take into account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
 - Are to come to a decision after giving what you feel is the right weight to those material considerations.
- 4.4 **Do** be aware that you can be biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- 4.5 **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, or for example, a councillor representative on Transport for Greater Manchester), provided:
- The proposal does not substantially affect the well-being or financial standing of the consultee body;
 - You make it clear to the consultee body that:
 - * your views are expressed on the limited information before you only;
 - * you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Panel and you hear all of the relevant information; and
 - * You will not in any way commit yourself as to how you or others may vote when the proposal comes before the Panel.
- 4.6 **Do** explain that you do not intend to speak and vote as a member of the Consultee Body because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes. (Use the disclosure form provided for disclosing interests.)

- 4.7 **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member at the Panel where you have represented your views or those of local electors and fettered your discretion but do not have a disclosable or other personal conflict of interest. Where you do:
- Advise the Democratic Services Officer or Chair that you wish to speak in this capacity before commencement of the item;
 - Remove yourself from the seating area for members of the Panel for the duration of that item; and
 - Ensure that your actions are recorded.

CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 5.1 **Do** refer those who approach you for planning, procedural or technical advice to officers.
- 5.2 **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying issues, you should seek to arrange that meeting through a request to the Head of Planning or in her/his absence his manager or authorised representative to organise it. The officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Panel.
- 5.3 **Do** otherwise:
- Follow the Authority's rules on lobbying;
 - Consider whether or not it would be prudent in the circumstances to make notes when contacted, and
 - Report to the Head of Planning or in his absence his manager or authorised representative any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ask them to ensure that this is recorded on the planning file.

In addition in respect of presentations by applicants/developers:

- 5.4 **Don't** attend a planning presentation without requesting an officer to be present.
- 5.5 **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- 5.6 **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the Speakers Panel.
- 5.7 **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at Panel.

LOBBYING OF COUNCILLORS

- 6.1 **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Panel's decision making, to express an intention to vote one way or another or to express such a firm point of view that it amounts to the same thing.
- 6.2 **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to favour, any person, company, group or locality.
- 6.3 **Don't** accept gifts or hospitality for any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, and its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.
- 6.4 **Do** copy or pass on any lobbying correspondence you receive to the Head of Planning at the earliest opportunity.
- 6.5 **Do** promptly refer to the Head of Planning or in his absence his manager or authorised representative any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 6.6 **Do** inform the Borough Solicitor where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- 6.7 **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Code through:
- Listening or receiving viewpoints from residents or other interested parties:
 - Making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision);
 - Seeking information through appropriate channels;
 - Receiving circulated material from applicants or objectors;
 - Being a vehicle for the expression of opinion of others in your role as a Ward Member.

LOBBYING BY COUNCILLORS

- 7.1 **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby or promote or oppose planning proposals unless it is your intention to openly campaign on the matter and will therefore step away from the Panel when it comes to make its decision.
- 7.2 **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or a local civic society), but you should normally seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular

proposal and make it clear to that organisation and the Panel that you have reserved judgement and the independence to make up your own mind on each separate proposal.

- 7.3 **Do** be aware of the power of social media posts or re-posting and be careful to not give the impression that you will definitely vote in a certain way or act with a closed mind if you intend to participate in the decision making on behalf of the authority.
- 7.4 **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 7.5 **Don't** decide or discuss how to vote on any application at any political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

SITE VISITS / INSPECTIONS

- 8.1 **Do** try to attend any site visits organised by the Council where possible.
- 8.2 **Don't** request a site visit unless you feel it is strictly necessary because:
 - Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - There are significant policy or precedent implications and specific site factors need to be carefully addressed
- 8.3 **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee.
- 8.4 **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- 8.5 **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- 8.6 **Don't** hear representations from any party. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- 8.7 **Don't** express opinions or views.
- 8.8 **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
 - You feel it is essential for you to visit the site other than through attending the official site visit,
 - You have first spoken to the Head of Planning or in his absence his manager or authorised representative about your intention to do so and why (which will be recorded in the file) and

- You can ensure you will comply with these good practice rules on site visits.

PUBLIC SPEAKING AT MEETINGS

- 9.1 **Don't** allow members of the public to communicate with you during the Panel's proceedings (orally, in writing or by social media) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.
- 9.2 **Don't** participate in social media or exchanges by texting as a member of the Panel during the Panel's proceedings as this may give the impression of undue external influence and may give the appearance of bias.
- 9.3 **Do** ensure that you comply with the Council's procedures in respect of public speaking.

OFFICERS

- 10.1 **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Head of Planning or in his absence his manager or authorised representative, which may be incorporated into any committee report).
- 10.2 **Do** recognise that officers are part of a management structure and you should therefore only discuss a proposal, outside or any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- 10.3 **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Panel or its Members.

DECISION MAKING

- 11.1 **Do** ensure that, if you request a proposal to go before the Panel rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Panel.
- 11.2 **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- 11.3 **Do** comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 11.4 **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is not sufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.

- 11.5 **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter. (Where a matter is deferred and its consideration recommences rather than starts completely afresh at a subsequent meeting, only Members who were present at the previous meeting will be able to vote. If this renders the Panel inquorate then the item will have to be considered afresh and this would include public speaking rights being triggered again).
- 11.6 **Do** have recorded the reasons for Panel's decision to defer any proposal and that this is in accordance with the Council's protocol on deferrals.
- 11.7 **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion / decision. These reasons must be given prior to the vote and be recorded (it will help to take advice from officers when and where necessary to do this and, if there are no indications allowing you to do this in advance of the meeting, it may be helpful to request a short adjournment for these purposes). Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.
- 11.8 **Do** note that the Chair of the Committee is entitled to vote as any other member on the merits of the application and has a second or casting vote in the event of an equality of votes cast.

TRAINING

- 12.1 **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- 12.2 **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- 12.3 **Do** participate in any review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

Agenda Item 5.

