

Our ref: 17880/201805732

Ask for: Karen Edwards

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Date: 8 February 2019

 Karen.Edwards@ombudsm
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Ms A

Dear Ms A

Code of Conduct complaint made against Councillor Hugh Evans of Llandelidan Community Council

I have now considered your complaint against Councillor Hugh Evans, a member of Llandelidan Community Council (“the Community Council”). Having carefully considered the evidence provided, I am not persuaded that the general or specific complaints you make against Councillor Evans meet the Ombudsman’s criteria for an investigation. Accordingly, under the authority delegated to me by the Ombudsman, I have decided not to investigate your complaints. I appreciate that you are unlikely to agree with my assessment of your complaint, so I will explain the reasons for my decision.

You consider that Councillor Evans has a personal interest in matters involving the owner of the Nantclwyd Estate (“the Estate”) which prejudices his decisions at Community Council meetings because he rents some land from him.

The substance of your complaint is two-fold. Firstly, you complain that Councillor Evans failed to declare personal and prejudicial interests in Community Council meetings involving the Llandelidan Village Green (“the Village Green”). Secondly, you complain that Councillor Evans’ is openly biased in favour of the Estate because he is closely connected to the Personal Assistant who works for the Estate who supported his nomination for the Community Council at the local elections in May 2017, and Councillor Evans has previously declared he does not want to upset the Estate. You therefore consider that Councillor Evans has breached the Code of Conduct for members (“the Code”).

From the evidence presented, the Community Council was given the Village Green for the benefit of the Llandelidan community (“the community”) by virtue of an Inclosure Award. In May 2010, the Estate registered a possessory title over

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the Village Green. You say you were a member of the Community Council until 2016 and had made enquiries on its behalf into the ownership of the Village Green. The Community Council are aware that the Commons Register lists the Community Council as the owners of the Village Green. At a Community Council meeting on 14 December 2017, it decided to instruct a firm of Solicitors to gather evidence and provide advice on the legal rights and ownership of the Village Green. You have attended Community Council meetings as a member of the public since 2016 and raised concerns about its failure to take action to challenge the possessory title registered at the Land Registry. You also raised concerns that certain members have not declared personal interests in the Village Green despite their connection to the Estate. Whilst it was explained to you that such matters are for the individual member to decide in accordance with the Code, it is clear, that from May 2018 certain members declared personal interests but did not consider their interest to be prejudicial. You consider the Community Council has disposed of this community asset to the Estate as the members personal interest significantly prejudiced their ability to make a decision in the public interest.

The Ombudsman has limited investigative resources and when assessing Code complaints, it is necessary to consider the specific nature of the allegations made against the member complained about in the context of the duties and obligations placed on him/her under the Code as individuals who have been elected or co-opted to a council. In determining whether to investigate a breach of the Code, the Ombudsman initially considers the evidence provided by the complainant to assess whether it is sufficient to meet his threshold for investigation by applying a two-stage test.

Firstly, he aims 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/ the Adjudication Panel for Wales is required in the public interest. In this regard we consider a number of public interest factors such as: whether the member deliberately sought a personal gain at the public's expense for themselves or others, whether the member misused a position of trust, whether an investigation is required to maintain public confidence in elected members and whether an investigation would be proportionate.

This office is not a legal advisory service and given the Ombudsman's quasi-judicial role under Part III of the Local Government Act 2000 in considering Code complaints, it is important to remain impartial and independent of all parties. In the first instance, we base our decisions on the evidence provided by the complainant.

You allege that Councillor Evans is biased in decisions involving the Village Green on two grounds: firstly, as a member who has an interest in a matter under discussion or for decision (in accordance with the provisions of the code of

conduct)¹ and, secondly, as a member he has predetermined a matter, namely reached a decision without such an interest but nonetheless with a closed mind to any material arguments/documentation before the member for consideration.²

I first considered your specific complaint that Councillor Evans is openly biased in favour of the Estate. Paragraph 8 of the Code provides that when a member takes part in a meeting of the authority, or when arriving at decisions relating to the authority's business, the member must do so with an open mind and objectively. In effect, a member must act fairly and take proper account of the public interest during the decision-making process. In support of your argument you provided Denbighshire County Council's statement of persons nominated for the Community Council ("the nomination") in the 2017 local elections. This document demonstrates that Councillor Evans was nominated by a Maureen Shakesbury, but there is no evidence of any personal connection between her, the Estate and Councillor Hughes. In any event the nomination, of itself, is not sufficient to establish a close personal association suggestive of bias. This issue will not be investigated.

You also provided a 'contemporaneous' note of a discussion between you and Councillor Evans in May 2012 (as Exhibit RD17). However, the document itself is short and its contents selective; there is no written context to the discussion such as who was present during this discussion, whether it was part of Community Council business or at an official meeting, or even if Councillor Evans has agreed your version of the discussion. Furthermore, the conversation allegedly took place in 2012, over six years ago, and in our experience when investigating matters where there has been a substantial lapse of time between events and a complaint to this office, there are limitations on our ability to conduct a robust investigation. In the absence of such or any evidence capable of corroborating your account of this discussion it would not be possible for the Ombudsman to now determine, on a balance of probabilities, whether Councillor Evans made such comments at that time. Members may often have a view to which they are predisposed prior to debate, but it does not necessarily follow they could not be swayed in that view by the evidence presented in a debate and persuaded to vote contrary to their predisposition. In view of the evidential limitations identified above, I am not persuaded that it would be a proportionate use of the Ombudsman's resources to now investigate this issue.

