

Our ref: 17880/201805735

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 Richard Salisbury of Llandelidan Community Council

I have now been able to consider your recent complaint against Councillor Richard Salisbury, a member of Llandelidan Community Council (“the Community Council”). I have carefully considered the evidence you provided, but under the authority delegated to me by the Ombudsman, I have decided not to investigate your complaint. I appreciate that you are unlikely to agree with my assessment and I will therefore explain the reasons for my decision, below.

You consider that Councillor Salisbury 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 is employed by, and a tenant of land owned by, the Estate. The substance of your complaint was that Councillor R Salisbury failed to declare his personal and prejudicial interests at Community Council meetings about matters involving the Llandelidan Village Green (“the Village Green”). As such you consider that Councillor Salisbury has breached the Code of Conduct for members (“the Code”).

From the available evidence, 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

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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 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.

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 member's personal interest which would likely conflict with Councillor Salisbury's 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.

I have considered the evidence you provided which consists of Community Council Minutes for its meetings held on 4 January 2018, 8 March, 10 May, 7 June and 6 September. Councillor Salisbury is recorded as not present at the Community Council meetings held on 8 March and 7 June 2018, but he is recorded as in attendance at the other meetings.

Councillor Salisbury declared a personal interest in the Community Council meeting on 10 May 2018 on the grounds that he is an employee of the Estate. He did not declare a personal interest when he attended the meeting on 6 September 2018. This is concerning and I consider that as an employee of the Estate, a reasonably informed member of the public may well consider that Councillor Salisbury's personal interest may be so significant that it was likely to harm or prejudice his judgement in the public interest in matters involving the Estate, such as the Village Green.

That said, and based on the available evidence, I have concluded that whilst the conduct of which you complain may amount to a breach of the Code in this case, it appears to me that, even if the alleged breach were to be proven, an investigation would not be in the public interest. This is because matters have progressed since your initial complaint to this office. On 2 January 2019, the Community Council issued a public consultation for the community to consider the options available for the Village Green to assist it to make a decision. The Community Council has therefore asked the local community to determine in the public interest what option it prefers before making any decision.

For the reasons set out in this letter, I have decided not to investigate this complaint. I have, however, informed Councillor Salisbury that he may wish to seek clarity from either the Monitoring Officer of Denbighshire County Council, or One Voice Wales, about this personal interest in the context of his obligations under the Code.

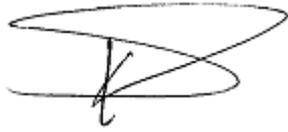
This letter is only being sent electronically. A hard copy will not be sent unless you ask for one.

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