

## **Appendix A**

## Council says it is unable to remove convicted councillor ahead of sentencing

July 15, 2020

Wakefield Council has explained to local residents that it is powerless to remove a councillor convicted of sex offences involving children.

Independent councillor Alex Kear is reported by the BBC to have admitted trying to entice a child aged under 13 to engage in sexual activity, and attempting to incite a child into pornography.

He is due to be sentenced on 20 August at Leeds Crown Court.

Gillian Marshall, the council's chief legal officer, said: "Under local authority legislation, Alex Kear remains a councillor. Wakefield Council is powerless to remove him at this stage.

"Central government has essentially left local councils powerless to take action in these situations. We do not have any authority to remove elected members from their position, regardless of the severity of their alleged crimes, unless they receive a significant custodial sentence.

"Therefore unless Cllr Kear chooses to resign, he remains a councillor. This will be reviewed when he is sentenced."

She said the council had taken "appropriate safeguarding measures" when it became aware of West Yorkshire Police's investigation of the matter.

## The right to lobby councillors: Holborn Studios 2

June 26, 2020

***A High Court judge recently considered the right of local councillors to receive correspondence from the public and to consider it when making decisions. Richard Harwood QC analyses the outcome.***

The High Court has ruled, for the first time, whether members of the public can write to councillors, and whether councillors can read those letters in advance of taking decisions. The case concerned the practice of the London Borough of Hackney of prohibiting planning committee members from reading correspondence sent to them about forthcoming applications.

Holborn Studios run the largest photographic studio in Europe. Redevelopment is proposed by their landlords, with a scheme which will not accommodate them. In 2017 planning permission was quashed because of an unfair failure to reconvene on amendments and a failure to disclose application documents in breach of a legitimate expectation: *R (Holborn Studios) v London Borough of Hackney* [2017] EWHC 2823 (Admin). A new application was considered by Hackney's Planning Sub-Committee in January 2019. Shortly before the meeting Holborn Studio's managing director wrote to the committee members about the officers' report and received this reply from the chair:

*"Planning members are advised to resist being lobbied by either applicant or objectors."*

Holborn Studio's solicitors, Harrison Grant, then wrote to the planning officers, copying in the committee members, explaining why the officer recommendation to refuse the application should be rejected. They also said that Hackney's approach of not allowing committee members to read representations sent to them was unlawful. A councillor replied that he had been given legal advice that he *"should forward any lobbying letters to Governance Services and refrain from reading them"*. Consequently, he said, *"I have not read your email"*. In an addendum report the officers responded to the solicitors' letter:

*"Members are warned about viewing lobbying material as this can be considered to be prejudicial to their consideration of the application."*

This reflected the Council's leaflet *'How to have your say at the Planning Sub-Committee'*, sent to the public in advance of the meeting *"it is advised that you don't contact any of the councillors before a meeting"*.

The particular issue was whether the public could write to councillors about decisions they will be making and whether those councillors could consider those representations. The point was remarkably free of any judicial authority, apart from a passing comment by Dove J in *R (Legard) v Royal Borough of Kensington and Chelsea* that *"As democratically elected*

representatives they are expected to receive and consider representations and lobbying from those interested in the issues they are determining".

Holborn Studios relied on Article 10 of the European Convention on Human Rights and the common law. Article 10 provides *"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information ... subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society"*. In R(Lord Carlisle of Berriew v Secretary of State for the Home Department Parliamentarians asked for the exclusion of a dissident Iranian politician from the United Kingdom to be lifted to enable her to address meetings in Parliament on issues associated with Iran. Lord Neuberger said at paragraph 91, discussing meetings with MPs and Peers:

*"These are hugely important rights. Freedom of speech, and particularly political speech, is the foundation of any democracy. Without it, how can the electorate know whom to elect and how can the parliamentarians know how to make up their minds on the difficult issues they have to confront? How can they decide whether or not to support the Government in the actions it wishes to take?"*

Baroness Hale emphasised that whilst the politician could still speak to UK Parliamentarians by video or audio link, or they could see her in Paris, the preventing a meeting at Westminster was still an interference with the Parliamentarians' Article 10 rights.

Holborn Studios also relied on the common law as being in step with Article 10 citing Lord Steyn in *R v Secretary of State for the Home Department ex p Simms*:

*"The starting point is the right of freedom of expression. In a democracy it is the primary right: without it an effective rule of law is not possible. ... In Attorney-General v. Guardian Newspapers Ltd. (No. 2) [1990] 1 A.C. 109; 283-284, Lord Goff of Chieveley expressed the opinion that in the field of freedom of speech there was in principle no difference between English law on the subject and article 10 of the Convention. ...*

*"Freedom of expression is, of course, intrinsically important: it is valued for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First, it promotes the self-fulfilment of individuals in society. Secondly, in the famous words of Holmes J. (echoing John Stuart Mill), "the best test of truth is the power of the thought to get itself accepted in the competition of the market:" Abrams v. United States (1919) 250 U.S. 616, 630, per Holmes J. (dissenting). Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country ..."*

Dove J referred to the Local Government Association's publication "*Probity in Planning*" which says "*Lobbying is a normal part of the planning process*". It was "*indisputably correct*" that "*that issues in relation to freedom of expression and the application of Article 10 of the ECHR were engaged in the communication between members of a local authority, and in particular members of a planning committee, and members of the public who they represent and on whose behalf they were making decisions in the public interest*" (para 78). He held (para 78):

*"Similarly, bearing in mind the importance of the decisions which the members of the planning committee are making, and the fact that they are acting in the context of a democratically representative role, the need for the communication of views and opinions between councillors and the public whom they represent must be afforded significant weight. In my view, it would be extremely difficult to justify as proportionate the discouragement, prohibition or prevention of communication between public and the councillors representing them which was otherwise in accordance with the law. Here it was no part of the defendant's case to suggest that the communication which the claimant made in their correspondence in respect of the committee report was anything other than lawful."*

