

## **Local filter: In detail**

### **South Cambridgeshire District Council**

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## Introduction

Here are three case examples (two initial complaints and one appeal case) from the local filter pilot project with an example of how to work through the local filter complaint handling chart and apply the process to the facts.

## Case C: Marnham District Council, Councillor Davies

### Summary

The complainant is the Conservative leader of the council. He alleged that a fellow Conservative councillor, Councillor Davies, had failed to treat council staff and other councillors with respect in breach of Paragraph 2(b) of the Code and had brought his office and the council into disrepute contrary to Paragraph 4 of the Code. This followed a complaint to the leader about Councillor Davies' behaviour by the chief executive.

The complaint included the following allegations:

- Councillor Davies had sent a number of disparaging emails to the council's IT staff, criticising their work and mocking their capabilities and copied them to third parties;
- Councillor Davies had sent unfair and derogatory emails about the chief executive, the council's solicitor and the complainant, copying them in to third parties, as well as inappropriate emails to other councillors;
- Councillor Davies had become involved in support of a local IT company in a dispute with the council, and was confrontational when officers reminded him about possible conflicts of interest; and
- Councillor Davies had been hectoring and overbearing towards technical officers in the presence of the chief executive and two other members at a meeting held on 23 April 2005. The chief executive asked the junior officers to leave after 20 minutes on account of Councillor Davies' behaviour, and because they were upset at the untimely death of a close colleague the previous Saturday. It is reported that when Councillor Davies was told of this, he retorted, "I suppose you're going to blame him!"

It is alleged that Councillor Davies has been warned about his conduct, including formal warnings, but that it has continued.

## **Filter process**

### **1. Is the complaint about the conduct of a member?**

Yes.

### **2. Does it appear to be a breach of the code of conduct?**

Yes.

#### **Relevant section (s) of Code to be applied:**

3. (1) You must treat others with respect.

(2) You must not:

(b) bully any person;

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

### **3. Is enough information provided to investigate?**

Yes.

### **4. Does the complaint merit further action?**

Yes – involves serious allegations of bullying, aggression and disrespect involving senior officers.

### **5. Is the committee conflicted out/liable to judicial review if it is investigated?**

No.

### **6. Is the complaint from the chief executive/monitoring officer or about the leader/leader of opposition/elected mayor?**

Yes. Complaint includes a complaint from the chief executive and is from the leader.

If so, consider referring case to SBE for investigation.

If not, refer for local investigation (also consider whether outsourcing is necessary and whether a mediation/training need is identified).

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### **SCDC decision**

Appears to be a serious allegation that needs investigating – do not want to send it to SBE – wish to retain locally. Can send case to Adjudication Panel for penalty if felt necessary following a hearing.

### **SBE decision**

The complaint discloses potentially serious breaches of the Code of Conduct, particularly the bullying of officers, and should be referred for investigation. The matter is not recommended for local investigation.

**(NB. In the actual case the councillor received a two-year disqualification from the Adjudication Panel.)**

## **Case D: Coketown District Council, Councillors Yeo, Bailey and Malecka**

### **Summary**

The complainants refer to the proposed development of a council-owned allotment site at Coketown, for 217 dwellings and associated infrastructure, considered by the planning committee on 21 September 2006. It is reported that Councillor Yeo, the executive member for land and property, had been involved in discussion with the developers, and council decisions over the sale of the site, the proceeds of which would be used by the council to pay for a new leisure centre at elsewhere in the borough. Having declared a personal interest in the matter at the planning committee, it is alleged that he failed to declare a prejudicial interest and withdraw from the meeting.

It is alleged that Councillor Bailey, the chairman, did not ensure that the meeting was conducted impartially due to confusion of members' and officers' roles, and that the planning officer, as an employee of the council, was not able to give the committee the impartial advice they needed.

It is also alleged that Councillor Bailey refused to allow a local member to speak until the very last moment, and then cut him short before hastily moving to the vote.

It is alleged that by allowing the planning officer to warn members that refusal of the application could lead to an expensive appeal, that Councillor Bailey allowed undue influence to be put on the committee.

It is alleged that when the chairman and the planning officer were asked by another member if the terms of the development brief had been complied with, the member was given an affirmative answer. The complainants dispute this and say there were breaches of the development brief.

It is alleged that when Councillor Malecka asked the chairman and the planning officer if the terms of the development brief had been complied with, the member was given an affirmative answer. The complainants dispute this and say there were breaches of the development brief.