Report To:	STANDARDS COMMITTEE
Date:	26 March 2024
Reporting Officer:	Sandra Stewart – Chief Executive
Subject:	WITHHOLDING DETAILS OF COUNCILLORS' SENSITIVE INTERESTS AND HOME ADDRESSES
Report Summary:	<p>In response to recent concerns from elected members about intimidation in public life, The Minister wishes to ensure that all councillors and elected mayors are aware of the sensitive provisions in Section 32 of the Localism Act 2011. The sensitive interests' provisions provide for details about a registered interest to be excluded from versions of the Register of Interests available for public inspection (or published online) where a member and monitoring officer agree that the disclosure of that interest could lead to violence or intimidation of them or their family. They provide for members to disclose that they have an interest but for the details to be withheld from the public register.</p>
Recommendations:	To note and agree further communicated to members.
Financial Implications: (Authorised by the statutory Section 151 Officer & Chief Finance Officer)	There are no significant financial issues arising from this Report.
Legal Implications: (Authorised By Borough Solicitor)	<p>The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications.</p> <p>32 Sensitive interests <i>(1) Subsections (2) and (3) apply where —</i> <i>(a) a member or co-opted member of a relevant authority has an interest (whether or not a disclosable pecuniary interest), and</i> <i>(b) the nature of the interest is such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.</i> <i>(2) If the interest is entered in the authority's register, copies of the register that are made available for inspection, and any published version of the register, must not include details of the interest (but may state that the member or co-opted member has an interest the details of which are withheld under this subsection).</i> <i>(3) If section 31(2) applies in relation to the interest, that provision is to be read as requiring the member or co-opted member to disclose not the interest but merely the fact that the member or co-opted member has a disclosable pecuniary interest in the matter concerned.</i></p>
Risk Management:	Standards Committee should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.

Links To Community Plan:

Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.


Access To Information

NON-CONFIDENTIAL

This report does not contain information which warrants its consideration in the absence of the Press or members of the public

Background Information:

The background papers relating to this report can be inspected by contacting the report author, Sandra Stewart, Chief Executive & Head of Paid Service:

 Telephone: 0161 342 3502

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Department for Levelling Up,
Housing & Communities

Simon Hoare MP
Minister for Local Government
2 Marsham Street
London
SW1P 4DF

Chief Executives of Local Authorities in England

18 March 2024

Dear Colleague,

Withholding details of councillors' sensitive interests and home addresses

In response to recent concerns from elected members about intimidation in public life, I want to ensure that all councillors and elected mayors are aware of the sensitive provisions in Section 32 of the Localism Act 2011.¹

The sensitive interests' provisions provide for details about a registered interest to be excluded from versions of the Register of Interests available for public inspection (or published online) where a member and monitoring officer agree that the disclosure of that interest could lead to violence or intimidation of them or their family. They provide for members to disclose that they have an interest but for the details to be withheld from the public register.

On receipt of this letter, I would be grateful to you bringing the contents to the attention of all current members of your Council and your Council's Monitoring Officer. The Government encourages monitoring officers to look sympathetically at accommodating requests for the withholding of home addresses from published versions of the register of interests where there are legitimate concerns of violence or intimidation.

Previously the Prime Minister, when Minister for Local Government in 2019, wrote to all Leaders of local authorities in England on this matter. I want to refresh awareness of the sensitive interests' provisions among the current cohort of councillors in response to recently raised concerns about councillors' personal safety.

This letter will be published on gov.uk for guidance purposes. I remain grateful to all those who serve their communities as local council members.

SIMON HOARE MP
Minister for Local Government

¹ <https://www.legislation.gov.uk/ukpga/2011/20/section/32> affected

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Agenda Item 6.

Report To: STANDARDS COMMITTEE

Date: 26 March 2024

Reporting Officer: Sandra Stewart – Chief Executive

Subject: LOCAL GOVERNMENT OMBUDSMAN FINDS TEIGNBRIDGE DISTRICT COUNCIL (21/004/645) INVESTIGATION INTO MEMBER'S CONDUCT FLAWED

Report Summary: The Local Government and Social Care Ombudsman has said Standards investigations by councils into the actions of councillors need to be conducted fairly and properly.

The warning comes after the Ombudsman was asked to look at the way Teignbridge District Council investigated the actions of a Councillor, Cllr Daws, after the Council alleged he had acted contrary to its Code of Conduct.

The Ombudsman found fault with a number of aspects of the council's investigation. It found the investigation was not prompted by a formal written complaint, contrary to the law. The Council also did not give the Councillor enough information about his alleged breaches of its Code.

The Council introduced new allegations during the process, but the independent investigator appointed to look at the case did not make it clear to Cllr Daws whether these were part of the investigation.

The Ombudsman also found that the inquiry into Cllr Daws' conduct was conflated with accusations levelled at another Councillor who was also being investigated at the same time.

The Council failed to reflect on the investigation and consider whether due process had been followed after Cllr Daws raised legitimate concerns about the way the investigation was being carried out. It also failed to consider Cllr Daws' enhanced right to free speech as an elected representative, which was relevant when the Council considered his justification for certain comments he acknowledged making or posted on social media.

The Ombudsman has made a number of recommendations to improve the Council's processes following the investigation, but the Council has not yet agreed to accept these.

The Local Government and Social Care Ombudsman, said:

***“Local councillors have a key role in scrutinising their authorities’ actions, and have an enhanced right of free speech to ask what might at times appear to be uncomfortable questions. Councils need to bear this in mind when deciding what constitutes a breach of their Code of Conduct. While both officers and members have a right to be treated with dignity and respect at work, and councils’ desire to do more to protect them from poor treatment is to be encouraged, they still need to carry out investigations into councillor standards fairly and properly.*”**

***“I look forward to the council considering my report at a senior decision-making level and hope it accepts the recommendations I have made to improve its processes and*”**

procedures.”