Mr Justice Dove concluded (para 79):

*"Receiving communications from objectors to an application for planning permission is an important feature of freedom of expression in connection with democratic decision-taking and in undertaking this aspect of local authority business. Whilst it may make perfect sense after the communication has been read for the member to pass it on to officers (so that for instance its existence can be logged in the file relating to the application, and any issues which need to be addressed in advice to members can be taken up in a committee report), the preclusion or prevention of members reading such material could not be justified as proportionate since it would serve no proper purpose in the decision-taking process. Any concern that members might receive misleading or illegitimate material will be resolved by the passing of that correspondence to officers, so that any such problem of that kind would be rectified. In my view there is an additional issue of fairness which arises if members of the planning committee are prevented from reading lobbying material from objectors and required to pass that information unread to their officers. The position that would leave members in would be that they would be reliant only on material from the applicant placed on the public record as part of the application or the information and opinions summarised and edited in the committee report. It is an important feature of the opportunity of an objector to a planning application to be able to present that objection and the points which they wish to make in the manner which they believe will make them most cogent and persuasive. Of course, it is a matter for the individual councillor in the discharge of his responsibilities to choose what evidence and opinion it is that he or she wishes to study in discharging the responsibility of determining a planning application, but the issue in the present case is having the access to all the material bearing upon the application in order to make that choice. If the choice is curtailed by an instruction not to read any lobbying material from members of the public that has a significant impact on the ability of a member of the public to make a case in relation to a proposed development making the points that they wish to make in the way in which they would wish to make them."*

*81. ... The standard correspondence clearly advised against members of the public writing directly to members of the committee; there was no warrant for that advice or discouragement and it impeded the freedom of expression of a member of the public who was entitled to write to a member of the planning committee setting out in his or her own terms the points they wish to be considered in respect of an application and expect that the member would have the opportunity to read it."*

The permission was not quashed on this ground since whilst committee members had thought they were obliged to disregard a letter from Holborn Studios' solicitors, their points were made by their QC at the committee meeting.

The judgment establishes, surprisingly for the first time, the right of local councillors to receive correspondence from the public and to consider it when making decisions. Part of that is the right of the public to write. There is also a recognition that members can and will be lobbied, whether in writing, in meetings, at social events or chatting in the street. Provided that is done openly, in particular that correspondence is copied to officers whether by the writer or the recipient, that is not simply legitimate, but an important part of the democratic process.

The planning permission was though quashed because the council failed to make affordable housing viability assessments available to Holborn Studios and the public. These were background papers and given government policy and guidance on transparency, the public interest did not allow these to be exempt information. Dove J found that the viability material which was published to justify a reduced affordable housing contribution was 'opaque and incoherent'.

## **NALC renews calls for power to suspend councillors for up to six months**

June 23, 2020

The National Association of Local Councils (NALC) has called on the Government to take “urgent action” to introduce a power for local authorities to suspend councillors for up to six months.

The introduction of such a power was recommended by the Committee on Standards in Public Life in a report in January 2019 to the Prime Minister on improving ethical standards in local government.

NALC has made its call after working with the Local Government Association (LGA) on the development of an updated national model code of conduct for all tiers of local government.

The LGA published the draft code earlier this month for consultation.

On the power to suspend, NALC said: “Failure to introduce this sanction alongside other measures will risk wider steps being taken to improve ethical standards, such as the model code of conduct and training for councillors and clerks, as being ineffective.

“Now more than ever, high standards of conduct in government at all levels are needed to protect the integrity of decision making, maintain public confidence and to safeguard local democracy.

“That is why NALC is also calling for the Committee on Standards in Public Life to publish a timetable for reviewing progress on the implementation of the report’s wider recommendations and best practice to ensure this important issue continues to be a priority for action.”

## Community councillor in Wales fails to secure injunction to stop Ombudsman investigating complaints against him

June 12, 2020

A High Court judge has rejected an application by a community councillor for an injunction against the Public Service Ombudsman for Wales (PSOW) to stop its investigation of complaints made against him.

Jonathan Bishop had been the subject of complaints by the former clerk, the chair and vice-chair of the Taff's Well and Nantgarw Community Council.

The application for an injunction was made on an urgent basis, before a claim had been issued.

In *Bishop v Public Service Ombudsman for Wales* [2020] EWHC 1503 (Admin) His Honour Judge Jarman QC, sitting as a judge of the High Court, said the basis of the application was that the complaints should be investigated under a local resolution procedure which had been adopted by the council, and not by the statutory procedure under Part III of the Local Government Act 2000.

Cllr Bishop asserted that the former procedure, which is an informal non statutory procedure, was appropriate where, as here, complaints were made against a councillor by another councillor rather than a member of the public.

In his pre-action protocol letter the applicant set out three reasons why the Ombudsman did not have the power to investigate the complaint. These were:

1. Issues of politeness should be dealt with under the local resolution procedure.
2. Councillors and officers are expected to have a thick skin.
3. Allegations made by the vice-chair about the applicant were made outside the political arena.

A "further aspect" was then stated to be that named members of PSOW staff had acted in a biased manner towards him in other referrals or complaints. This included that complaints against him had been treated more favourably than complaints which he had made against the complainants. Mr Bishop expanded upon this in his oral submissions by saying that his complaints were not investigated but those against him were.

The complaint by the chair of the council, Alun Fowler, was made in September 2019. The following month the Ombudsman wrote to Cllr Bishop to inform him that the complaint would be investigated.



That investigation is now in the process of collating evidence. By letter dated 31 March 2020 the Ombudsman informed Cllr Bishop that the complaint against him by the vice-chair, Helen Edmunds, would not be investigated as a stand-alone complaint but as part of the ongoing investigation.

