

Appendix 4

The investigation of a complaint  
against Councillor Ian Gorn Scott of  
Mumbles Community Council

A report by the  
Public Services Ombudsman for Wales  
Case: 201905390

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## Introduction

Report by the Public Services Ombudsman for Wales on the investigation of a complaint made against Councillor Ian Gorn Scott of Mumbles Community Council, of a breach of the Council's statutory Code of Conduct for members.

This report is issued under section 69 of the Local Government Act 2000.

## Summary

The Ombudsman received a Code of Conduct (“the Code”) complaint from a member of a Community Council in Wales (“the Council”) because another member (“the Member”) had been named in an Audit Wales Report concerning unauthorised Council expenditure. The Ombudsman considered whether the Member may have breached paragraph 7 (b) (i), (ii), (iii) of the Code for use of Council resources which was imprudent, in breach of the authority’s requirements and unlawful.

The Ombudsman’s investigation found that a Planning Consultancy had billed the Council for work which had not been agreed and the Planning Consultancy said it had been instructed by the Member. The Member said at the time of the events he had taken on the role of Chair and was new to the Council and he thought the work undertaken by the Planning Consultancy had been part of a previously agreed arrangement with the Council. The Member said whilst he had liaised with the Planning Consultancy, he had not realised his communications would be interpreted as instructions or incur additional costs for the Council and this was an error on his part. The Ombudsman’s investigation found that although there was a lack of clear arrangements or guidance from the Council, the Member had been in a position of accountability and failed to ensure he fully understood the terms of what he was overseeing. The Ombudsman considered that the Member had directed the Planning Consultancy to undertake work he wasn’t lawfully able to authorise, and his actions were suggestive of a breach of paragraph 7(b) i), ii) and iii), of the Code of Conduct.

The Ombudsman referred his investigation report to the Monitoring Officer of the City and County of Swansea Council, for consideration by the Council’s Standards Committee.

## The Complaint

1. On 9 December **2019** I received a complaint from Councillor Carrie Townsend-Jones, Chair of Mumbles Community Council (“the Council”), that Councillor Ian Gorn Scott, the previous Chair of the Council, had failed to observe the Code of Conduct for members of the Council. It was alleged that Councillor Scott had issued instructions to a planning consultancy (“the Planning Consultancy”) without authorisation from the Council. A copy of the complaint and supporting documents are attached at Appendix A.

## Legal background

2. As required by Part III of the Local Government Act 2000 (the Act), The Council has adopted a Code of Conduct for members which incorporates the provisions of a model code contained in an order made by the Welsh Ministers. A copy of that Code of Conduct is at Appendix B. Council members are required to sign an undertaking that, in performing their functions, they will observe the Council’s Code of Conduct. Councillor Scott gave such an undertaking on 9 May **2017**. A copy of that declaration is attached at Appendix C.

3. Section 69 of the Act provides the authority for my investigation and the production of this report.

## Relevant legislation

4. Section 101 of the Local Government Act 1972 sets out that the Council may delegate responsibility for its functions to:

- a committee or a sub-committee of the Council
- an officer of the Council
- any other local authority.

Therefore, it is not possible to delegate responsibility for the discharge of functions or for decision making to individual councillors.

5. The statutory provisions of the Local Government Act 1972 are reinforced by the Council's own standing orders and financial regulations.

- Standing Order 24<sup>1</sup> states that unless authorised to do so by Council resolution, "no councillor shall... issue orders, instructions or directions".
- Financial Regulation 10.4<sup>2</sup> states: "A member may not issue an official order or make any contract on behalf of the Council".

6. Part 2 of the Model Code of Conduct<sup>3</sup> provides that members must observe the Code:

- a) whenever they conduct the business, or are present at a meeting, of their authority
- b) whenever they act, claim to act or give the impression they are acting in the role of member to which they were elected or appointed
- c) whenever they act, claim to act or give the impression they are acting as a representative of their authority or
- d) at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.