The Local Government and Social Care Ombudsman’s role is to remedy injustice and share learning from investigations to help improve public, and adult social care, services. In this case the Council should apologise to Cllr Daws and rescind its decision notice upholding the complaint the Councillor breached the Code of Conduct and ensure this is no longer available on its website. It should be replaced with a statement saying the notice has been withdrawn.

The Ombudsman has the power to make recommendations to improve processes for the wider public. In this case the Council should ensure it has a written procedure for officers and independent investigators asked to consider standards complaints.

The Ombudsman can investigate complaints from locally elected Councillors where they allege they have suffered a personal injustice because of actions taken by a body in the Ombudsman’s jurisdiction. This is because where a Councillor makes a complaint of this type, they are not doing so on behalf of the Council or another public body, but in their own personal capacity. They are also not an employee, governed by a personnel relationship with a Council, where there are legal limits on what the Ombudsman can investigate.

Recommendations: For discussion and note for compliance, assurance and learning.

Financial Implications: There are no significant financial issues arising from this Report.
(Authorised by the statutory Section 151 Officer & Chief Finance Officer)

Legal Implications: The promotion and maintenance of high standards of conduct by Councillors is an important part of maintaining public confidence in both the Council and its members. Failure to do so could have significant reputational implications.
(Authorised By Borough Solicitor)

Risk Management: Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.

Links To Community Plan: Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.

Access To Information

NON-CONFIDENTIAL

This report does not contain information which warrants its consideration in the absence of the Press or members of the public

Background Information: The background papers relating to this report can be inspected by contacting the report author, Sandra Stewart, Chief Executive & Head of Paid Service:

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Council Investigation into Local Councillor's Conduct Flawed

Councils Need To Ensure Standards Investigations Into The Actions Of Councillors Are Conducted Fairly And Properly.

We Have Issued A [Report About The Way Teignbridge District Council Investigated The Actions Of A Councillor](#) After The Council Alleged He Had Acted Contrary To Its Code Of Conduct.

Who Should Read This Report?

- Monitoring Officers Who Are Responsible For The Council's Standards Complaints Investigation Processes.
- Council Officers Who Deal With Complaints About The Conduct Of Local Councillors.
- Local Councillors Who Sit On Standards Committees.

What Happened?

We Found Fault With A Number Of Aspects Of The Council's Investigation. We Found The Investigation Was Not Prompted By A Formal Written Complaint And Was Contrary To The Law. The Council Also Failed To Give The Councillor Enough Information About His Alleged Breaches Of Its Code.

The Council Introduced New Allegations During The Process, But The Independent Investigator Appointed To Look At The Case Did Not Make It Clear To The Councillor Whether These Were Part Of The Investigation.

We Also Found The Inquiry Into The Councillor's Conduct Was Conflated With Accusations Levelled At Another Councillor Who Was Being Investigated At The Same Time.

The Council Failed To Reflect On The Investigation And Consider Whether Due Process Had Been Followed After The Councillor Raised Legitimate Concerns About The Way The Investigation Was Being Carried Out. It Also Failed To Consider The Councillor's Enhanced Right To Free Speech As An Elected Representative, Which Was Relevant When The Council Considered His Justification For Certain Comments He Acknowledged Making Or Posted On Social Media.

We Have Made A Number Of Recommendations To Improve The Council's Processes Following The Investigation, But The Council Has Not Yet Agreed To Accept These.

Michael King, Local Government And Social Care Ombudsman, Said:

"Local Councillors Have A Key Role In Scrutinising Their Authorities' Actions, And Have An Enhanced Right Of Free Speech To Ask What Might At Times Appear To Be Uncomfortable Questions. Councils Need To Bear This In Mind When Deciding What Constitutes A Breach Of Their Code Of Conduct."

"While Both Officers And Members Have A Right To Be Treated With Dignity And Respect At Work, And Councils' Desire To Do More To Protect Them From Poor Treatment Is To Be Encouraged, They Still Need To Carry Out Investigations Into Councillor Standards Fairly And Properly."

"I Look Forward To The Council Considering My Report At A Senior Decision-Making Level And Hope It Accepts The Recommendations I Have Made To Improve Its Processes And Procedures."

Can The Ombudsman Investigate Complaints From Councillors?

We Can Investigate Complaints From Locally Elected Councillors Where They Allege They

Have Suffered A Personal Injustice Because Of Actions Taken By A Body In Our Jurisdiction. This Is Because Where A Councillor Makes A Complaint Of This Type, They Are Not Doing So On Behalf Of The Council Or Another Public Body, But In Their Own Personal Capacity. They Are Also Not An Employee, Governed By A Personnel Relationship With A Council, Where There Are Legal Limits On What We Can Investigate.

What Can Your Council Learn From This?

In The Report We Recognise That Councils Have A Responsibility To Protect The Wellbeing Of Officers. This Includes Protecting Them From Overly Critical Comments From Local Councillors. However This Needs To Be Balanced Against A Local Councillor's Right To Freedom Of Expression Which Includes Legitimate Questioning And Criticism Of A Council's Actions.

We Have Recommended Teignbridge District Council Has A Written Procedure For Officers And Any Independent Investigators Asked To Consider Standards Complaints That Should Include:

- Having A Record Of Complaints Being Made In Writing;
- Having A Clear Written Record Of Consultation With An Independent Person To Include Their Response;
- Recording When The Written Complaint Has Been Shared With The Councillor Complained Of, Or A Clear Written Record As To The Reasons Why Not;
- Ensuring That Where An Investigation Expands To Consider Further Allegations Arising During The Investigation, It Keeps A Clear Written Record Of And A Record That This Has Been Explained To The Councillor Complained About; And
- That In All Appropriate Cases It Considers The Rights Of The Councillor Complained About To Free Expression Under Article 10 Of The Human Rights Act, As Part Of Any Investigation Report And Subsequent Committee Decision Making.