In an email Cllr Bishop informed the Ombudsman of several medical conditions which he has, including autism spectrum disorder and also a high IQ with dyslexia, dyscalculia and dysgraphia.

In a reply sent on 6 April 2020 an assistant investigation manager at the Ombudsman's service replied, saying Cllr Bishop's comments had been noted and would be considered during the course of the investigation.

HHJ Jarman QC said Cllr Bishop's contention that the Ombudsman should not be investigating the complaints against him under the statutory procedure but that the complaints should be dealt with in the local resolution process was at the heart of his application for an injunction to stop the current investigation.

Counsel for the Ombudsman, Gwydion Hughes, submitted that such an injunction should not be granted for three reasons:

1. There was no good reason or urgency to justify making the application prior to the commencement of a claim.
2. There was no serious issue to be tried with a real as opposed to a fanciful prospect of succeeding at trial.
3. Exceptional circumstances would have to be shown before a court prevented a statutory investigatory body from exercising its powers of investigation, and none were shown here.

HHJ Jarman QC said it was appropriate to deal with the most substantive of those grounds first, namely the second ground that there was no serious issue to be tried.

The judge said: "In deciding whether or not to investigate, as PSOW and OVW [One Voice Wales] guidance make clear, one of the matters taken into account is the seriousness of the complaint.

"In my judgment Alun Fowler's complaint clearly goes far beyond matters of politeness or matters in respect of which he can reasonably be expected to be thick skinned. The reference to obscene and offensive language may come within that category, but the complaint continues to include allegations that the actions of the applicant have caused two clerks to resign and a third to consider her position, to enclose a long list of complaints against the applicant, that most members of the council have indicated a wish to resign if the applicant is not dealt with, and to enclose statements showing a pattern of unacceptable behaviour on the part of the applicant."

He continued: "Each of those other aspects of the complaint is in my judgment clearly capable of amounting to a lack of consideration for others and/or may reasonably be regarded as bringing the office or authority into disrepute. Each of these is in a different category to a lack of politeness or a matter in respect of which other members of the council should be thick skinned about.

"In my judgment the applicant does not have a real prospect of succeeding at trial in establishing that the complaints against him should be dealt with in the local resolution process rather than be investigated by the PSOW."

In respect of the complaint of Helen Edmunds against the applicant, the judge noted that the Ombudsman had informed Cllr Bishop by letter dated 31 March 2020 that it had been decided not to investigate this as a standalone complaint, but as part of the existing investigation.

"Given that Alun Fowler's complaint alleges that the applicant has shown a pattern of unacceptable behaviour and the most of the members of the council had threatened resignation if the applicant is not dealt with, in my judgment that was clearly an approach which PSOW was entitled to adopt," he said.

As for the applicant's allegation that the Ombudsman had shown bias against him in refusing to investigate his complaints, the judge noted that Cllr Bishop said that the reason the Ombudsman gave for not investigating his complaints was that he had not identified which part of the code he alleged was broken by Alun Fowler, but neither had the latter in his complaint.

"However, it is clear from reading the decision of PSOW in respect of the applicant's complaint against Alun Fowler that that is not the reason given for not investigating that complaint."

The judge said the reasons were given in a letter from the Ombudsman to the applicant dated 6 April 2020. HHJ Jarman QC went on to cite large extracts from that letter.

He said the Ombudsman's decision was reasoned and reasonable. "It is clear that the request for references to the code in future was a request for assistance for the avoidance of doubt rather than the basis for refusal. The reasons for refusal included lack of evidence, which the applicant said he would only supply if an investigation was initiated, and lack of particularity. This was in marked contrast to Alun Fowler's complaint, which was particularised and accompanied by statements."

The judge said another particular of bias relied upon by the applicant was that Helen Edmunds' complaint that the applicant said to her that she shouldn't come to council meetings with a communicable infection was being investigated, but his complaint about her

that she said that applicant could not help with voluntary work as a friendly face was needed, was not being investigated.

“However, as is clear from PSOW's letter concerning the former, that is not being investigated as a standalone complaint but as part of the ongoing investigation which includes an allegation of a pattern of unacceptable behaviour on the part of the applicant,” the judge said.

HHJ Jarman QC continued: “Finally, in respect of bias, the applicant says that is shown by how PSOW conducted an interview of his support worker as part of the investigation, after which the support worker wrote to PSOW saying that the draft statement which had been sent to him did not fairly reflect what he said in the interview and was in breach of data protection rights arises. In my judgment this is far from justifying the allegation of bias.”

The applicant submitted before the judge that the complaint of Helen Edmunds dealt with matters outside council business and therefore came within the principle in *Livingstone v The Adjudication Panel for England* [2006] EWHC 2533 (Admin).

HHJ Jarman QC agreed with counsel for the Ombudsman that this and any other jurisdictional points could be raised by the applicant in the course of the investigation (see, for example APW/001/2018-19/CT *Councillor Graham Down*).

The judge said the applicant in his oral submissions referred to his medical conditions as impacting upon the subject matter of the complaints against him and his ability to take part in the investigation.

“As indicated above he has made these known to PSOW who has indicated that they will be taken into account and that reasonable adjustments will be made in the investigation. The applicant invited me to extend time for any judicial review claim in light of these conditions, but it is not appropriate to do so unless and until a claim is issued.”

HHJ Jarman QC concluded that he was not satisfied that Cllr Bishop had shown any serious issue to be tried, and that was sufficient to justify refusing to grant the order sought.

The judge said it was not necessary for him to make findings on the other points taken by counsel for the Ombudsman.

---



# 180 complaints alleging councillors' misconduct sent to South Tyneside Council - chief fears process is being 'weaponised'

Claims complainants are "weaponising" council processes as reports of alleged councillor misconduct soar in South Tyneside.

By Chris Binding

Tuesday, 07th July 2020 3:07 pm



A large spike in complaints against councillors could be linked to a "weaponisation" of council processes, legal chiefs have said.

