

## **The Ombudsman's final decision**

Summary: The Council failed to properly investigate Mr B's complaint about three councillors and significantly delayed providing its response to the complaint. The Council has agreed to apologise, make a payment to Mr B and take action to prevent similar failings in future.

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## **The complaint**

1. Mr B complains that the Council has failed to properly deal with his complaint about elected members of the Council.

## **The Ombudsman's role and powers**

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

5. I have:
  - considered the complaint and the documents provided by the complainant;
  - discussed the issues with the complainant;
  - made enquiries of the Council and considered the comments and documents the Council has provided; and
  - given the Council and the complainant the opportunity to comment on my draft decision.

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## What I found

### Background to the complaint

6. On 8 March 2018, Mr B complained to the Council's Monitoring Officer about a councillor who, in his view, made slanderous comments about him during a meeting. Mr B also complained that after the meeting, a second councillor spoke to him in a manner intended to intimidate and a third councillor was verbally abusive to him.
7. The Council acknowledged Mr B's complaint but took no further action until 4 May. The Monitoring Officer then telephoned Mr B and apologised for the delay in dealing with his complaint, which he explained was due to his absence from work for health reasons. The evidence suggests that during this call, the Monitoring Officer invited Mr B to send him a copy of any relevant video footage; Mr B had been using a video camera on the day in question.
8. Mr B did not provide any further evidence to the Council. He then complained via his Member of Parliament about the Council's delay in dealing with his complaint.
9. The Monitoring Officer told Mr B that he would arrange to carry out an initial assessment of his complaints with the Council's Independent Person. He explained that this would result in a decision as to whether his complaint would be formally investigated, whether other action or no further action would be taken.
10. The Monitoring Officer met with the Independent Person on 25 June. It was decided that the comments made by one councillor during the meeting were not a potential breach of the code. It was also decided that Mr B's complaint about the other two councillors did not justify the cost of an external investigation, but that the Monitoring Officer should make further enquiries.
11. The Council took no further action and on 16 November, Mr B complained about the delay. The Monitoring Officer apologised to Mr B and said that he aimed to conclude work on his complaint within four weeks.
12. In December, the Monitoring Officer told Mr B that there was significant conflict between the accounts of the incident which occurred after the council meeting ended. He repeated his offer for Mr B to provide any other material he had.
13. Mr B provided the contact details of two witnesses to the incident. He said that he did not have any footage of it.
14. The Monitoring Officer interviewed the witnesses in February 2019. The Council told me on 22 February that it expected to send out its decision on Mr B's complaint early the following week.
15. The Monitoring Officer sent his decision to Mr B on 31 May. In relation to the comments made by the councillor during the meeting, he said that he had decided that the councillor's actions were not serious enough to warrant a finding that the Code of Conduct had been breached.
16. In relation to the incident after the meeting, the Monitoring Officer said that he had spoken to one of the councillors Mr B had complained about. He said that the councillor denied using any inappropriate language, or that he sought to intimidate Mr B. The Monitoring Officer told Mr B that he had also spoken to another councillor who was involved in the incident, along with the two witnesses Mr B had put forward. The Monitoring Officer told Mr B that due to the conflicting evidence, he was unable to reach a finding that the two councillors were acting in breach of their duties under the Code of Conduct.

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## **Council policy**

17. The Council's policy for dealing with complaints against councillors says:
- "The Monitoring Officer will review every complaint received and will confirm which part of the Code of Conduct applies and inform the subject member and in the case of a complaint against a town or parish councillor, the Clerk to the town or parish council."
- "If local resolution is not achieved, or not considered appropriate, the Monitoring Officer will consult with the Independent Person before progressing with the complaint."
- "The Monitoring Officer will then take a decision as to whether it merits investigation. This decision will normally be taken within 20 working days of receipt of a complaint."
- "When the Monitoring Officer has taken a decision, he will inform the complainant of his decision and the reasons for that decision. The subject member, and the town or parish council, will also be notified in writing of the Monitoring Officer's decision."
- "If the Monitoring Officer, in consultation with the Independent Person, decides that a complaint merits formal investigation, he will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator."

## **Analysis**

### **Complaint about the councillor's comments during the meeting**

18. The Monitoring Officer was present at the council meeting and therefore heard the comments which Mr B subsequently complained about. I do not consider it was necessary for the councillor to be questioned about what happened. However, the Council should have told the councillor about the complaint, and it should have written to the councillor with its findings.
19. The Monitoring Officer, in consultation with the Independent Person, decided in June 2018 that the actions of the councillor were not a potential breach of the code. The Council decided to respond to all aspects of Mr B's complaint at the same time. It did so on 31 May 2019, over a year after Mr B complained on 8 March 2018. This delay was fault. Other than this, I have found no evidence of fault in the way the Council decided there had not been a breach of the Code of Conduct.

### **Complaint about the incident after the meeting involving two other councillors**

20. The Monitoring Officer spoke to one of the councillors about the complaint almost a year after the incident. The Council delayed speaking to the councillor and failed to keep a record of the discussion. This was fault.
21. The Monitoring Officer did not speak to the other councillor, but instead relied on an email about the incident which she sent before Mr B complained. The Council should have told the councillor about the complaint and it should have written to both councillors with its findings. It did not do so; this was fault.
22. The Monitoring Officer, in consultation with the Independent Person, decided in June 2018 that Mr B's complaint about these two councillors did not justify the cost of an external investigation, but that the Monitoring Officer should make further enquiries. The Council should have written to Mr B to tell him its decision,

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and the reasons for its decision. It did not do so; this was fault. As a result, it is not clear if the Council decided that the complaint merited formal investigation, or whether it was decided more information was needed before it could reach a decision on whether a formal investigation was needed.

23. In any event, the Monitoring Officer did investigate the complaint. The policy says that where a complaint merits investigation, the Monitoring Officer will appoint an Investigating Officer, who can be a senior officer of the Council. The failure to do this resulted in an inadequate investigation and significant delays.
24. The failings in this case have caused Mr B frustration and put him to avoidable time and trouble. He has also been left with uncertainty as to whether a different decision would have been reached if there had been no fault by the Council.

### **Agreed action**

25. Within four weeks, the Council will make a payment of £150 to Mr B and apologise to him for the failings identified in this case.
26. Within twelve weeks, the Council will review its policy and procedures for dealing with complaints about councillors and will ensure it is able to deal with complaints in a timely manner.

### **Final decision**

27. I have completed my investigation and uphold Mr B's complaint. There was fault by the Council which caused injustice. The action the Council has agreed to take is sufficient to remedy that injustice.

### **Investigator's decision on behalf of the Ombudsman**