

Special Standards Committee - Wednesday, 30 June 2021

- a Decision Report of the City and County of Swansea Standards Committee

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Agenda Item 5a

DECISION REPORT OF THE CITY AND COUNTY OF SWANSEA STANDARDS COMMITTEE

IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT –

COUNCILLOR IAN GORN SCOTT

1. INTRODUCTION

- 1.1 This is the determination of the City and County of Swansea Standards Committee in relation to a complaint of breach of the Code of Conduct by Councillor Ian Scott of Mumbles Community Council.
- 1.2 The determination follows receipt of a report issued by the Public Service Ombudsman for Wales (the Ombudsman) under s 69 Local Government Act 2000 dated 18 December 2020 wherein the matter was referred to the Council's Standards Committee for consideration.
- 1.3 The Standards Committee determined its adjudication by way of an oral hearing on 30 June 2021 which was conducted remotely. The Public Service Ombudsman (represented by Katrin Shaw and Louise Morland) and Councillor Scott were also in attendance remotely via MS Teams.

2. ALLEGATIONS

- 2.1 The allegations contained within the Ombudsman's report were that Councillor Scott had breached the Council's Code of Conduct when authorising work by the Planning Consultancy, in that he had failed to comply with the following provisions of the Code:

Paragraph 7(b) – not to use, or authorise others to use, the resources of his authority –

(i) imprudently

(ii) in breach of his authority's requirements

(iii) unlawfully.

3. HEARING

- 3.1 The Standards Committee adopted a Standards Committee Hearing Procedure for considering alleged breaches of the Code of Conduct referrals on 18 February 2021.
- 3.2 On 19 March the Standards Committee determined that there was sufficient evidence to proceed to the next stage of the process and that Councillor Scott be given an opportunity to respond to the allegations and the investigation report from the Ombudsman.
- 3.3 Councillor Scott confirmed that he wished to have an oral hearing under the Procedure. The Ombudsman's office also confirmed that they wished to attend to present their report to the Committee.

4. STAGE 1 - FINDINGS OF FACT

- 4.1 Councillor Scott confirmed that he was not challenging the facts as set out in the Ombudsman report and, by way of summary, the Standards Committee found the following undisputed material facts:
- 4.2 Councillor Scott was elected to the Mumbles Community Council in May 2017. He was appointed to the Council's Planning Committee and was Chair of the Council from May 2017 to May 2018.
- 4.3 The Council inherited a position of objection to the Local Development Plan (LDP) from the previous Council, with an allocated budget for the LDP issues of £3,000 in 2017-2018. The previous Council had worked with CDN Planning (Wales) Ltd (hereinafter referred to as the Planning Consultancy) during 2016-2017 regarding the LDP. Whilst the Council did not have any contractual arrangement or terms of reference with the Planning Consultancy, it had a history of engagement with them over a number of years for planning matters. When a planning issue arose, the Clerk would not follow a procurement process but would instead contact the Planning Consultancy directly for advice because they had built up a working relationship.
- 4.4 As a result of direct communications with Councillor Scott on 19 and 20 September 2017 (whilst the clerk was on leave), the Planning Consultancy agreed to attend a public meeting on the Council's behalf on 6 October 2017 about a development at Summerland Lane and subsequently undertook further work on related planning matters for the Council.
- 4.5 The Planning Consultancy stated it was asked to attend a meeting at a resident's home on 7 December by Councillor Scott, who was also present, and the purpose of the meeting was to establish what was happening with the applications and what else could be done in terms of lodging objections.
- 4.6 The Planning Consultancy subsequently submitted several invoices to the Council for work it had undertaken on the planning issues, which were approved at Council meetings between August 2017 and April 2018 and totalled £8,967.
- 4.7 At a meeting on 27 March 2018, the Council resolved to instruct a barrister in respect of a judicial review. No budget allocation was identified for this expenditure.
- 4.8 Following concerns from members, the Clerk asked the Planning Consultancy for a breakdown of their invoices. The Council subsequently disputed costs amounting to £6,177 and the Planning Consultancy agreed to accept a sum of £5,000 for work undertaken which was paid in 2018-2019.
- 4.9 The Auditor General for Wales was notified in July 2018 that the Council had significantly overspent its budget in relation to planning consultancy services and undertook an audit of the Council's accounts for the 2017-2018 financial year. A public interest report was issued by the Auditor General regarding deficiencies in procurement and governance in relation to the Council's expenditure on planning consultants.
- 4.10 The report noted, that whilst it was clear that the Council had approved payments to the Planning Consultancy, it had not considered whether the fees charged would exceed the budget or if a budget virement was necessary and therefore there had been a failure by the Council to comply with its own rules and regulations.