Since January 2020, South Tyneside Council's monitoring officer has received a total of 178 emails, letters or calls from potential complainants.

This included complainants expressing a wish to make a complaint or sharing information in respect of "perceived elected member misconduct."

Of this number, only 23 complainants provided further information to support their complaint, with several cases rejected or resolved without the need for investigation.



A total of 13 complaints are currently ongoing, with many nearing conclusion following delays caused by Covid-19, the meeting heard.

"The [complaints] process itself provides for complaints or communications, that are described as being complaints but mainly aren't, to be rejected fairly early on if they're considered to be tit for tat, politically motivated or 'vexatious'," Interim Head of Legal Services, John Rumney, said.

"That said, I do think the weaponisation of the process may account for the large numbers that we have seen in recent months.

"But it is certainly nothing new and the process does provide for them [complaints] to be dealt with appropriately."



The legal chief was speaking at a Standards Committee meeting on July 6 in response to a question from Coun Doreen Purvis about the complaints process potentially being "weaponised".

Coun Purvis said examples could include a complaint against a councillor(s) being posted on social media and staying in the public domain, regardless of whether the complaint is pursued.

At the meeting, which was broadcast live on the council's YouTube page, councillors heard about recent steps that have been taken to improve the complaints process.

This included the introduction of a new 'complaints form' which helps complainants to structure their complaint and provide necessary information and evidence.



Despite the large number of complaints, no cases have progressed to the final stage so far such as a formal hearing and/or sanction.

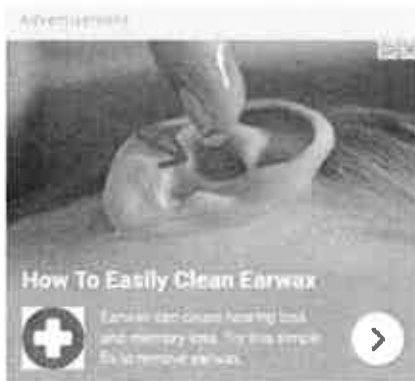
Independent chair of the Standards Committee, Professor Grahame Wright, said that the complaints figure of 178 may be "a little bit misleading".



But he noted a "significant number of complaints" were still under active consideration, pending any decision

to investigate further.

Coun Anne Hetherington added that the complaints figures showed "a very serious issue" and asked if there was any previous data to look at comparisons and trends.



"I know the process for dealing with complaints against elected members since some legal reforms are a bit of a toothless tiger," she said.

"But there are means in the council's constitution where members can be sanctioned to a degree if a complaint is found to be proven and I would like to see that we're actually following that through and dealing with complaints to the full extent that we're able to.

"Particularly if we're receiving complaints from residents that they see we're addressing these complaints because we can't put ourselves above the law that is there to supervise our behaviour as elected members."

Legal officer Mr Rumney, responding, confirmed council bosses are recording complaints to allow for statistical analysis in future.

But he warned that records for previous complaints may not be available to build a historical picture. ✕

He told the meeting: "The plan is going forward that each complaint which is reviewed and found to be capable of proceeding within the process will be given a number.

"We have already started numbering complaints so that they can be logged and outcomes recorded so statistical analysis can take place in the future.

"Whether it's possible to go back beyond the beginning of this year or late 2019 I'm not sure that the records will be there I'm afraid."

Standards Committee chair, Prof Wright, added: "If you see some of the complaints that we get they're extremely difficult to work out what exactly it is the councillor has meant to have done wrong.

"It's more that somebody is just angry and they want to blame somebody so one of the reasons we have this [complaints] form is to try and guide people so if they have a complaint they can make clear what the nature of that complaint is."



# Wellingborough councillor removed from meeting over outburst

🕒 18 June 2020

f 🌐 🐦 ✉️ Share



**A councillor was removed from a public meeting after speaking about his mental health over what he describes as bullying from his authority's leader.**

Robert Gough made the statement at a virtual Borough Council of Wellingborough meeting on Tuesday

He claimed his mental health issues were being used against him

Council leader Martin Griffiths said his conduct "was not acceptable" The authority said it takes "allegations of councillor misconduct very seriously"

During an agenda item on a proposed pay rise for Mr Griffiths, Mr Gough attempted to outline the impact the situation has had on his mental health recently.

He was stopped by other councillors who said correct procedures were not being followed and was eventually removed from the meeting

▪ **Live updates: Coronavirus and other news from across the East of England**

Mr Griffiths, who did not attend the meeting which was watched by the public, said: "I am incredibly saddened and sympathetic that councillor Gough is suffering at this time.

"However, the conduct last night was not acceptable at a public meeting "

Mr Gough told the **Local Democracy Reporting Service** his mental health problems, possibly linked to his time in the Army, were being used against him.

The incident was the latest issue within the Wellingborough Conservative Group in recent weeks.

Previously a group of eight councillors, including Mr Gough, had asked for a motion of no confidence in Mr Griffiths citing bullying behaviour and pre-empting of council committee meetings.

The motion did not carry because the group was one short for a vote of no confidence to take place.

Mr Gough, whose Earls Barton ward falls within Daventry constituency, was then suspended by Daventry Conservative Association following complaints against him.

An investigation is ongoing, but he automatically had the whip removed from the Borough Council of Wellingborough's Conservative group

## Standards Commission sets hearing date for shamed Aberdeen councillor



by Alastair Gossip

June 23, 2020, 12:10 pm



Former deputy Lord Provost Alan Donnelly

**A disgraced Aberdeen councillor has been given a date for a hearing which could end in his removal from office.**

Suspended councillor Alan Donnelly will face the Standards Commission on October 6 in the council chambers at Aberdeen Town House.

He was convicted of sexual assault last December and later placed on the sex offenders register, sentenced to eight months supervision and ordered to pay his victim £800 in compensation.