## My investigation

7. Councillor Scott was given notification of the complaint on 9 December 2019. A copy of this letter is attached at Appendix D.

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<sup>1</sup> Appendix G Mumbles Community Council Standing Orders

<sup>2</sup> Appendix H Mumbles Community Council Financial Regulations

<sup>3</sup> The Model Code of Conduct prescribed by the Local Authorities (Model Code of Conduct) (Wales) Order 2008 as amended.

8. Having considered the complaint as made to me, I concluded that it was appropriate to investigate whether Councillor Scott had failed to comply with any of the following provisions of the Code of Conduct:

- 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.

9. Councillor Scott was informed of my intended investigation on 20 January **2020**. A copy of this letter is attached at Appendix E.

10. During the investigation, the Investigation Officer obtained information, which confirmed Councillor Scott attended training on the Code of Conduct on 24 July 2017 (Appendix F), along with other documents and minutes from the Council (Appendix G<sup>4</sup>, Appendix H<sup>5</sup> and Appendix I<sup>6</sup>). The Investigation Officer also obtained information from Audit Wales (“AW”) (Appendix J).

11. The evidence found during the investigation was shared with Councillor Scott, enabling him to review it before responding to questions, which were put to him at an interview on 5 October 2020. A transcript of the interview is attached at Appendix K.

12. Councillor Scott was given the opportunity to comment on a draft of this report which included my provisional views and finding. However, he did not provide any comment.

### **My guidance on the Code of Conduct**

13. I have issued guidance for members of local authorities in Wales on the model Code of Conduct (“my guidance”). I include at Appendix L extracts of my guidance which are relevant to this complaint.

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<sup>4</sup> Appendix G Mumbles Community Council Standing Orders

<sup>5</sup> Appendix H Mumbles Community Council Financial Regulations

<sup>6</sup> Appendix I Mumbles Community Council Minutes

## Events leading to the complaint

14. Councillor Scott was elected as a member of the Council in May 2017. He was appointed to the Council's Community Planning Committee and held the role of Chair to the Council from May 2017 to May 2018.

15. The elected Council in 2017 (consisting of mainly new members) inherited a position of objection to a Local Development Plan ("LDP") from the previous Council, with an allocated budget for the LDP issues of £3,000 in 2017-18. The previous Council had worked with the Planning Consultancy during 2016-17 regarding the LDP and its objections to proposed housing developments known as Summerland Lane and Higher Lane. 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 to the Council ("the Clerk") would not follow a procurement process and instead contacted the Planning Consultancy directly for advice because they had built up a working relationship.

16. Following the inception of the new Council in May 2017, the Planning Consultancy liaised with the Clerk and Councillor Scott concerning the LDP and proposed Summerland Lane development. 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 Councils' behalf on 6 October 2017 about the Summerland Lane development, and subsequently undertook further work on related planning matters for the Council.

17. At a special meeting on 24 October 2017, the Council agreed to instruct the Planning Consultancy to prepare an objection to the Summerland Lane development. The Council also agreed that its current position, opposing development to another site (known as Higher Lane), should be maintained.<sup>7</sup> No request for any additional budget allocation was discussed.

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<sup>7</sup> Appendix I Special Meeting Minutes - 24 October 2017 Points S.042 and S.043



18. 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 (totalling £8,967).<sup>8</sup> These encompassed work on the Summerland Lane and Higher Lane developments and the Planning Consultancy's communications with a barrister regarding a potential judicial review. The Planning Consultancy's invoices raised concerns with members in February, and at a meeting on 13 February 2018 the Council resolved to ask the Planning Consultancy if further work was needed on the Summerland Lane objection, and to limit the costs to £1,000.

19. At a meeting on 27 March 2018, the Council resolved to instruct a barrister in respect of a judicial review about the planning matters, based on a quote of £1,500 for the work. No budget allocation was identified for this expenditure<sup>9</sup>.

20. Following the concerns from members, the Clerk asked the Planning Consultancy for a breakdown of all invoices. The Council subsequently disputed costs amounting to £6,177 and the Planning Consultancy agreed to accept a sum of £5,000 for the work undertaken, which was paid in 2018-19.

