



RHONDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

29 JANUARY 2024

**PUBLIC SERVICES OMBUDSMAN FOR WALES – SUMMARY OF COMPLAINTS
AGAINST MEMBERS – 30th AUGUST 2023 – 22nd JANUARY 2024**

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF THE REPORT

- 1.1 To provide Members with a summary of complaints made against Members and submitted to the Public Services Ombudsman for Wales (the 'Ombudsman') for the period 30th August 2023 – 22nd January 2024.

2. RECOMMENDATION

- 2.1 To consider the contents of the report and provide any comments/feedback on the complaints received by the Ombudsman during the period 30th August 2023 – 22nd January 2024.

3. BACKGROUND AND DETAILS OF COMPLAINTS

- 3.1 In determining whether to investigate a breach of the Code of Conduct, the Ombudsman initially applies a two-stage test. At the first stage, she will aim to establish whether there is direct evidence that a breach of the Code has occurred. At the second stage the Ombudsman considers whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. This involves the consideration of a number of public interest factors such as: whether the member has deliberately sought a personal gain at the public's expense for themselves or others, misused a position of trust, whether an investigation is required to maintain public confidence in elected members and whether an investigation is proportionate in the circumstances.
- 3.2 Members will note below the summary of anonymised complaints made against Members and submitted to the Ombudsman during the reporting period 30th August 2023 – 22nd January 2024:

Date Notification Received by the Ombudsman	Body & Cllr	Nature of Complaint	Ombudsman Investigation Yes/No
21/11/23	Rhondda Cynon Taf County Borough Council (County Borough Councillor)	<p>It was alleged that a Councillor failed to disclose a personal and prejudicial interest to the Council and to a Planning Committee in respect of a resident's private planning application. It was also alleged that the Councillor misled the Planning Committee about the condition of the property and about the number of objectors to the application.</p> <p>Finally, it was alleged that the Councillor may have sought to improperly influence the Council's planning office to make a decision in favour of the applicant's planning application.</p> <p>PSOW Decision (1) Whether there is evidence to suggest that there have been breaches of the Code of Conduct.</p> <p>Councillors are permitted to make representations in support of an individual resident's private planning application as any member of the public can. Councillors must make sure, however, that they disclose any personal and prejudicial interests they may have in such applications to the council. This is so that those with decision making powers can evaluate appropriately any information they receive about a particular matter, and so members of the public can have confidence in decision making.</p> <p>In this case, the Councillor made oral representations at a Planning Committee meeting convened to discuss, among other things, a planning application affecting the complainant. Before making representations, the Councillor declared that they had a personal and prejudicial interest in the application because they had a close personal association with the applicant's grandfather. The Councillor then left the meeting, after they made their representations, so the Planning Committee could make its decision.</p> <p>The complainant thinks the Councillor may have been helping the applicant in a professional capacity, and that this should therefore have been disclosed to the Planning Office and Planning Committee as a personal and prejudicial interest. No evidence has been provided, however, to show the Councillor was advising the applicant in such a professional capacity. The fact that the Councillor said they had advised the applicant</p>	No

does not evidence such a relationship as alleged.

The complainant also thinks the Councillor may have attempted to influence the planning office about the application (prior to the Planning Committee meeting) and may have failed to disclose their personal and prejudicial interest when they first contacted the council about the matter.

From the information provided by the Council to the complainant however, it appears that the Councillor contacted the head of planning by email and asked if they could have a chat about the application. The head of planning then spoke to the Councillor and the Councillor disclosed that they had an interest in the matter in the conversation. No evidence was been provided to show that the Councillor contacted the planning office before this interaction. No evidence has been provided to show the Councillor had tried to improperly influence the Council's decision as alleged.