Further Information

In The Report We Said The Council Had Failed To Have Regard To The Local Councillor's Right To Freedom Of Expression.

We Have Issued A [Report On Human Rights](#) Which Explains Why It Is Important That Councils Treat The People They Serve With Fairness, Respect And Dignity. This Contains Important Guidance On How Councils Should Consider Human Rights When Delivering Services As Well As Guidance For Local Councillors Responsible For Scrutinising The Way Councils Carry Out Their Functions.

Teignbridge District Council (21 004 645)

Category :[Other Categories](#) > [Councillor conduct and standards](#)

Decision :**Upheld**

Decision date :**21 Dec 2022**

Overview:

Summary

Councillor Daws says the Council was at fault as it failed to follow due process when investigating him for alleged breaches of its code of conduct for elected councillors.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (Local Government Act 1974, section 31(2), as amended)

To remedy this complaint the Council should take the following action.

- Apologise to Councillor Daws, accepting the findings of this investigation.
- Rescind its decision notice of 22 July 2020 upholding the complaint Councillor Daws breached the Code of Conduct and ensure this is no longer available on its website. In its place it should provide a statement saying the notice has been withdrawn following this investigation and provide a link to this report.

The Council should also learn lessons from this complaint. It should ensure it has a written procedure for its officers and any independent investigators asked to consider standards complaints that should include:

- ensuring the Council has a record of complaints being made in writing;
- ensuring there is a clear written record of consultation with an Independent Person to include their response;
- recording that the written complaint has been shared with the Councillor complained of, or a clear written record as to the reasons why not;
- ensuring that where an investigation expands to consider further allegations arising during the investigation, it keeps a clear written record of that and a record that this has been explained to the Councillor complained about; and
- that in all appropriate cases it considers the rights of the councillor complained about to free expression under Article 10 of the Human Rights Act, as part of any investigation report and subsequent committee decision making.

Ombudsman satisfied with Council's response: 20 December 2023.

Teignbridge District Council (21 004 645)

Category :[Other Categories](#) > [Councillor conduct and standards](#)

Decision :**Upheld**

Decision date :**21 Dec 2022**

The Investigation

The complaint

1. Councillor Daws says the Council was at fault as it failed to follow due process when investigating him for alleged breaches of its code of conduct for elected councillors. In particular he complained the Council:

- initiated an investigation without receiving any complaint about his conduct which is contrary to the law and its own policy;
- misled him into believing such a complaint had been made;
- did not disclose details of any such complaint as might have been made; and
- did not carry out due diligence of an independent investigator appointed to investigate the complaint.

2. Councillor Daws says because of the above he was unfairly sanctioned with damage to his personal and professional reputation. He says the Council's actions also breached his right to freedom of expression. He says he has also spent unnecessary time and trouble in responding to the investigation and then seeking redress.

Legal and administrative background

The Ombudsman's role and powers

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision making, we cannot question the outcome. (Local Government Act 1974, section 34(3), as amended)

4. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)

5. Our decisions do not normally mention the name of any person or include details likely to identify them. We can decide to use someone's name if it is in the public interest as well as that of the complainant to do so. In this case we have decided to name the complainant because we consider it is in his interest, and he has asked us to do so. (Local Government Act 1974, section 30 (3))

Relevant law and Council policy

6. Chapter 7 of the Localism Act 2011 requires all local authorities to "promote and maintain high standards of conduct" by elected councillors. Councils must adopt codes of conduct for councillors as part of that requirement.

7. Section 28(6) of the Act requires local authorities to have in place "arrangements" for investigating "allegations" that councillors have breached the code.

8. Section 28(7) of the Act requires local authorities to "include provision for the appointment by the authority of at least one independent person whose views are to be sought, and

a) taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate [...]"

9. Section 28(9) of the Act says that “an allegation” in sections 28(6) and 28(7) of the Act “means a written allegation that a member or co-opted member of the authority has failed to comply with the authority’s code of conduct”.

10. The Council publishes its Code of Conduct (‘the Code’) on its website. Relevant extracts from the version in force in November 2019 are quoted later in this report.

11. On its website the Council has a form that anyone wanting to complain about a councillor’s conduct can complete. Section 4 invites the person completing the form to explain what sections of the Code the councillor is alleged to have broken. It invites those completing the form to “be specific”; for example, “instead of writing that the Member insulted you, you should state what it was they said”. Those completing the form should also “provide relevant background information”.

12. The form says at Section 5 that “in the interests of fairness and natural justice we believe Members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint.”

13. The Council also publishes details of its procedure for investigating standards complaints (i.e. complaints that councillors have breached the Code). It says complaints should be submitted to its Monitoring Officer, who has the statutory responsibility for administering investigations into complaints about councillor conduct.

14. The procedure says: “the Monitoring Officer will review every complaint received, and after consultation with the Independent Person, take a decision on whether it merits formal investigation”.

15. The procedure explains that where the Monitoring Officer or the Standards Committee considers a complaint merits a formal investigation then it will appoint an Investigating Officer. This may be an external investigator. It says that “normally” the Investigating Officer will write to the councillor complained about and provide them with a copy of the complaint and ask them to provide their explanation for events.

16. The Investigating Officer must produce a report which is first circulated for comment as a draft. The final report must take account of any comments made on the draft version. The case can then proceed to a hearing at the Standards Committee which can decide if there has been a breach of the Code and if so, decide what sanction to apply.

Human Rights Act

17. The Human Rights Act 1998 sets out the fundamental rights and freedoms that everyone in the UK is entitled to. The Act requires all local authorities to respect and protect individuals’ rights.