Next, I considered the evidence you provided in support of your complaint that Councillor Evans has a personal interest in matters involving the Village Green, which you consider is also a prejudicial interest because he rents land from the Estate.

Personal and prejudicial interests are contained in paragraphs 10 to 14 of the Code. Briefly, personal interests relate to council issues or matters under discussion at meetings, where the issue under discussion has some link to the

¹ Paragraphs 10-14 of the Members Code of Conduct.

² Paragraph 8 (a) of the Members Code of Conduct

member/ the members close personal associate. Where such an interest exists, members are required to declare that personal interest and to disclose the nature of that interest, before the matter is discussed or, as soon as it becomes apparent to the member, at the relevant council meeting. However, a member can remain in the room, participate in the discussion and vote on the issue unless the personal interest is considered as prejudicial in accordance with paragraph 11 of the Code of Conduct.

Simply put, a personal interest only becomes prejudicial where an informed independent observer could conclude that the personal interest would significantly influence the member's vote or decision. There must be some evidence of a direct link between the alleged personal interest which would likely conflict with Councillor Evans' obligations under the Code and significantly impact his ability to make a decision in the public interest. This is an objective test, and the member must decide not whether he/she would take the decision without prejudice, but whether the member would be seen as doing so. The evidential proof required is on a balance of probabilities. However, a personal interest must be more than a simple connection within the local community, and consideration is given to the nature of the personal interest and whether a large number of people are equally affected by it, or whether only the member and/or a smaller group is particularly affected. It seems likely that the Estate's connection, by virtue of renting land, applies to a large portion of the community.

You consider that Councillor Evans has a personal interest in matters about the Village Green as he is a tenant of the Estate. You also consider the personal interest is prejudicial by virtue of that connection with the Estate. In support of your complaint, you provided Community Council Minutes for its meetings held on 4 January, 8 March 2018, 10 May, 7 June and 6 September.

The meeting on 7 June 2018 can be disregarded, because the Village Green was not an item on the agenda; the minutes simply record the Village Green in the context of actions undertaken following its previous meeting.

On 14 December 2017, Councillor Hugh Evans was involved in the initial instructions to the Solicitors with another two members. Councillor Evans was recorded as present at the Community Council meetings in January and March 2018 but did not declare a personal interest in the Village Green item. That said, the Village Green was only on the agenda for these meetings to provide any possible updates on receipt of the legal advice requested; there is no record of detailed discussions or voting.

At the Community Council meeting on 10 May 2018, Councillor Evans was present and declared a personal interest in the Village Green item on the basis that he rents land from the Estate. The Community Council discussed this item 'in camera'³ and the minutes record that it had received the legal advice. It was resolved that in view of comments received from a member of the public, the

³ Where the public are not present.

Clerk would write to the Solicitors to ask whether it could, or should, disclose the legal advice to the public, in view of comments it had received, and ask for legal advice on its prospects of success if it were to challenge the possessory title registered against the Village Green at the Land Registry.

At the Community Council meeting on 6 September 2018, Councillor Evans is recorded as present and he declared a personal interest in the Village Green item on the same basis as previously. Again, the matter was discussed 'in camera' and the minutes record that the Community Council resolved to accept the legal advice received, not to disclose the content of the advice to the public and not to challenge the possessory title registered against the Village Green at the Land Registry.

As explained, a personal interest only becomes prejudicial where a member of the public, who knows all the relevant facts, would reasonably think a member's personal interest is so significant that it is likely to prejudice that member's judgment of the public interest when making his/her decision. This is an objective test and it does not matter whether it actually would or not, the key point is whether the personal interest is perceived as likely to harm or impair the member's ability to judge the public interest.

We also consider the nature of the matter including whether a large number of people are equally affected by it, or whether only the member or a smaller group are particularly affected. There must be some factor that might positively harm the member's ability to judge the public interest objectively. In my view, the fact that Councillor Evans is a tenant of the Estate would not be sufficient to amount to a prejudicial interest.

Further, on 2 January 2019, the Community Council issued a public consultation for the community to determine what action it prefers in the context of the options available regarding the Village Green. As such the Community Council has placed the decision with the community.

Your complaints against Councillor Evans are very serious and I have carefully considered the evidence you presented. I am not persuaded that your complaint against Councillor Evans meets the Ombudsman's evidential requirements for a formal investigation. I have therefore concluded, for the reasons set out in this letter, that an investigation of your complaints would not be in the public interest. The Ombudsman cannot assist you on this occasion.

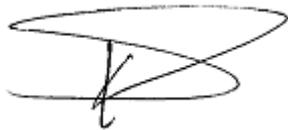
This letter is only being sent electronically. A hard copy will not be sent unless you ask for one.

I have copied this letter, which constitutes a formal statement of reasons for the decision not to investigate your complaint, to Councillor Hugh Evans, to the Clerk of Llanelidan Community Council and to the Monitoring Officer of Denbighshire County Council.

The file on your complaint will now be closed. We routinely destroy hard copies of complaint files after two years following the date on which a complaint is closed, unless there is an exceptional reason to keep the information for longer. We will destroy personal information held on electronic records after ten years following the date on which the complaint is closed.

If you have not already done so, I would be grateful if you could complete customer satisfaction and equality questionnaires. These can be accessed at www.ombudsman.wales/customersatisfaction If you would prefer paper copies please contact us.

Yours sincerely

A handwritten signature in black ink, appearing to be 'K Edwards', written over a horizontal line.

Karen Edwards
Investigation Officer/Swyddog Ymchwilio