

Our ref: 17880/201805733

Ask for: Karen Edwards

 01656 641192

Date: 8 February 2019

 Karen.Edwards@ombudsm
an-wales.org.uk

Ms A

Dear Ms A

Code of Conduct complaint made against Councillor Iola Jones of Llandelidan Community Council

I have now considered your complaint against Councillor Iola Jones, a member of Llandelidan Community Council (“the Community Council”). Under the authority delegated to me by the Ombudsman, I have decided not to investigate your complaint. I appreciate that you are likely to be disappointed by this decision, so I will explain the reasons for my view.

The substance of your complaint is that Councillor Jones failed to declare a personal and prejudicial interest in Community Council meetings involving the Llandelidan Village Green (“the Village Green”). Accordingly, you consider that Councillor Jones has breached the Code of Conduct for members (“the Code”) by virtue of her connection to the owner of the Nantclwyd Estate (“the Estate”).

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 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 have 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

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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 member's 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. Initially, we consider the evidence presented by the complainant to assess whether it is sufficient to meet the Ombudsman's threshold for investigation.

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 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 Jones' obligations under the Code and significantly impact her 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 Jones has a personal interest in matters about the Village Green as she is a tenant of the Estate which prejudices her ability to consider matters in the public interest. In support of your complaint, you provided Community Council Minutes for its meetings held on 4 January 2018, 8 March, 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. Indeed, this is also the case at item 27 of the minutes when Councillor Jones asked another member to update her about the AED installation permission for the Village Hall.

The minutes for the Community Council meetings on 4 January 2018 and 6 September 2018 record that Councillor Jones was not in attendance. I have limited my consideration of Councillor Jones' actions in Community Council meetings on 8 March 2018 and 10 May 2018.

The minutes for the Community Council meeting on 8 March record that Councillor Jones was present and did not declare a personal interest. I am mindful that the Village Green was only on the agenda to provide updates on the progress of the legal advice requested and whether it had yet been received, there was no discussion or vote on the item.

The minutes for the Community Council meeting on 10 May record that Councillor Jones was present and declared a personal interest in the Village Green item, on the grounds that she is a tenant of land from the Estate. This item was discussed between the members present in private. This may be done where information may be considered to contain sensitive/confidential information. The minutes recorded that the legal advice was received and the Community Council resolved that the Clerk would write to the Solicitors to ask whether it could, or should, disclose the legal advice to the public in view of comments from a member of the public, and to specifically ask for legal advice on the prospects of success if the Community Council were to challenge the possessory title registered against the Village Green at the Land Registry.

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, it is unlikely that a reasonably informed member of the public would consider Councillor Jones' personal interest is prejudicial simply on the basis that she is a tenant of some land from the Estate. Accordingly, having declared her personal interest, I consider Councillor Jones was entitled to remain in the room to discuss the item.

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.

I am not persuaded that your complaint against Councillor Jones 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 complaint is not in the public interest.

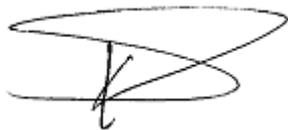
This letter is only being sent electronically. A hard copy will not be sent unless you ask for one.

I have copied this letter, which constitutes a formal statement of reasons for the decision not to investigate your complaint, to Councillor Iola Jones, 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