While Donnelly resigned from the Scottish Conservatives and was stripped of all council committee positions, the former deputy provost resisted calls to stand down as a councillor.

After complaints from fellow councillors and members of the public, Donnelly was banned while the ethical standards commissioner compiled a report into his misconduct.

Given his refusal to resign, and with councils not able to sack elected members, the Standards Commission could be the only means for Donnelly's removal from office.

The hearing in October will come more than seven months after his initial ban on March 4.

It is understood plans to have it at the Town House could still change, depending on guidance around the pandemic.

The proceedings will be streamed online.

Hot Topics : [NHS CAMPAIGN](#) | [ELY BUSINESS AWARDS](#) | [SUPPORT US](#)

You can help keep campaigning local journalists alive.  
Support our work

## 50 Backpacks in crisis as Fenland Council rips apart damaging allegations made against Wisbech councillor

✓ PUBLISHED: 12:18 01 July 2020 | UPDATED: 12:16 01 July 2020 | [John Elworthy](#)



An organisation set up to help the homeless was in meltdown this week after its chairman Simon Crowson posted a series of malicious allegations.

Mr Crowson (Spike) used Facebook to fire off damaging accusations against a Wisbech councillor.

The claims were made on his 50 Backpacks Facebook page after he had questioned a 'victim' (a woman in her 30s) and who offered him screenshots of emails sent to Fenland Council intended to support her accusations.

Council leader Chris Boden and chief executive Paul Medd met on Tuesday and authorised an investigation.

The council later issued a statement saying they had "identified both the original email partially published last night and the full correspondence trail associated with that email.

"We can categorically confirm that this email has been completely misrepresented".

On Monday they had become aware "of serious allegations made on 50 Backpacks' Facebook page about Cllr Steve Tierney and Fenland Council.

"The allegations were that Cllr Tierney had been accused of serious sexual misconduct and that Fenland Council had 'covered up' a complaint made about Cllr Tierney's alleged behaviour.

"50 Backpacks purportedly supported their allegation concerning Fenland Council's alleged 'cover up' by publishing a partially redacted section of an email from FDC, sent in 2016."

The council found the correspondence and "we can categorically confirm that this email has been completely misrepresented.

"The email did not in any way relate to a complaint of sexual misconduct against Cllr Tierney; there has never been any complaint received by FDC against Cllr Tierney regarding sexual misconduct." 50 Backpacks had "fundamentally misrepresented" the emails. Fenland Council completely refutes 50 Backpacks' blatantly false claim that the council 'covered up' any allegations of sexual misconduct, whether by Cllr Tierney or by anyone else".

Mr Crowson has since removed the 50 Backpacks page from Facebook. In an oblique message to other Facebook pages today he says: "My job is done, so whatever happens to me or the future of 50 Backpacks is immaterial". There was no apology to either the council or Cllr Tierney.

# Plymouth councillor accused of misconduct over tweet

Tudor Evans claimed the post from Chaz Singh amounted to bullying and harassment of Labour Cabinet member Kate Taylor

SHARE



COMMENTS

By **Edward Oldfield**

15:06, 2 JAN 2020

Enter your **postcode** for local news and info

Enter your postcode

Go

In YourArea



Plymouth City Council's Labour leader has accused a councillor of misconduct over a tweet about a colleague.

Tudor Evans claimed the post from Chaz Singh amounted to bullying and harassment of Labour Cabinet member Kate Taylor.

Cllr Singh, who denied the accusation, resigned from the Labour Party in September and now sits as an Independent on the city council.

He tweeted a screenshot of a Facebook post by Cllr Taylor which included a comment that one of the things she would not miss about lockdown was gin hangovers.

The comment by the Cabinet member, who has responsibility for much of the council's health response to COVID-19, is understood to have been light-hearted and was published on her personal profile, visible to friends rather than public.

However the row went public when Cllr Singh published the screenshot in a Tweet on Monday and tagged in several other accounts including the city council's official feed, Labour group leader Cllr Evans, and the city's director of public health Dr Ruth Harrell. He also tagged the city's Labour MP for Sutton and Devonport Luke Pollard, who Cllr Taylor works for.

The tweet, with a screenshot of the post, was then retweeted by Cllr Evans.

Cllr Singh commented in the tweet: "Caseworker for @LukePollard has endured many hangovers due to excessive gin consumption. Getting some support is the first step."

Cllr Taylor, the city council's cabinet member for health and adult social care, said she felt she was being hounded over a "non-issue".



**Cllr Kate Taylor made the comments on a personal social media account** Image: Paul Slater

She replied to Cllr Singh's tweet: "Hi Chaz. I have removed you from my social media because I don't want to engage with you so would appreciate it if you would refrain from tagging me in your posts. Your hounding of me via the council and my employer on a non-issue is now verging on harassment."

The council leader then intervened. He retweeted the post from Cllr Singh and added: "I'm reporting this to the Council today. I believe this to be Bullying and harassment by a councillor, to another."



**It is understood Cllr Evans has lodged a formal complaint**

Cllr Evans declined to comment. It is understood he has lodged a formal complaint about Cllr Singh's conduct.

Cllr Singh, who represents the Drake ward, denied his actions amounted to bullying and harassment.

He said he considered it was inappropriate for a councillor with responsibility for adult health to joke about alcohol consumption.

Cllr Taylor declined to comment on the tweets as the issue was expected to become a disciplinary matter.

Cllr Singh, who is a Sikh, resigned from the Labour Party last year after saying membership was no longer compatible with his faith.

The Labour group said the issue related to his "conduct towards another local authority."

It later emerged that the row involved comments Cllr Singh made on Twitter about a wreath-laying ceremony in Bristol.