18. Not all rights operate in the same way. Instead, they break down into three separate categories:

- absolute rights: those which cannot be interfered with under any circumstances;
- limited rights: those that can be interfered with in certain circumstances; and
- qualified rights: those rights where interference may be justified to protect the rights of others or wider public interest.

19. Our remit does not extend to making decisions on whether a body in jurisdiction has breached the Human Rights Act – this can only be done by the courts. But we can make decisions about whether a body in jurisdiction has had due regard to an individual’s human rights in their treatment of them, as part of our consideration of a complaint.

20. Of relevance to this complaint is Article 10 of the Human Rights Act which protects freedom of expression. This aims to ensure people can give their views and opinions. However, it is a qualified right, which means there are circumstances where the freedom can be curtailed so long as that is lawful, necessary and proportionate.

21. Court judgments have considered the interplay between regimes that aim to protect standards in public life through local authority code of conduct schemes with elected representatives’ right to free expression. The courts have recognised that elected politicians have an enhanced right of protection to free expression. But where an elected politician makes a critical comment about a

non-elected official, it is legitimate to consider the requirement to protect that official. However, this must be weighed:

- first, against the interest of open discussion of matters of public concern; and
- second, where the comment is made by a politician as a political expression, the enhanced protection given to his right of freedom of expression. (see *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin))

22. A breach of Article 10 rights can occur if a councillor is found to have breached a code of conduct and been asked to apologise, even when subject to no formal investigation. (see *Robinson, R (on the application of) v Buckinghamshire Council* [2021] EWHC 2014 Admin)

How we considered this complaint

23. Before issuing this report we considered:

- Councillor Daws' written complaint to us and any supporting information he provided;
- correspondence between Councillor Daws and the Council about the matters covered by the complaint, which pre-dated our investigation;
- information provided by the Council in reply to our enquiries; and
- any relevant law, procedure or guidance as referred to in this report.

24. Councillor Daws and the Council also had opportunity to comment on a confidential draft of the report. Any comments they made, or further evidence they provided, was taken into account before we finalised the report.

What happened – key events

25. Councillor Daws was elected to the Council in 2019. He stood for a group known as 'Newton Says No' (NSN). This political grouping had its origins in campaigning against proposed housing development in part of the Council's area (the 'NA3' area). Councillor Daws was one of three councillors elected as part of the NSN group. Another was 'Councillor X'.

26. On 1 November 2019 Councillor Daws and Councillor X received an email from the Council's Monitoring Officer. It said: "significant concerns have been raised with me by officers and / or members about your conduct towards them particularly in recent weeks. The conduct appears on the face of it to establish a case for investigation into whether the standards of conduct required of councillors, as set out in the Members' Code of Conduct, have been breached. I list the relevant provisions of the Code below:

- Para 4.1 – requirement to behave in such a way that a reasonable person would regard as respectful
- Para 4.2 – requirement not to act in a way which a reasonable person would regard as bullying or intimidatory
- Para 4.7 – requirement not to bring the office of councillor or the Council into disrepute".

27. The email cited three matters:

- "Councillor Daws behaviour in connection with his desire for members of the public to attend a Members' briefing on Climate Change on 24 September 2019;
- Comments directed to officers at / in response to the above, a subsequent, [planning] workshop meeting held on 3 October 2019 and more generally their advice on NA3 development / appeal issues, including comments which were made on social media by Cllr [X] "
- Comments directed to Cllr Mr and Mrs Cllr [Y] in response to their support of officers and / or more generally".

28. The email went on to offer an explanation about why the Council did not open the climate change briefing to members of the public. The Monitoring Officer then suggested meeting with both

councillors to “discuss the above, including the investigations process and how, if it all, it may be possible for you to reasonably resolve at least some of the above concerns”. On 3 November Councillor Daws and Councillor X rejected the invitation of a meeting with the Council Monitoring Officer.

29. On 1 November, the Council Monitoring Officer had also sent an email to an external consultancy firm whose services include carrying out investigations into alleged breaches of local authority code of conduct schemes. In that email the officer said the Council had not received any formal complaint about either Councillor. But said she had received concerns from Councillors Mr and Mrs Y about comments made on social media. The same email said Councillor Daws had been disrespectful to the Council Managing Director on 24 September 2019. The officer reported that Councillor Daws “would not accept” that members of the public could not attend the climate change briefing and had told the Managing Director he was “on thin ice”. The email continued: “Whilst this in itself may not be seen as a breach of the code of conduct given the seniority of the officer, within the context of what have been very personalised comments which have specifically been directed for some months on social media by Cllr [X]/ residents’ association, there is potential for this to be in breach of the Council’s Code of Conduct”.

30. On 7 November the Monitoring Officer sent an email to one of the independent persons retained to sit on the Council’s Standards Committee. They enclosed a copy of the email of 1 November to Councillor Daws and Councillor X. The covering email said the Council had “provisionally contacted” the consultancy about investigating and enclosed a copy of that email also. There is no record the Independent Person replied.

31. On 11 November the Council Monitoring Officer received an email from a senior planning officer, which referred to a conversation they had “a couple of weeks ago”. The email raised the following matters.

- That Councillor Daws had used a side entrance to let members of the public into the planning workshop. They described this as the second security breach involving Councillor Daws doing this.
- That Councillor X had put offensive posts on social media.
- That Councillor Daws had sent an email on 21 October 2019 which contained a negative comment on local planning policy documents which they considered contained disrespectful language.
- That Councillor Daws had sent an email on 19 June 2019 to the Council Managing Director as part of an exchange of emails where Councillor Daws had challenged figures used by the Council in its 2012 local plan. Councillor Daws said in his email: “*the actions taken to defend them and implement them without addressing reasoned concerns are in our view tantamount to ‘Misfeasance in public office’*”.
- That the actions of Councillor Daws and Councillor X were having a stressful effect on the officer and the team; reducing their enjoyment in the job and causing sleeplessness and low morale.
- That NSN had a website which targeted officers and contained derogatory comments about them.