21. AW stated it was notified in July 2018 that the Council had significantly overspent its budget in relation to planning consultancy services, and it then undertook an audit of the Council's accounts for the 2017-18 financial year. Following the audit, AW issued a public report ("the AW Report") regarding deficiencies in procurement and governance in relation to the Council's expenditure on planning consultants.<sup>10</sup>

22. The AW 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<sup>11</sup> was necessary, and therefore there had been a failure by the Council to comply with its own rules and regulations.

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<sup>8</sup> Appendix I Meeting Minutes - 8 August 2017 Point 322.08, 12 September 2017 Point 378.09, 9 January 2017 Point 024.01, 13 February 2018 Point 075.02, 13 March 2018 Point 126.03, 10 April 2018 Point 174.04

<sup>9</sup> Appendix I Special Meeting Minutes 27 March 2018 Point S.027

<sup>10</sup> Report in the Public Interest – Expenditure on Planning Consultants – Mumbles Community Council. Issued November 2019

<sup>11</sup>Where a projected surplus in one budget may be transferred to cover another budget's deficit.

23. The AW Report also noted that the Planning Consultancy stated it had undertaken work in response to instructions from Councillor Scott. The AW 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.

24. In her complaint to me Councillor Townsend-Jones referenced the AW Report and said that Councillor Scott had instructed the Planning Consultancy to act without the approval of the Council and incurred expenditure in excess of the allocated budget.

25. Councillor Townsend-Jones said members had not been officially notified about a public meeting on 6 October 2017, and the Council was not aware the Planning Consultancy had attended the meeting on its behalf until an invoice was received.

26. Councillor Townsend-Jones said Councillor Scott had used the Council's resources to gain an information advantage and advise private residents, including the Planning Consultancy's attendance at a private resident's meeting on 7 December 2017.

27. Councillor Townsend-Jones stated that communications between the Planning Consultancy and a barrister took place from 14 February to 7 March 2018, however, the Council did not approve the instruction for the Barrister to work for the Council until 27 March 2018.

28. The Planning Consultancy stated it received instructions, "via a telephone conversation with the Chairman on September 19<sup>th</sup> 2017. This was confirmed the next day by email exchange which was copied to the Clerk." The Planning Consultancy also stated that virtually all emails were, "sent to or copied to the Chairman. Many were also copied to the Clerk," and, it did not "keep recordings of telephone conversations".<sup>12</sup>

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<sup>12</sup> Appendix A

29. The Planning Consultancy stated it was asked to attend a meeting at a resident's home on December 7 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<sup>13</sup>.

### **What Councillor Scott said**

30. Councillor Scott said he was given the role of Chair in May 2017, but he had no previous experience of being a member of a Council or of Council matters. Councillor Scott said whilst he was not provided with specific guidance for his role, the Clerk endeavoured to assist him, and he discussed everything with the Clerk.

31. Councillor Scott said following his election, he was provided with information on the Council's Standing Orders and Financial Regulations and whilst he might have looked at it, he was not familiar with the detail at that time. Councillor Scott said he undertook Code of Conduct training in July 2017 and attended courses on community planning and finances in September 2017 and December 2018.

32. Councillor Scott said 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, who would contact the Planning Consultancy and he would then speak to them. Councillor Scott said he normally spoke to the Planning Consultancy in the presence of the Clerk, and he was not told, "we should do this, that or the other", and no concerns were raised about finances or budgets. Councillor Scott said he did not discuss costs for the Planning Consultancy's work, and he felt that was a matter which was out of his domain and not his responsibility.

33. 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. Councillor Scott said it was subsequently brought to his attention that in

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<sup>13</sup> Appendix A

doing so he had acted contrary to Standing Orders. Councillor Scott said 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 there would be a cost. Councillor Scott said it was not his position to hire people, that was a matter for the Clerk and if costs had been discussed, he would have advised the Planning Consultancy to speak with the Clerk.