## **Appendix B**

**Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held online, on Wednesday 8 July 2020.**

**Panel Members:** Ms Ashleigh Dunn, Chair of the Hearing Panel  
Professor Kevin Dunion  
Mr Paul Walker

The Hearing arose in respect of a Report referred by Ms Caroline Anderson, the Commissioner for Ethical Standards in Public Life in Scotland (the ESC), further to complaint reference LA/H/3003, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Allan Henderson (the Respondent).

The ESC was represented by Mr Martin Campbell, Director of Investigations and Solicitor to the Commissioner.

**Referral**

Following an investigation into a complaint received about the conduct of the Respondent, the ESC referred a report to the Standards Commission for Scotland on 30 April 2020, in accordance with section 14(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act), as amended.

The substance of the referral was that the Respondent had failed to comply with the provisions of the Code and, in particular, that he had contravened paragraphs 5.3, 5.7 and 5.18(2)(ii). The relevant provisions are:

**5.3** You may feel able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the objective test ("the objective test") which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.

**Your Non-Financial Interests**

**5.7** You must declare, if it is known to you, any **NON-FINANCIAL INTEREST** if:

- (i) that interest has been registered under category eight (Non-Financial Interests) of Section 4 of the Code or
- (ii) that interest would fall within the terms of the objective test.

There is no need to declare:

- (i) an interest where a general exclusion applies, but an interest where a specific exclusion applies must be declared; or
- (ii) an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

#### **Definition of Exclusions**

**5.18 The following paragraphs refer to General Exclusions and Specific Exclusions.**

#### **(2) The Specific Exclusions**

**The specific exclusions referred to in this Section of the Code are in relation to interests which a councillor may have:**



INTEGRITY IN PUBLIC LIFE

**COUNCILLOR ALLAN HENDERSON  
HIGHLAND COUNCIL**

**(iv) as a member of a Regional Transport Partnership (RTP);**

**In relation to (iv), the exclusion applies to any councillor who is a member of a Regional Transport Partnership established under the Transport (Scotland) Act 2005 by virtue of having been appointed by their council. The exclusion enables such a councillor to take part in the consideration and discussion of, and to vote upon, a matter relating to that RTP or in relation to which the RTP has made a representation; provided that the councillor has declared his or her interest at all meetings where such matters are to be discussed. The exclusion includes quasi-judicial and regulatory matters except any quasi-judicial or regulatory matter on which the RTP has made an application to the council, has formally objected to an application made by another party, or is the subject of an order made or proposed to be made by the council.**

#### **Evidence Presented at the Hearing**

##### **Joint Statement of Facts**

The Hearing Panel noted that a Joint Statement of Facts had been agreed between the ESC and the Respondent. The Hearing Panel noted that it was not in dispute that, at a meeting of Highland Council's Environment, Development and Infrastructure Committee on 16 May 2019, the Respondent moved, and voted in favour of, a motion to:

- approve £170,000 worth of additional funds for work relating to Skye Airport / Aerodrome; and
- for him, as Committee Chair, to write to the Transport Secretary on behalf of the Council and also on behalf of HITRANS (being the local regional transport partnership) requesting support.

The Panel noted that HITRANS was a member of a working group established for the purpose of developing Skye Aerodrome into an airport and that the Respondent had been Chair of HITRANS since June 2017. The Panel noted that the post was unremunerated. The Panel noted that it was not in dispute that the Respondent had not declared his interest in HITRANS at the meeting of the Environment, Development and Infrastructure Committee on 16 May 2019.

##### **Submissions made by the ESC's Representative**

The ESC's representative advised that the Respondent accepted that he had breached the Code and had apologised for doing so.

The ESC's representative noted that while councillors may be able state truthfully that an interest they had in a matter would not influence their discussion or decision-making, they must nevertheless comply with the objective test outlined in paragraph 5.3 of the Code. The ESC's representative argued that, in this case, having applied the objective test as required, the Respondent should have declared his interest in HITRANS. This was because a member of the public with knowledge of the relevant facts, being that:

- the Respondent was the chair of HITRANS; and
- that HITRANS was a member of the working group

would reasonably conclude the Respondent would be likely to support proposals to help fund the activities of a working group of which HITRANS was a member and, as such, that his interest could influence his discussion and decision-making on the matters under consideration.

The ESC's representative noted while there would be no need to withdraw in the case of an interest covered by a specific exclusion; paragraph 5.7 nevertheless requires councillors to declare any non-financial interests that would fall within the terms of the objective test. The ESC's representative noted that the specific exclusion at paragraph 5.18(2)(ii) allows any councillor who has been appointed by their Council to be a member of a regional transport partnership to take part in the consideration, discussions and voting on matters relating to that regional transport partnership, provided they declare their interest in it at the Council meeting in question. The ESC's representative advised, therefore, that in this case, the Respondent would have had to have declared the interest in the regional transport partnership in order to benefit from the



**COUNCILLOR ALLAN HENDERSON  
HIGHLAND COUNCIL**

specific exclusion at paragraph 5.18(2)(ii). The ESC's representative argued, therefore, that the failure to do so amounted to a breach of the Code.

The ESC's representative nevertheless asked the Panel to note that:

- the fact that the Respondent was Chair of HITRANS was widely known;
- the funding approved by the committee would not benefit HITRANS; and
- that the Respondent was not the HITRANS representative on the Working Group.

The ESC's representative further asked the Panel to note that the Respondent's position as Chair of HITRANS was unremunerated and that there was no question of him having gained personally from the Environment, Development and Infrastructure Committee's decision.

**Submissions made by the Respondent**

### **Submissions made by the Respondent**

The Respondent advised that he considered that the ESC's representative's summary of the case was accurate and fair. The Respondent advised that while his position as Chair of HITRANS was known to all members of the Environment, Development and Infrastructure Committee, he nevertheless accepted that he was aware of the terms of the specific exclusion and that he should have formally declared an interest, in order to benefit from it. The Respondent apologised unreservedly for his failure to do so.