While the Councillor emailed a director at the Council, copying in the head of planning, this was at a time when the Councillor's interest had previously been declared to the head of planning. There was nothing within the email to show the Councillor was improperly trying to influence the Council's decision. The Ombudsman appreciated that the complainant was concerned, when they found out that the Councillor had spoken to the head of planning, that they may have tried to influence the Council to approve the application. However, no evidence was provided to show any such improper influence was brought to bear and the Ombudsman noted the Council's recommendation to the Planning Committee was that the application should be rejected.

It is alleged that the Councillor told the Planning Committee that the complainant was the only objector to the planning application when there had in fact been previous objectors. From what the complainant had explained, when the Planning Committee convened, the complainant was the only ongoing objector because another neighbour had withdrawn their objection. Therefore the Ombudsman was of the view therefore that the Councillor can't be said to have misled the Planning Committee in this respect, although it was appreciated it is the complainant's view that the Councillor deliberately omitted to explain the full factual background to the Planning Committee.

There were other factual aspects which the

		<p>complainant considered the Councillor misled the Planning Committee about, such as the state of dereliction of the building and its grounds. However, commenting on the condition of a property is a matter of subjectivity and the Councillor, in supporting the applicant, was entitled to rely to an extent also on what the applicant may have advised the Councillor. Overall, no evidence was provided to show that the Councillor advised the Planning Committee of something which he knew to be false.</p> <p>The Ombudsman will not investigate unless there is reasonably strong evidence to suggest that the member concerned has breached the Code. No evidence had been provided to show that the Councillor may have breached any provisions of the Code for Members.</p> <p>(2) Whether an investigation is required in the public interest</p> <p>The conduct complained about did not meet the first stage of the test, as set out above, therefore, there was no need to consider the second stage of the test.</p>	
21/11/23	Rhondda Cynon Taf County Borough Council (County Borough Councillor)	<p>The Councillor was a member of a Planning Committee where a planning application affecting the complainant was decided.</p> <p>It was alleged that the Councillor colluded with other councillors (who were not on the Planning Committee) because the Councillor tried to approve the application when this was against the planning officer's recommendations to refuse it. It was also alleged that the Councillor was not competent to sit on a Planning Committee.</p> <p>It was alleged that the Councillor made offensive comments about the complainant in the Planning Committee, and which the complainant found upsetting.</p> <p>PSOW Decision</p> <p>(1) Whether there is evidence to suggest that there have been breaches of the Code of Conduct</p> <p>Councillors must have regard to any relevant advice provided by the authority and must make decisions on the merits of the individual circumstances of a matter and the wider public interest. Planning applications involve particular regulations and guidance, the interpretation of which can involve some degree of</p>	No

judgment. A councillor therefore deciding not to follow the recommendations of a planning officer does not, in and of itself, show that a councillor may not be competent or may have failed to follow regulations and guidelines correctly. Similarly, a decision to depart from the Council's recommendation does not evidence something untoward, such as collusion with other councillors, as alleged.

The video of the Council meeting shows the Councillor had duly considered the Council's report and recommendations, but in the Councillor's view there was nothing wrong with the proposed extension i.e. they did not consider this to be overbearing which was 1 of the 2 reasons the council had recommended refusal. The Ombudsman noted the Chair of the Planning Committee said that the case was tricky which implied that refusal of the application was not obvious. Another councillor member of the Planning Committee also said that they did not consider the applicant's extension to be overbearing. All councillors, however, including the Councillor complained about in this complaint, agreed 1 element of the application was not acceptable.

The fact that the Councillor said that they thought the applicant was entitled to develop the property in the way they wanted, did not show that they were suggesting that planning regulations should not be adhered to as alleged and that they were not competent, therefore. Rather, the Councillor (as was shown by the full comments in the meeting) was of the view that the application did meet planning regulations and the applicants were able to develop as they proposed in the Councillor's view (subject to a condition).

In these circumstances, the Ombudsman could not conclude that there was evidence to show either that the Councillor was not competent or that they failed to have due regard to the authority's advice. There was no evidence to suggest that the Councillor colluded with others to try to approve the application as opposed to coming to their own independent judgement about the application before them.