34. Councillor Scott said he attended the private residents meeting on 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 made aware the Planning Consultancy's attendance would incur a charge.

35. 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. Councillor Scott said he never sanctioned anyone to contact the Planning Consultancy.

36. 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.

37. Councillor Scott said, whilst the AW Report highlighted flaws in the way the Council had operated, he acknowledged he had made an error. He said the AW Report had caused him considerable angst and he regretted what had happened because he thought members should be seen in a good light. Councillor Scott said he was "just trying to be helpful", and with the benefit of hindsight he would now do things very differently, however he did not believe he had breached the Code of Conduct.

38. Councillor Scott said since these events, the Council had appointed a well-qualified and very capable Responsible Financial Officer who had made a change to the Council and reduced work for the Clerk.

## **Disputed facts**

39. Did Councillor Scott fail to establish the terms of the Council's arrangements with the Planning Consultancy, and that his communications with them could incur additional costs for the Council?

## **Analysis and Conclusions**

### **Did Councillor Scott fail to establish the terms of the Council's arrangements with the Planning Consultancy, and that his communications with them could incur additional costs for the Council?**

40. Councillor Scott said at the time of the events that he believed the Planning Consultancy was on a rolling programme of work with the Council, and when he dealt with the Planning Consultancy he acted through the Clerk. Councillor Scott acknowledged that he had asked the Planning Consultancy, when the Clerk was absent, to attend a meeting on behalf of the Council and that he had contravened Standing Orders. However, he said this would have gone through the Clerk and he did not specifically instruct the Planning Consultancy to undertake work. Having carefully considered the evidence, I consider that there was a lack of clear arrangements or guidance from the Council. This may have contributed to the Planning Consultancy interpreting its discussions with Councillor Scott as instructions to undertake more work. Whilst the Council's minutes reference approval of the Planning Consultancy's subsequent invoices, and agreements for them to work on differing planning matters, they do not indicate that any discussions took place about budgets for the work. It is also noted that the Council subsequently disputed some of these costs and an agreement was reached to settle with the Planning Consultancy at a lower rate.

41. That said, Councillor Scott was in a position of accountability and working closely with the Clerk. The Clerk asked Councillor Scott to deal directly with the Planning Consultancy. Councillor Scott assumed this responsibility, liaising directly with the Planning Consultancy and asking it to attend a meeting. Councillor Scott had an obligation, in agreeing to abide by the Code of Conduct, to ensure that the resources of the Council were used appropriately. Whilst Councillor Scott was new to his role and inexperienced in Council matters, which provides some mitigation for his actions, I am of the view that Councillor Scott did not do enough to ensure he knew, and understood, the terms of what he was overseeing and, as a result, he authorised work, without recognising it would incur additional costs, which needed to be agreed by the Council.

42. I consider that Councillor Scott (even if somewhat inadvertently) directed the Planning Consultancy to undertake work he wasn't lawfully able to authorise, and his actions are therefore suggestive of a breach of paragraph 7(b) i), ii) and iii), of the Code of Conduct.

### Finding

43. My finding under section 69 of the Local Government Act 2000 is that my report on this investigation should be referred to the Monitoring Officer of the City and County of Swansea Council, for consideration by the Council's Standards Committee.



**Nick Bennett**  
Ombudsman

18 December 2020

## Appendices

- Appendix A – Complaint and Supporting Information
- Appendix B – Code of Conduct
- Appendix C – Declaration of Acceptance of Office
- Appendix D – Notification of Complaint to Cllr Scott
- Appendix E – Investigation Start Letter
- Appendix F – Email from Clerk re Code of Conduct Training
- Appendix G – Mumbles Community Council Standing Orders
- Appendix H – Mumbles Community Council Financial Regulations
- Appendix I – Mumbles Community Council Minutes 16 May 2017 to 21 November 2019
- Appendix J – Email response and Supporting Information from Audit Wales
- Appendix K – Interview Transcript
- Appendix L – Extracts from PSOW Guidance

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