The complainants also object to aspects of the proposed development, the granting of planning permission, and the way the meeting was minuted.

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## **Filter process**

### **1. Is the complaint about the conduct of a member?**

Yes and no – there are four separate issues, including a complaint against a planning officer. The committee has no jurisdiction over officer conduct.

### **2. Does it appear to be a breach of the Code of Conduct?**

#### **Relevant section of the Code to be applied:**

##### **Personal interests**

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

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

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body –

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

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

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(b) a decision in relation to that business might reasonably be regarded as affecting your wellbeing or financial position or the wellbeing or financial position of a relevant person to a greater extent than the majority of –

(iii) (in all other cases) other council tax payers, rate payers or inhabitants of your authority's area.

### **Councillor Yeo**

No information that Councillor Yeo had any kind of personal interest in the issue – being the portfolio holder for land and property does not mean he has a personal interest in a proposal for the development of council-owned land – he is acting in the interests of the authority, not himself.

### **Councillor Bailey**

No section of Code applicable – committee has no jurisdiction over the decision of a local authority or the conduct of meeting. The Code governs the ethical behaviour of members and not their competence or efficiency.

### **Councillor Malecka**

Unclear what the allegation is against this councillor.

### **SCDC decision**

This complaint is really about dissatisfaction with a council decision and there are no apparent breaches of the Code of Conduct. No further action.

### **SBE decision**

It is not unusual for local authorities to consider planning applications for development of land which they own, and it is noted from the council's constitution that there are procedures for doing so. It is not apparent from the allegation that members failed to follow those procedures. Councils seek to safeguard their interests by obtaining the professional advice of officers, who would be entitled to point out the possible consequences of refusal, given the general presumption that planning applications will be granted. It is noted that the recommendation was to grant the application, and according to procedure, Councillor Bailey, as chair, would be bound to ensure that the planning officer's views were put forward. Furthermore, chairs have considerable discretion over the conduct of meetings and rules for speaking at committee.

With regard to Councillor Yeo and personal interests as defined by the Code of Conduct, no information has been provided to indicate that, by virtue of being the lead member for land and property, the matter affects Councillor Yeo's wellbeing or financial interest or that of any of his relatives or friends, to a greater degree than other people in the district, or that it was something that he would be required to register in the register of members' interests. It is not considered that being lead member for land and property on the executive would automatically give rise to a personal interest at the planning committee when dealing with a proposed development on council-owned land.

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If Councillor Yeo considered that his role on the executive could give rise to concern at the planning committee, the right course of action would be to state it, which it appears by the minutes that he did. However, taking all things into account, it is not considered that Councillor Yeo's prior participation in this matter would give rise to a personal interest which by extension, as a result of public perception, would amount to a prejudicial interest requiring him to withdraw.

The complainants also object to aspects of the proposed development, the granting of planning permission, and the way the meeting was minuted.

It would not be the role of the Standards Board for England to adjudicate on the development brief or the correctness of members' views, such as the opinion allegedly expressed by Councillor Malecka, only their ethical conduct. Similarly, we cannot deal with allegations concerning the conduct of officers, aspects of the proposed development, or the way meetings are recorded.

## **Case K: Central Barton Urban Parish Council, Councillor Robert Paxton**

### **Case for review**

#### **Summary**

The details of the case are summarised in the Standards Board for England's decision notice below. The complainant sought a review of the decision not to refer the matter for investigation. Members were asked to decide, in the light of the review request, whether that decision should be overturned or upheld.

**The following is the Standards Board for England's original decision:**

#### **Decision Notice**

**Reference SBE16970.06**

#### **The complaint**

The Standards Board for England recently received a complaint from Mr Peter Goodwin concerning the alleged conduct of Councillor Robert Paxton of Central Barton Urban Parish Council. Officers conducted an assessment and decided not to refer the complaint for investigation. The following summarises the general nature of the allegation:

It is reported that Councillor Paxton attended a meeting of Central Barton Place Making Group on 15 September 2006, and that the meeting was confidential. It is alleged that he took documents from the meeting and, with others, copied them with a covering letter to members of Grange Road (Freehold) Ltd. It is alleged that the letter sought to discredit the existing

directors of the company and further Councillor Paxton's chances of being elected a director of the company.