### **DECISION**

The Hearing Panel considered the submissions made both in writing and orally at the Hearing. It concluded that:

1. The Councillors' Code of Conduct applied to the Respondent, Councillor Henderson.
2. The Respondent had breached paragraphs 5.3, 5.7 and 5.18(2)(ii) of the Code.

### **Reasons for Decision**

The Panel noted that paragraph 5.7 of the Code states that councillors must declare any non-financial interest even if the interest is not so remote or insignificant that it could not reasonably be taken to fall within the objective test. In this case, the Panel considered that, having applied the objective test under paragraph 5.3, the Respondent should have reached the view, in terms of paragraph 5.7, that his interest in HITRANS, as a member of the Working Group, would not be perceived as being so remote and insignificant that it could not influence him. This was because the Panel agreed with the ESC's representative that a member of the public would be reasonably entitled to conclude that, as Chair of HITRANS, the Respondent would be likely to support proposals to help fund the activities of a working group of which HITRANS was a member and, as such, his interest could influence his discussion and decision-making on the matters under consideration.

The Panel noted the terms of the specific exclusion under paragraph 5.18 of the Code that allowed councillors who were members of regional transport partnerships, such as HITRANS, to take part in the consideration and discussion of, and to vote upon, a matter relating to that regional transport partnership. The Panel noted however, that the specific exclusion only applies if the councillor declares his or her interest at all meetings where such matters are to be discussed. In this case, despite confirming to the Panel that he was aware of the specific exclusion, the Respondent failed to declare an interest at the Committee meeting on 16 May 2019 before taking part in the discussion and decision-making.

The Panel concluded, therefore, that the Respondent's failure to declare his interest in HITRANS at the meeting in question amounted to a contravention of paragraphs 5.3, 5.7 and 5.18 of the Code.

**Evidence in Mitigation**

The Respondent advised that his failure to declare his interest in HITRANS at the Environment, Development and Infrastructure Committee on 16 May 2019 was simply an oversight. The Respondent explained that this had occurred largely because there had been a full agenda and a large amount of paperwork before the Committee on the date in question. The Respondent further advised that as matters before the Committee did not usually concern HITRANS, the need to declare an interest was not at the forefront of his mind.

The Respondent advised that he was embarrassed by his failure to declare an interest as required and apologised unreservedly to the complainer, Panel and ESC for the breach of the Code.

**SANCTION**

The decision of the Hearing Panel was to censure the Respondent, Councillor Henderson.

The sanction was made under the terms of section 19(1)(a) of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

**Reasons for Sanction**

In reaching its decision on sanction, regarding the breach of paragraphs 5.3, 5.7 and 5.18 of the Code, the Hearing Panel noted, in mitigation, that the Respondent had co-operated fully with the investigative and Hearing processes and offered an unreserved apology in respect of the failure to declare the interest. The Panel accepted the Respondent's submission that the failure to comply with the Code was inadvertent and an oversight.

The Panel emphasised, however, that the requirement for councillors to declare certain interests is a fundamental requirement of the Code. A failure to do so removes the opportunity for openness and transparency in a councillor's role and denies members of the public the opportunity to consider whether a councillor's interests may or may not influence their discussion and decision-making. The Panel noted it was a councillor's personal responsibility to be aware of the provisions in the Code and to ensure that he or she complied with them.

The Panel was nevertheless of the view that the Respondent's conduct did not warrant a more severe sanction. This was because there was no evidence that the Respondent had attempted to conceal his interest or that there was any personal gain. The Panel further noted that while it had found that the Respondent had not declared the interest as required, had he done so, he would still have been allowed to take part in the discussion and decision-making under the specific exclusion in the Code for members of regional transport partnerships.

**RIGHT OF APPEAL**

The Respondent has a right of appeal in respect of this decision, as outlined in Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

**Date:** 13 July 2020



**Ms Ashleigh Dunn  
Chair of the Hearing Panel**

## **Extract from Annual report Ombudsman for Wales**

### **Code of Conduct complaints**

#### **(a) New Code of Conduct complaints**

This year we received 231 new Code of Conduct complaints - a decrease of 18% compared to 2018/19:

Body	2018/19	2019/20
Town and Community Councils	135	190
County and County Borough Councils	96	91
National Parks	0	1
<b>Total</b>	<b>231</b>	<b>282</b>

This decrease relates entirely to complaints made against members of Town and Community Councils. This is encouraging and suggests that standards of conduct of members of these bodies may be improving and/or that local resolution of issues may be taking place with good effect.

Nevertheless, within a small number of Town and Community Councils we are still seeing complaints which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues.

In fact, 18% of the Town and Community Council complaints received related to members of just one body and were, in effect, 'tit for tat' complaints. In those cases, we were very grateful to the Monitoring Officer of the principal authority who agreed to visit the Council to remind its members of their obligations under the Code and their democratic responsibilities to the communities they serve.

We take a very dim view of complaints of this nature and have, where appropriate, advised members that making frivolous and/or vexatious complaints is a breach of the Code of Conduct in itself.

We categorise the subject of the Code of Conduct complaints based on the Nolan Principles which are designed to promote high standards in public life.

The table below shows the proportion of complaints received under each principle when compared to 2018/19:

Subject	2019/20	2018/19
Accountability and openness	11%	7%
Disclosure and registration of interests	17%	17%
Duty to uphold the law	7%	9%
integrity	10%	13%
Objectivity and propriety	2%	2%
Promotion of equality and respect	49%	51%
Selflessness and stewardship	3%	1%

As in previous years, the majority of the Code of Conduct complaints that we received during 2019/20 related to matters of 'promotion of equality and respect' (49%) and 'disclosure and registration of interests' (17%)

We are concerned that these themes continue to dominate. In fact, we have seen year on year an increase in the number of complaints where bullying behaviour is being alleged, particularly from Clerks or employees/contractors of Local Authorities or Town and Community Councils.