32. On 13 November the Council contacted various officers and councillors arranging interviews with the Investigator employed by the consultancy firm, which it retained to carry out the investigation. It also told Councillor Daws it had appointed the Investigator. It said the Investigator would contact him to arrange a meeting “in connection with the conduct issues from the three incidents to which I have referred”.

33. In separate correspondence, on 15 November, Councillor Daws asked the Investigator to send him “full details of each complaint made, including specific actions, times, dates together with details of who raised the complaint”. In reply the Investigator told Councillor Daws that his remit was to investigate the matters raised by the Monitoring Officer in their email of 1 November. Although he also said he had been given the “timeline of events” set out in the 11 November email and this was attached. The Investigator noted this mentioned two specific social media posts by

Councillor X and the email sent by Councillor Daws on 21 October 2019. The Investigator said he would be carrying out interviews to ascertain more detail about these incidents.

34. Councillor Daws asked again if he could see complaints made in writing, to which the Investigator replied that he had “provided all the details I have at this stage”.

35. On 3 December the Council contacted Councillor Daws and Councillor X to set up interviews.

36. Before agreeing to an interview Councillor Daws questioned if he had seen all information relevant to the complaint. He was told by the Council Monitoring Officer “please be assured you have all the relevant information there is to date and to which you are properly entitled”.

37. On 17 December 2019 Councillor Daws met with the Investigator. The Investigator’s record of that interview says the interview covered:

- Councillor Daws familiarity with the Code of Conduct;
- discussion over the NSN website and its content;
- discussion over why Councillor Daws had used the phrase “*tantamount to misfeasance in a public office*” in the email of 19 June 2019; Councillor Daws said he used the phrase as he disputed the statistical accuracy of figures used by the Council in the local plan;
- events on 24 September 2019 including a subsequent social media post. Councillor Daws explained he went to the Managing Director’s office as he did not know the reasons why the public were excluded from the climate change briefing. He said he had used the phrase “*skating on thin ice*” as he did not consider barring members of the public from attending the briefing was lawful. He had later posted on his Councillor Facebook page that the “*management of TDC was out of control*” as it had given “*no good reason*” for not allowing members of the public into the briefing. Councillor Daws explained he had tried to get an explanation for why the briefing was not open to members of the public before 24 September 2019 but had not been given one; and
- when members of the public had been admitted to the Council building by Councillor Daws.

38. On 25 January 2020 the Investigator sent Councillor Daws a copy of a draft of his report. He asked for any comments by 4 February 2020. Councillor Daws did not comment on the draft.

39. On 4 March 2020 the Council sent Councillor Daws a copy of the final report. It said that it would be discussed at a Standards Committee meeting in April. But because of the COVID-19 pandemic that was postponed and rearranged for July 2020.

40. The Investigating Officer’s report contains a summary of the email sent to Councillor Daws and Councillor X on 1 November 2019. In a later section headed ‘findings of fact’ the Officer discusses matters raised in the email of 11 November 2019.

41. The Investigator made findings in respect of five matters.

- Any involvement Councillor Daws had with the NSN website did not breach the Code.
- Councillor Daws’ email of 21 October 2019 did not breach the Code as it made a general criticism of the Council and not individual officers; it was not considered disrespectful.
- Councillor Daws’ email of 19 June 2019 did breach the Code because it constituted a serious allegation against a senior officer.
- Councillor Daws’ conduct in his meeting with the Managing Director on 24 September was disrespectful and intimidatory; a finding which encompassed not only his comment the Managing Director was ‘skating on thin ice’ but also his conduct in the meeting.
- The social media post made later that day also breached the Code as it was disrespectful to the Council management team.

42. The Investigator’s report appended most of his interview notes including that with Councillor Daws referenced above. The Investigator had also interviewed Councillors Mr and Mrs Y as part of their investigation. The interview recorded the Councillors saying they had concerns about the

conduct of Councillor Daws and Councillor X. But the only examples they gave of behaviour thought unacceptable were about the actions of Councillor X.

43. Councillor Daws made submissions in advance of the meeting including that:

- no complaint about his conduct had been disclosed or shared with him;
- no due diligence was carried out on the Investigator who conducted the investigation;
- the report produced by the Investigator failed to distinguish between his actions and those of Councillor X;
- the investigation was politically motivated and a smear campaign; and
- the Council had not complied with his requests for information.

44. At the beginning of the Standards Committee meeting Councillor Daws tried to raise the matter of how the investigation had been conducted, saying no complaint had been made about him. The committee curtailed discussion of this item.

45. On 22 July 2020 the Standards Committee gave its findings. It found Councillor Daws had:

- breached section 4.1 of the Code (the requirement to behave in such a way that a reasonable person would regard as respectful) when he sent his email to the Managing Director on 19 June 2019;
- breached sections 4.1 and 4.7 of the Code (bringing his office into disrepute) in his conduct with the Managing Director on 24 September 2019; and
- breached section 4.1 of the Code with the content of his social media post on 24 September 2019.

46. The Committee gave its reasons for these findings. It noted that Councillor Daws had not acknowledged any breach of the Code nor apologised for his actions. It resolved that it should put its decision notice in the public domain and said Councillor Daws should provide an unequivocal letter of apology to those officers the Committee found he was disrespectful to.

47. In October 2020 Councillor Daws sent an email to the Council Monitoring Officer, Managing Director and the Chair of the Standards Committee saying he had been subject to an unlawful investigation procedure.

48. The Council Managing Director replied saying the Council regarded the investigation as concluded and did not comment on the procedure followed. A further email from Councillor Daws met with a similar reply.