In particular, it is alleged that architects acting for the directors of the company (including the complainant) sought an informal officers' opinion on the possibility of building on a plot at Eaton Mews. Unbeknown to the architects, the matter was discussed by the Place Making Group, with a sketch plan and a 3-D graphic.

### **Decision**

Officers have obtained the terms of reference of the group when it was set up by Barton Partnership to assist in the exercise of its planning powers, and it is noted that the parish council, along with other parish councils and agencies, has a representative on the group. The preliminary inquiry has also confirmed that Councillor Paxton is appointed to the Place Making Group by Central Barton Urban Parish Council.

Although the meetings may be "confidential" in the sense that they are not open to the public, that does not mean that all the things discussed there are confidential. It is also noted that the group brings together a number of stakeholders. It would be unlikely for a joint advisory panel of this diverse nature to be asked to consider sensitive information, unless by error, particularly as there is an expectation that representatives will liaise between the partnership and the bodies which appoint them. In this connection it is noted that the documents are not marked "confidential" or otherwise not for publication, as would normally be the case in local government if there was a risk that they might unintentionally enter the public domain.

It is considered that the allegations concerning the freehold and right-to-manage companies relate to Councillor Paxton's private capacity.

The Standards Board for England has decided that the allegation should not be referred to an ethical standards officer for investigation. Having taken account of the available information we do not believe that a potential breach of the Code of Conduct is disclosed. We have made no finding of fact. We notify all concerned parties in writing once we have assessed a complaint. This decision notice is sent to the person or persons making the allegation, the member against whom the allegation was made, the monitoring officer of the relevant authority and the clerk to the parish council.

## **Review**

At the request of the complainant, the Standards Board's chief executive (or, in his absence, another senior officer) can review and change a decision not to refer an allegation for investigation. However, he will generally only do this if he is persuaded that the decision was unreasonable in law. This would be if the decision was flawed because of the irregular way in which we processed the allegation, or because we made an irrational judgement on the reported facts.

A request for the chief executive to conduct a review has to be made in writing. We must receive the complainant's written request within 30 days of the date of this notice, explaining in detail on what grounds our decision should be reviewed.

If we receive a request for a review, we aim to deal with it within two weeks of receipt. We will write to all the parties mentioned above, notifying them of the outcome.

## **SCDC pilot appeal process**

Grounds for overturning on appeal are:

- That the original decision is considered to be a flawed judgement because it is unreasonable in law or because the correct procedures were not followed, or
- The complainant has provided compelling new information in their review request.

Committee should look at the allegation and review the request afresh.

## **SCDC decision**

Didn't feel the appellant has demonstrated any of the grounds for review. Feel original decision was sound. Papers need to be marked confidential or they won't be treated as such. Appeal refused – no new evidence and no flawed decision.

## **SBE response to the complainant's review request:**

14 February 2007

Mr Peter Goodwin  
Rosemount Properties  
Above Bar Gate  
Southampton  
SO1 2NP

Dear Mr Goodwin

**SBE16970.06**

Thank you for your letter of 28 January 2007. The chief executive is away, and he has delegated power to me to conduct the review of your case in his absence.

I note your dissatisfaction with the decision taken by officers not to refer this matter for investigation. I have now had an opportunity to review the relevant file and I have carefully considered the comments you make on this matter.

The Code of Conduct in relation to confidential information is quite tightly drawn, and refers to the disclosure of information given in confidence, or information which a member acquires which they believe to be of a confidential nature.

The Standards Board for England's guidance on this matter, published in *The Case Review, no.1, vol.1*, is clear. It says, "members are not expected to be clairvoyants. The person giving the information needs to make sure that the member is aware that the information is being given 'in confidence'". The documents acquired by Councillor Paxton were not marked confidential, and they did not come with a request asking him to keep them to himself. I do not know the exact conditions under which the Place Making Group meets, but it is apparent from the terms of reference that it aims to involve the community, and in any case, there is a general expectation that the town and country planning process will be transparent.

In reviewing your complaint I looked at whether the original decision was reasonable and was reached in accordance with our procedures. I consider that the final decision was reasonable and that the case was handled correctly.

I realise that you may be disappointed with the results of my review. However, our review process is there to ensure that reasonable decisions are made and that the relevant procedures have been followed. Now that process is complete, I regret that neither I nor the chief executive will be able to engage in further correspondence or discussion on this case.

Yours sincerely

**Paul Hoey**  
**Head of Policy and Guidance**

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