The Ombudsman saw the Councillor made reference to what they thought was an emotional connection by the complainant to the property in question. The Councillor went on to set out what they thought was a similar case in their own ward and they described a property that had been left derelict. While the Ombudsman

		<p>appreciated the complainant felt upset by these comments, because the circumstances of this case were different and the complainant had not suggested that the property should be left derelict, the Ombudsman did not consider the Councillor's comments can be said to be objectively offensive and therefore in breach of the Code.</p> <p>Overall, no evidence was provided to show that the Councillor had behaved improperly and in breach of the Code for Members.</p> <p>(2) Whether an investigation is required in the public interest</p> <p>The conduct complained about did not meet the first stage of the test, as set out above, therefore, there was no need to consider the second stage of the test.</p>	
21/11/23	Rhondda Cynon Taf County Borough Council (County Borough Councillor)	<p>The Councillor called in a planning application which led to the application being considered at a Planning Committee rather than it being decided by a planning officer. The Councillor did not attend the Planning Committee meeting where the application was decided, and the Councillor did not provide a written statement to the meeting. It is alleged that the Councillor colluded with another councillor to make sure the application was called in, and so that the application could be approved at Planning Committee.</p> <p>PSOW Decision</p> <p>(1) Whether there is evidence to suggest that there have been breaches of the Code of Conduct</p> <p>Local councillors can call in individual planning applications if they think there is a valid planning reason to do so. The Council will then decide if there is a valid planning reason and if an application should therefore be brought before a Planning Committee rather than be decided by an individual planning officer.</p> <p>The complainant thinks the Councillor colluded with another councillor to call in the application so it could be approved at Planning Committee and not rejected by the planning officer because: the Councillor did not represent the ward in which the planning application was made; the call in was made within a few days of another councillor withdrawing their call in request (following the complainant's concern about that councillor having personal and prejudicial interests in the matter); and the Councillor did not attend the Planning Committee meeting or provide any written representations at the meeting.</p>	No

The Ombudsman stated they have expected some representations by the Councillor at Planning Committee given the Councillor had called in the application. However, the Councillor's absence from the meeting, and the absence of written representations, is not evidence that the Councillor must have colluded with another councillor. It appeared that the Councillor provided a valid planning reason to the Council to call in the application. This reason was accepted by the Council.

While the complainant feels that collusion can be the only explanation for the Councillor calling in the application, Ombudsman felt alternative explanations are equally plausible. For example, the Councillor may have been approached by the applicant, and may have decided there was a valid planning reason to call in the application.

Overall, the complainant's concerns arise from speculation as to what may have happened; however, the Ombudsman will not investigate a matter unless there is reasonably strong evidence to suggest that the member concerned has breached the Code. The Ombudsman was not persuaded that the Councillor's non-attendance at the meeting, or the fact they represent a different ward, is reasonably strong evidence to suggest the Member has colluded with another councillor and potentially breached the Code.

It appears the complainant had a concern that a valid planning reason was not given by the Councillor and/or that the request to call in the application was not submitted within the Council's timeframes and should not therefore have been accepted by the Council. In that case, the Ombudsman stated the complainant may wish to pursue this concern through the Council's complaints process. This is a concern about the Council's administration process rather than a concern about the ethical conduct of the individual Councillor.

(2) Whether an investigation is required in the public interest

The conduct complained about does not meet the first stage of the test, as set out above, therefore, there is no need to consider the second stage of the test.

4. LEGAL IMPLICATIONS

4.1 There are no specific legal implications arising from this report.

5. CONSULTATION

5.1 There are no consultation implications arising from this report.

6. EQUALITY AND DIVERSITY IMPLICATIONS

6.1 There are no equality and diversity implications arising from this report.

7. FINANCIAL IMPLICATIONS

7.1 There are no financial implications arising from this report.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

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STANDARDS COMMITTEE

29 JANUARY 2024

REPORT OF THE MONITORING OFFICER

Background Papers: Freestanding matter

Contact: Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)