49. Subsequently, in December 2020, solicitors wrote to the Council on behalf of Councillor Daws. They invited the Council to review its decision citing among other matters that:

- at no time during the investigation had the Council given Councillor Daws details of any complaint made against him or given him a copy of the same;
- the response to information requests made by Councillor Daws showed that no complaint he had breached the Code of Conduct was ever made against him; and
- the investigation against Councillor Daws suffered from being 'cross-pollinated' with the complaint against Councillor X.

50. The Council sent a short reply saying Councillor Daws had been "fully aware of the circumstances that gave rise to the need for an investigation".

51. During our investigation the Council has said "it is apparent that no formal complaint was received with regards to the conduct of Councillor Daws". But that its Monitoring Officer did receive "written complaints/concerns/ allegations" about Councillor Daws which they "considered" were "written allegations". The Council has suggested it would be "perverse" if its Monitoring Officer had to require a "written complaint" if aware of inappropriate conduct. It has suggested that the full records of the complaints received by the Monitoring Officer may have been lost due to the passage of time.

Findings

General approach to investigation

52. Before addressing the specific facts of this case, we will explain our approach to investigating complaints of this type.

53. We can investigate complaints from locally elected councillors where they allege they have suffered a personal injustice because of actions taken by a body in our jurisdiction. This is because where a councillor makes a complaint of this type, they are not doing so on behalf of the council or another public body, but in their own personal capacity. They are also not an employee, governed by a personnel relationship with a council, where there are legal limits on what we can investigate.

54. There is nothing specific in the legislation that sets out our powers (the 1974 Local Government Act) which prevents us investigating complaints about the procedures used by local authorities to investigate complaints alleging breaches of local codes of conduct. That said, we are not an appeal body. This means we do not take a second look at a decision to decide if it was wrong. Instead, we look at the procedure an organisation followed to make its decision.

55. In doing so, we do not take an overly forensic view of reports prepared on behalf of councils by independent investigators. We would not for example criticise a minor error in the facts recorded in such a report, unless it appeared that error had a significant bearing on the report's findings.

56. Nor will we comment on all that might be said at a standards committee hearing. In such meetings we expect statements will often be made that might be disputed by complainants and others, but which form part of the 'ebb and flow' of debate. We would only criticise the conduct of such a hearing if we considered it seriously flawed. We will rely primarily on the written decision recorded by the standards committee in understanding how it reached its findings.

Findings in this case

57. We find there were a series of faults in the Council's processes, that led Councillor Daws to become the subject of an investigation into whether he had breached the Council's Code of Conduct. There were also faults in how that investigation subsequently unfolded. However, we do not propose to uphold that part of the complaint which questions the suitability of the Investigator the Council appointed. While we do not have full details of the process the Council went through before making that appointment, we do not find any reason to criticise it. The Investigator worked for a consultancy specialising in such investigations and clearly had experience in that field.

58. Turning to where we have found fault, we find first the Council initiated an investigation without a complaint in writing. We can understand the Council may want some procedure to address conduct if aware of a potential breach by a councillor that has not resulted in a written allegation. But the wording of the law is clear. The Localism Act 2011 says to trigger any investigation of an alleged breach the Council must receive details of that allegation in writing. There was no written complaint about Councillor Daws having breached the Code on 1 November 2019.

59. The Council has suggested this finding is wrong because it may have received complaints in writing, subsequently lost. On the balance of probabilities, we do not think this likely. First, because the Council Monitoring Officer referred at the outset to having received 'no formal complaint' against Councillor Daws which suggests nothing was put in writing to her. Second, because Councillor Daws went to lengths to question if he had seen the complaints made against him. He received assurance from both the Investigator and Monitoring Officer that he had seen all relevant documents. They did not suggest they were withholding documents they believed should not be shared with Councillor Daws. So, this too suggests there was no complaint in writing in existence in November or December 2019.

60. The second fault lies in the Council's email of 1 November 2019 which notified Councillor Daws of a 'complaint'. It did not provide enough information about alleged breaches of the Code. It did not specify:

- what allegations had been made about Councillor Daws' behaviour in connection with his desire to open a Members' briefing on climate change to the public;

- what comments were made further to that briefing; nor where they were made; nor by whom; which were considered a potential breach of the Code;
- whether any comments at the planning workshop allegedly giving rise to a potential breach of the Code originated from Councillor Daws or from Councillor X; and
- who made any comments directed to Councillors Mr and Mrs Y that were to be the subject of an investigation; it did not say what those comments were and why they were considered to potentially breach the Code.

61. This led to the third fault, which was that from the outset the Council conflated allegations against Councillor Daws with those against Councillor X. We note that of the three matters referred to as the subject of investigation on 1 November, only one referred directly to Councillor Daws - that of his conduct on 24 September 2019. The other allegations did not say whether the conduct under investigation was his or that of Councillor X. But it has subsequently become clear there were never any allegations Councillor Daws breached the Code in relation to the meeting on 3 October 2019. Nor did Councillors Mr and Mrs Y ever make a specific allegation Councillor Daws breached the Code. In their interview with the Investigator, the only examples given of behaviour they thought breached the Code referred to the actions of Councillor X, not Councillor Daws. This conflation suggests a lack of objectivity in officers' consideration of Councillor Daws' actions.

62. The fourth fault was the Council does not have full records of its consultation with the Independent Person. The Council commits to only begin such investigations after consultation, so these are significant records that it should keep. But there is no complete record of that consultation – only what the Monitoring Officer sent to the Independent Person, which as we have already noted was flawed. It is not recorded if the Independent Person replied, nor what their reply said. Nor is it recorded when the Council initiated the investigation by hiring the consultancy firm and if this pre-dated the completion of this consultation exercise.

63. The fifth fault was in how the Council then introduced new allegations into its investigation. An investigation into a breach of a code of conduct can consider new evidence that arises during the investigation. In this case we note the email sent by the Planning Officer of 11 November 2019 introduced new allegations about Councillor Daws. It said he gave members of the public unauthorised access to buildings; complained about the content of emails he sent to officers in June and October 2019 and complained about the NSN website.

