

Our ref: 17880/201805731

Ask for: Karen Edwards

 01656641192

Date: 30 January 2019

 Karen.Edwards@ombudsman-wales.org.uk

PERSONAL & CONFIDENTIAL

Ms A
Address

Dear Ms A

Complaint against Llanelidan Community Council

I have now considered your complaint against Llanelidan Community Council (“the Community Council”) which we acknowledged on 13 December 2018. I also considered the additional information you provided with your email dated 11 January 2019, namely the Community Council’s public consultation for the Llanelidan Village Green (“the Village Green”).

I have carefully considered the evidence presented in conjunction with the Ombudsman’s jurisdiction, but I have decided that your complaint should not be investigated. I understand that this is unlikely to be the outcome you hoped for, and I will therefore explain the reasons for my decision, below. This letter is only being sent electronically. A hard copy will not be sent unless you ask for one.

You raise various complaints about the way the Community Council has dealt with the Village Green, but the crux of your complaint is that the Community Council failed to take action to reclaim ownership of the Village Green for the benefit of the community. You also complain that the Community Council obtained legal advice about this issue using public money yet refuses to disclose the content of that legal advice or undertake a public consultation on the options available in this matter. Further, you complain that the Community Council failed to answer questions set out in your letter dated 6 August 2018.

Given the amount of issues you complain about, I will not refer to every single item received or every single issue you raise. However, I am satisfied that I have seen sufficient material to give me an overview of your concerns and to reach

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some conclusions in respect of your complaints. If I do not refer to every single point raised by you, it is not because I have not considered it, but because I do not think it will help to explain my conclusions. Whilst your complaints to the Community Council are intrinsically linked with your other complaints submitted against various members of the Community Council, I will deal with these issues separately, as the Ombudsman's jurisdiction in this area falls under different legislation.

My role is to consider and assess complaints to decide if they should be passed for full investigation. The Ombudsman does not investigate every complaint made to him as it would not be possible to do so, given his resources are not without limit. His role is to consider complaints of maladministration or service failure on the part of public bodies which causes hardship and injustice to an individual member of the public. We normally take maladministration to mean that the body concerned has not acted in accordance with its policies or procedures. The Ombudsman's powers of investigation are set out in the Public Services Ombudsman (Wales) Act 2005 ("the Act") which defines who may complain to the Ombudsman and what he can do or achieve for a complainant.

Section 4 (1)(a) of the Act defines a person entitled to make a complaint to the Ombudsman as a member of the public 'who claim to have sustained injustice or hardship in consequence of a matter which the Ombudsman is entitled to investigate.' From the evidence you presented, I cannot see that, even if the Community Council was in some way at fault, that you have suffered hardship or injustice directly as a result.

Before the Ombudsman could intervene in a complaint, he would have to be satisfied that the decision/action of the body was taken with maladministration and that the person making the complaint directly suffered hardship and injustice as a result. You express general dissatisfaction about the Community Council's failure to reclaim ownership of the Viallge Green in the wider public interest, but I am unable to identify any evidence to indicate that you have suffered significant injustice personally as a result of the matters complained about. It is not sufficient that the complainant is a local taxpayer, or the complaint is made in the wider public interest or for the benefit of the community. A key consideration is whether the individual making the complaint has been directly or personally affected by the decision reached or action taken. On that basis, I do not consider that you have demonstrated that you have suffered injustice. The Ombudsman is unable to intervene in this matter and your complaint will not be investigated.

However, I must tell you that even if you could establish an injustice, I do not consider the Ombudsman could look into your complaints. He cannot investigate complaints about a properly made decision that a public body or a provider of public services is entitled to make, even if you do not agree with the decision. I have noted your previous involvement in the Village Green issue when you were a member of the Community Council from 2012 until you resigned in 2016. Indeed, as a member of the Community Council you likely had more insight than an ordinary member of the public into the details involved at that time. You say

you returned to Community Council meetings as a member of the public in November 2017, and you have clearly engaged with it about the Village Green at both meetings and/or via correspondence/emails. Whilst you strongly disagree with the Community Council's decisions/actions about the ownership of the Village Green, nothing you have said shows that the decisions reached were not properly taken.

The Community Council is currently responsible to manage the Village Green in the best interests of its community. You say from 2012 to 2016, in your role as a member, you researched the ownership of the Village Green and based on your own investigations concluded that the Community Council owned the land. You consider the Community Council is negligent in its management of the Village Green, has allowed the Nantclwyd Estate to register a possessory title over the land and failed to take action to reclaim ownership of it.