- 4.11 The Auditor General report also noted that the Planning Consultancy stated it had undertaken work in response to instructions from Councillor Scott. The report concluded that Councillor Scott had acted unlawfully and incurred unlawful expenditure by directing the Planning Consultancy to undertake work, without a Council resolution which authorised members to issue instructions.
- 4.12 Councillor Scott said that the Planning Consultancy had been undertaking a “rolling programme” of work with the Council before he became a member and when he dealt with the Planning Consultancy he acted through the Clerk. He normally spoke to the Planning Consultancy in the presence of the Clerk and no concerns had been raised about finances or budgets. He did not discuss costs for the work and he felt that was a matter which would be out of his domain and not his responsibility.
- 4.13 Councillor Scott said he had called the public meeting on 6 October 2017 at short notice when the Clerk was on leave because he had been approached by residents and there was a tight deadline. When it was subsequently brought to his attention that in doing so he had acted contrary to Standing Orders he had apologised to the Council for his mistake and whilst he was not using ignorance as a defence, at the time everything was new to him. Councillor Scott said he had asked the Planning Consultancy to attend the meeting. However, he did not consider it an instruction as it would have gone through the Clerk and the Planning Consultancy had not suggested that there would be a cost.
- 4.14 Councillor Scott said he attended the private residents meeting on the 7 December 2017 as a Councillor because residents were keen for him to be there and he wanted to support them. Councillor Scott said he was asked by the residents if the Planning Consultancy could be at the meeting because it was well informed about planning processes. Councillor Scott said he was not aware the Planning Consultancy’s attendance would incur a charge.
- 4.15 Councillor Scott said some residents had contacted the Planning Consultancy and it had then charged the Council for its communications with them. Councillor Scott said some of the costs were questionable and the Planning Consultancy had reduced its bill once this was highlighted. He said he never sanctioned anyone to contact the Planning Consultancy.
- 4.16 Councillor Scott said the Planning Consultancy suggested involving a barrister in a potential judicial review. The Barrister subsequently came and spoke to the Council at no cost. Councillor Scott said he did not appoint the Barrister and the Council agreed the Barrister’s work and set aside a sum to cover the cost.

5. STAGE 2 – BREACH OF THE CODE OF CONDUCT

- 5.1 Upon the Ombudsman confirming that the alleged breach of the Code related to the two instances where Councillor Scott engaged directly with the Planning Consultancy namely, in relation to the October public meeting and the December private residents meeting, together with any associated work, the Standards Committee determined that:
- 5.2 Councillor Scott was in breach of Paragraph 7(b) (i) (ii) and (iii) of the Code of Conduct in that he authorised the use of council resources imprudently, in breach of his authority’s requirements and unlawfully, when directly engaging the Planning Consultants in relation to the 6 October 2017 and 7 December 2017 meetings for the following reasons:

Paragraph 7 (b)

- (i) imprudently – The Committee concluded that Councillor Scott failed to appreciate his responsibilities as Chair of the Council and acted without regard for the Council's Standing Orders or Financial Regulations. The Committee determined that Councillor Scott had an obligation to ensure that the resources of his Council were used appropriately.
- (ii) in breach of his authority's requirements – The Committee considered both the Standing Orders and Financial Regulations attached to the Ombudsman's report as well as the Auditor General's findings as set out in the public interest report. The Committee determined that Councillor Scott had acted in breach of Standing Order 24 (a) which states that "unless authorised by a resolution, no councillor shall issue orders, instructions or directions". The Committee also had regard to the Financial Regulations and in particular regulation 10.4 which states "a member may not issue an official order or make any contract on behalf of the Council". The Committee determined that Councillor Scott was also in breach of regulation 10.4 and was therefore in breach of his authority's requirements.
- (iii) unlawfully – the Committee determined that Councillor Scott had no delegated authority to instruct the Planning Consultancy to either attend or do associated work in relation to the October and December meetings as there was no Council resolution authorising the work. The Committee were therefore of the view that as the Local Government Act 1972 prohibited delegation to individual councillors and as there was no council resolution authorising the work that Councillor Scott acted unlawfully in engaging the Planning Consultancy.

6. STAGE 3 – SANCTION

- 6.1 In arriving at their decision as to the appropriate sanction the Standards Committee took into account the Adjudication Panel for Wales Sanction Guidance.
- 6.2 In assessing the seriousness of the breach the Committee took into account the fact that there was a financial impact on the Mumbles Community Council and that money was spent on a private company at a time when the expenditure on the Planning Consultants had exceeded the allocated budget. The Committee also took into account the reputational damage which had been caused to the Mumbles Community Council by the public interest report from the Auditor General. The Committee considered this to be a serious breach of the Code of Conduct.
- 6.3 The Committee considered the whole range of sanctions available and were mindful of the representations made by the Ombudsman both as to mitigating/aggravating circumstances and that the Ombudsman was of the view that a censure or limited form of suspension was in the public interest in this matter. The Committee also took into account the representations made by Councillor Scott and the fact that he had apologised for his actions and cooperated with the investigation by the Ombudsman.
- 6.4 The Committee were of the view that there were considerable mitigating circumstances. The Auditor General's public interest report highlighted that the Financial Regulations and Standing Orders were inadequate and had been for some time. The Committee also recognised and accepted that there was a "rolling programme" of work being undertaken by

the Planning Consultancy for some time. Councillor Scott had accepted that he had been naïve in his dealings with the Planning Consultancy although the Committee felt that having been in the role of Chair for some 5 months this would have presented him with an opportunity to question the processes in place.

- 6.5 The Committee took into consideration that Councillor Scott was an inexperienced Councillor, was recently elected and was an inexperienced Chair appointed shortly after taking office. There was no financial gain to Councillor Scott or any personal interest. The Committee accepted that he was acting with the best interests of the constituents in mind when instructing the Planning Consultants.
- 6.6 Notwithstanding the considerable mitigation the Standards Committee felt it appropriate to recognise that all councillors should be aware of the Standing Orders / Financial Regulations of their Community Council and ensure that they are complied with.
- 6.7 Pursuant to Regulation 9 of the 2001 Regulations, the sanction imposed by the City and County of Swansea Standards Committee is that Councillor Scott is formally censured for breach of paragraph 17(b)(i)(ii) and (iii) of the Code of Conduct.