64. We recognise Councillor Daws received a copy of these allegations before his meeting with the Investigator. But the Investigator did not make clear whether all the content of the email of 11 November was now part of his investigation, or only the reference to Councillor Daws email of October 2019. We also note the Investigator had earlier said his investigation was only concerned with the three matters mentioned in the email of 1 November 2019. At the time of his meeting with the Investigator therefore, the scope of the investigation being conducted into Councillor Daws' actions was unclear.

65. The Council's complaint form which can be used for reporting alleged breaches of the Code and its procedure make clear that it considers it part of natural justice that a Councillor accused of breaking the Code knows what it is they are accused of. We endorse this principle. This is so they have chance to answer those allegations before they have any meeting with the Investigator. But it was never made clear to Councillor Daws that the investigation had expanded to cover the full content of matters raised in the 11 November 2019 email. Nor which of the matters raised in that email were considered to potentially breach the Code and why. As an illustration of the confusion caused, we note that much time and energy was expended in the investigation looking at the allegation Councillor Daws allowed unauthorised access to Council buildings. This continued at the subsequent committee hearing. But that matter never formed the basis of an alleged breach of the Code by Councillor Daws.

66. The sixth fault is in how the Council reacted when Councillor Daws tried to raise legitimate questions about the procedure the Council had followed. Neither officers nor councillors involved in administering the procedure for complaints about breaches of the Code paused to consider if due process had been followed. Nor what consequences a failure to follow due process might have for

Councillor Daws. This fault was present from the outset and continued through to the committee hearing of the case and when Councillor Daws raised a complaint subsequently.

67. As we indicated above we do not propose to dwell on the detail of the Investigator's report or the discussion of it that followed at committee. However, significantly, a seventh fault is present in both. Because neither addressed the implications of their findings in interfering with Councillor Daws' Article 10 rights.

68. We consider these rights were engaged. Except for Councillor Daws' presentation or demeanour in his meeting with the Managing Director, every other matter where he was considered to have broken the Code related to statements he made either in person or by email. There were three instances. First, the "misfeasance" comment; second the "skating on thin ice" comment and third the "out of control" comment. In each case Councillor Daws advanced a defence for his choice of language. To summarise, he considered these were his political views or opinions. They amounted to no more than robust criticism, in his view, of decisions taken by the Council when it approved its local plan and when it chose to exclude members of the public from the climate change briefing.

69. We set out in paragraph 21 the approach the courts have taken to similar cases. It is clear in this case the Council considered the need to protect its officers from critical comment by Councillor Daws. That was legitimate. But this need had to be balanced with consideration of whether Councillor Daws was engaging in discussion of matters of public concern and his enhanced right to freedom of expression. We reiterate that it is not our role to undertake that balancing exercise. But where a local councillor is sanctioned under a standards regime for statements that may fall within the realm of political comment we consider the investigation must consciously consider these factors. In Councillor Daws' case there is no evidence such a balancing exercise took place.

The injustice caused to Councillor Daws

70. We consider an investigation should never have begun against Councillor Daws on 1 November 2019. First, because there was no written complaint to base it on. Second, because even if a written complaint had been received about Councillor Daws conduct on 24 September 2019, we know it was the Monitoring Officer's judgment this was insufficient to justify investigation on its own.

71. We accept the email received on 11 November 2019 may have contained information to justify an investigation. But that email was inherently problematic, because it was used to reinforce a procedure which had already begun. There is no evidence available that the matters in that email which engaged with Councillor Daws conduct, all of which had occurred weeks or months earlier, generated a complaint he had breached the Code or were considered sufficient to justify an investigation at the time. So here also, there is doubt about whether an investigation should have begun.

72. Yet even if the Council could persuade us it was justified in opening an investigation into Councillor Daws' conduct, he was subject to a demonstrably unfair process. He was denied the opportunity to have the allegations against him investigated in isolation from those against Councillor X. Both the report compiled by the Investigator and the Standards Committee meeting conflated the allegations made against each. Councillor Daws was also not given due notice of all the allegations against him, nor chance to respond to all those allegations before his interview with the Investigator.

73. When taken individually, some of the consequences of these faults would not lead us to conclude the outcome to the investigation into Councillor Daws' conduct would have been different. But when put together, along with the failure to consider his Article 10 rights, we cannot say this was the case. The faults have cast such a shadow of uncertainty over the Standards Committee findings that those findings cannot be relied on.

Recommendations

74. It flows from our findings set out above that to remedy this complaint the Council should take the following action.

- Apologise to Councillor Daws, accepting the findings of this investigation.
- Rescind its decision notice of 22 July 2020 upholding the complaint Councillor Daws breached the Code and ensure this is no longer available on its website. In its place it should provide a statement saying the notice has been withdrawn following this investigation and provide a link to this report.

75. The Council should also learn lessons from this complaint. It should ensure it has a written procedure for its officers and any independent investigators asked to consider standards complaints that should include:

- ensuring the Council has a record of complaints being made in writing;
- ensuring there is a clear written record of consultation with an Independent Person to include their response;
- recording that the written complaint has been shared with the councillor complained of, or a clear written record as to the reasons why not;
- ensuring that where an investigation expands to consider further allegations arising during the investigation, it keeps a clear written record of that and a record that this has been explained to the councillor complained about; and
- that in all appropriate cases it considers the rights of the councillor complained about to free expression under Article 10 of the Human Rights Act, as part of any investigation report and subsequent committee decision making.

76. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (Local Government Act 1974, section 31(2), as amended)

Decision

77. We find fault by the Council causing injustice to Councillor Daws. We recommend the Council take the action described above to remedy that injustice.

78. We have published this report because we consider it in the public interest to do so, given the injustice caused to the complainant and the wider systemic problems the complaint has revealed.

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