On 14 December 2017, the Community Council sought legal advice to consider the options available to it and for evidence to be gathered to determine the legal rights and ownership of the Village Green. You complain about the Community Council's use of public money to obtain this legal advice because in your view it could have easily challenged the Nantclwyd Estates title via the Land Registry. In your complaint you say this would have been the cheaper and quicker way to resolve the matter. You also remain unhappy that the Community Council refuses to disclose the content of that advice to you or the community. The legal advice obtained may be privileged information and as such the Community Council is not under an obligation to disclose confidential advice to members of the public. However, you appear to have asked the Information Commissioner's Office to consider this aspect of your complaint, and I consider this to be the most appropriate body to do so. In relation to your concerns about the Community Council's use of public funds to obtain the legal advice, and issues of financial mismanagement; these are more appropriately matters for the Wales Audit Office to consider. Their contact details are as follows:

Wales Audit Office
24 Cathedral Road
Cardiff
CF11 9LJ

Tel: 029 2032 0500
Fax: 029 2032 0600
Email: info@wao.gov.uk

Based on the available evidence, you have engaged frequently with the Community Council either through attendance at its meetings, and by oral and written questions and asked that it answer your specific questions about the Village Green. Your questions mainly revolve around discussions, the available evidence and documents between Council members, the Clerk, and the Nantclwyd Estate, to explain the reasons for not challenging their registered possessory title. Whilst you continue to disagree with the way the Community

Council has dealt with this matter, these are decisions it is entitled to take and there is no evidence of administrative flaws in the way the decisions were reached. Disagreement with a decision is not sufficient for the Ombudsman to intervene and, in such cases, he could not substitute his own decisions for those that have been properly reached and has no power to say whether a body should or should not take a particular action desired by a complainant.

I note that matters have progressed since your initial complaint to this office. On 2 January 2019, the Community Council asked the community to participate in a public consultation about the options available to it as regards the Village Green. A decision should be made following this process and will hopefully resolve your uncertainty.

Finally, I have considered your complaint that the Community Council failed to provide a written response to the questions set out in your letter dated 6 August 2018. I have carefully read the information you provided which included Community Council minutes of meetings and correspondence between you and the Clerk. I note the questions you asked were not part of the complaint process but were written questions you wanted the Community Council to address. The Clerk acknowledged your letter by email dated 13 August 2018 and confirmed that your letter would be passed to the Community Council for discussion. On 5 October 2018, you emailed the Clerk for answers to all the questions you posed about the Village Green. The Clerk responded the same day to confirm receipt of all your correspondence which would be considered by the Community Council as you requested, and if appropriate he would respond in due course. He also explained that he is contracted to work limited hours [seven and a half hours per month] and that during August the Community Council is in recess. Indeed, the Community Council minutes of its meeting on 6 September 2018, demonstrates that your correspondence about the Village Green was considered at the same time as the legal advice.

The Community Council's views were noted in the minutes of that meeting, which were formally approved on 8 November, and addressed some of the points you raised. The approved minutes state that in view of the legal advice received and the possibility of legal action, the Community Council could not minute the finer details discussed. As many of the questions you posed related to evidence the Community Council may hold about the Village Green, it would be reasonable that such issues were not disclosed at that time.

You made a formal complaint to the Community Council on 22 September 2018 repeating the questions you previously posed about the Village Green and included a Freedom of Information request. Both requests basically relate to the information and evidence the Community Council holds on the Village Green, including the legal advice and all correspondence/contact between Councillors and the Estate about this matter. The Community Council's formal complaints response to your concerns was dated 25 September and it responded to each of the ten specific complaints you raised. I have carefully considered the Council's response to your complaint and the minutes of the Community Council meetings

you provided, and I consider it has provided reasonable responses and explanations to the issues raised which address your concerns. In my view, there is no evidence of maladministration or an unremedied injustice in the way the Council dealt with this matter. Whilst you remain unhappy with the Council's explanations, it appears to me that the reasons why you consider the response to be inadequate, is because it does not meet with your specific requirements rather than any administrative flaw.

My only concern about the Community Council's complaints response was that it did not detail the Ombudsman's details, as required under section 33 of the Act, to allow a complainant to escalate a complaint to this office. That said, you did bring your complaint to this office and were not disadvantaged by the omission. I have however informed the Community Council that in any future complaint responses it must include the Ombudsman's details.

I am sorry but we are not able to assist you in this matter. I have concluded, based on the information provided and for the reasons set out in this letter, that your complaint is not one which we could or should investigate. An anonymised copy of this letter, which constitutes a formal statement of reasons for the decision not to investigate your complaint, has also been sent to the Community Council.

In accordance with the Ombudsman's paperlight policy we do not keep hard copies of documents albeit electronic copies remain available. We routinely destroy hard copies of complaint files after one year 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
Complaints Advice Team