This suggests that members could benefit from training or refresher training on these subjects. However, our impression from investigations is that many members of Town and Community Councils often do not take up opportunities offered to them to receive training on the Code of Conduct.

Our view is that Code of Conduct training is essential to becoming a 'good councillor'. We believe that members should embrace this training as soon as they become elected/co-opted and refresh themselves on the provisions regularly. Whilst there is no statutory obligation for members of Town and Community Councils to complete such training, we and the Monitoring Officers across Wales strongly advise them to do so.



(b) Closed Code of Conduct complaints

This year we closed 235 Code of Conduct complaints. This represented a 23.7% decrease compared to the previous year. The rate of closures was also inevitably affected by the number of new complaints received. However, we are glad that we still closed more complaints this year than we received.

The graphic below presents an overview of outcomes of the Code of Conduct complaints that we closed in 2019/20:



\* compared to 2018/19

All the Code of Conduct complaints received by our office are assessed against our two-stage test. We consider whether:

- a complaint is supported by direct evidence that is suggestive that a breach has taken place
- it is in the public interest to investigate that matter

Public interest can be described as "something which is of serious concern and benefit to the public"

In 2019/20, we closed 202 or approximately 86% of all Code of Conduct complaints after assessment against our two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is only marginally higher compared to the previous year (83%).

The remaining complaints taken forward to investigation represented the most serious of the complaints received.

During the life cycle of an investigation, we review the evidence gathered to assess whether it remains in the public interest to continue. Where it appears that investigating a matter is no longer in the public interest, we will make the decision to discontinue that investigation. Also, sometimes when we investigate we find no evidence of a breach. Finally, when an investigation is concluded, we can determine that 'no action needs to be taken' in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour (which may be suggestive of a breach of the Code) and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned.

We made one of these determinations in 85% of the Code of Conduct investigations this year.

In cases which cannot be concluded in this manner or feature serious breaches of the Code, it is necessary for us to refer these matters to a Standards Committee or the Adjudication Panel for Wales for consideration. In 2019/20 we made 5 referrals - that is, we referred 2% of all the Code complaints that we closed, compared to 8 or 3% last year.

The subjects of the Code of Conduct complaints that we closed this year largely mirrored the subjects of the new complaints received. The majority related to 'disclosure and registration of interests' and 'promotion of equality and respect'. We did, however, investigate a higher proportion of cases related to 'disclosure and registration of interests' than the proportion of this theme in the closed Code of Conduct complaints overall:

Subject	All closed	Closed at assessment	Closed at investigation
Disclosure and registration of interests	17%	15%	30%
Promotion of equality and respect	49%	50%	42%

### (c) Referrals

In 2019/20 we made:

- 4 referrals to the Standards Committees
- 1 referral to the Adjudication Panel for Wales

The Adjudication Panel for Wales and the Standards Committees consider the evidence we prepare, together with any defence put forward by the member concerned. They then determine whether a breach has occurred and if so, what penalty, if any, should be imposed.

The referrals to the Standards Committees this year featured behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct suggestive of bullying behaviour towards an employee of a contractor of the authority. At the time of writing, the Adjudication Panel for Wales was considering an appeal, on the issue of sanction only, in this case. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. At the time of writing, these two referrals were awaiting determination.

The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing the authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, a member of Flintshire County Council was suspended from holding office for 3 months.

Between 2016/17 and 2018/19, the Adjudication Panel for Wales and the Standards Committees upheld and found breaches in 88% of our referrals

This year Standards Committees and the Adjudication Panel for Wales also determined 5 cases referred by us in 2018/19. In all these cases, the Standards Committees and the Panel found serious breaches of the Code. Some of the breaches found included serious examples of disrespectful, disreputable and improper behaviour on the part of members towards other members and members of the public. In one case, the member was found to have been in breach of the Code for attempting to interfere with and prejudice our investigation of a complaint made about them. In all cases, the members; or former member, concerned were suspended for a period of 4 months.

### **(3) Lessons**

As is clear from the above, we make referrals only in a very small number of cases. We do not believe that the cases that we do refer are indicative of a wider decline in member conduct. Nevertheless, outcomes of these referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them.

However, even when we do not refer a case, we try to use our investigation as an opportunity to promote good practice. We usually remind the members investigated of their obligations under the Code and, where possible include instruction on further training or engagement with the authority to prevent further possible breaches. We may also make the members aware that the matter could be taken into consideration in the event of any future complaints of a similar nature.

We think that it is important that we continue to look for innovative and pragmatic ways to resolve matters to ensure a timelier outcome for all concerned. Where appropriate, we also want to give members the opportunity to account for their own actions and for further development.

**We plan to revise our Guidance to Members to include analysis of recent cases determined by Standards Committees and the Adjudication Panel for Wales.**

## **Appendix C**

### **LLG, CIPFA and SOLACE to work together on response to LGA draft model code of conduct, call for monitoring officers to be legally qualified**

July 20, 2020

LLG, CIPFA and SOLACE are to work together on a response to the draft model code of conduct that the Local Government Association (LGA) is currently consulting upon.

In a joint statement the three organisations said they would jointly challenge the LGA and “share the insight of our members gained from their close working knowledge of ethical governance within the local authority context”.

LLG, CIPFA and SOLACE said: “Our response to the consultation will explore and contrast the recommendations made by the Committee on Standards in Public Life’s Ethical Review. There is consensus between our organisations on the need for sanctions tailored for local government, including parish and town councils.

“In addition, whilst outside the scope of the code, we will argue in support of other measures which we consider will promote more effective ethical governance and standards such as statutory protection for Monitoring Officers and the requirement that Monitoring Officers should hold a legal qualification.”

The statement added: “This an unmissable opportunity to work together to cement consistency and high standards in governance. Between us, we are determined to raise the bar on acceptable conduct.”

The LGA launched its consultation last month. It runs until 17 August.

